

ROLE OF THE JUDICIARY IN THE FORMATION AND SUSTENANCE OF A CIVILIZED SOCIETY: AN ASSESSMENT OF GOVERNANCE AND VALUES IN CONTEMPORARY NIGERIA

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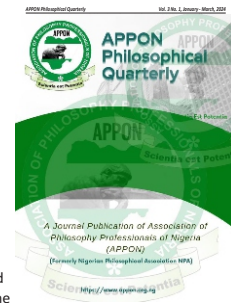
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Abstract

When people of two opposite ideas are in the same room, disputes are unavoidable. Every human being is a unique person because each person is fundamentally different; and it is in this difference that the beauty of humanity lies. Yet, these differences are the root of every dispute. The conjectures by philosophers about the state of nature are to portray this fundamental difference and its consequences if left uncontrolled. It is the quest to put it in check by means of law that ultimately led to the emergence of civil societies. But certainly not every dispute has a negative consequence. As a matter of fact, disputes are necessary for the growth of society as differing views on a subject matter ultimately allow people to look at things from different perspectives. Meanwhile, if parties are left alone without any restrictions, they might end up hurting each other – a situation described as anarchy by origin of state theorists. Thus, effective dispute resolution requires the existence of a third party with greater authority. The aim of this paper is to unravel that in modern democratic society, the judiciary has played the role of this third party. It forms one of the three most essential organs of government. It provides a platform for parties to raise their concerns and argue in a civilized manner, after which it makes decisions based on justice, equity, and good conscience. The research posits that dispute resolution is not the only function of the judiciary. Being one of the most essential organs of the state, it has powers and functions that go beyond just resolving disputes. Employing the analytic research method, this paper examines the roles of the judiciary in the formation and sustenance of a civilized society using Nigeria as a case study.

Keywords: judiciary, civilized society, government, separation of power, justice.

Introduction

Attempts have been made to explain the manner by which the state (or civilized society) came into existence. These theories were concerned, not primarily with the actual historical process of origin of the state, but rather with a rational explanation of the way in which the state may have been supposed to originate. These theories were put forward for the purpose of explaining

and justifying the existence and authority of the state. They were attempts to give rational answers to the questions of why men lived in political organization, of why they should submit to political authority, and of what limits should be placed to such authority. Let us quickly look at few of the most important of such theories.

One is the divine origin theory. During a large part of human history, the state was

viewed as of direct divine creation, and its government was theocratic in nature. In the early Oriental empires rulers claimed a divine right to control the affairs of their subjects and this light was seldom questioned.¹ The Hebrews believed that their system was of divine origin, and that Yahweh took an active part in the direction of their public affairs.

The rise of Christianity and the growth of the temporal power of the Catholic Church in the medieval period led to a bitter conflict between church and state and to an active discussion of the divine origin of political power. All were agreed that the ultimate source of authority was divine, but the supporters of the church declared that the Pope alone received his power directly from God. The Emperor, they held, received his authority indirectly through the Pope. The supporters of the state argued that the authority of the church should be limited to spiritual affairs and that God delegated to rulers directly the control of temporal affairs.

The leaders of the Protestant Reformation gave further impetus to the theory of divine origin, and taught that civil authority is delegated by God to the temporal rulers and that subjects should give obedience. When the medieval conflict between church and state was replaced in the sixteenth and seventeenth centuries by the contest within the state between king and people the controversy took a new form.

In opposition to the growing ideals of popular sovereignty and of the state as a deliberate creation of the people, the rulers again appealed to the theory of divine origin and looked to the church for support. Interest centred, not so much in the origin of political power itself as in the question of the persons by whom and the manner in which it

could rightfully be exercised. Those who supported royal power argued that God had delegated authority directly to kings, and that resistance to royal power was sin. Even after the success of the popular revolutions by which modern democracy was established, the idea of the “divinity that doth hedge a king” continued to exert a considerable influence upon the minds of the people.

Yet, there is another theory which asserts that the state is a product of force. The force theory holds that the state came into existence as a result of the forced subjection of the weak to the strong. This theory is used by some thinkers to justify the state on the ground that the state is power, that might make right and that the essence of the state is a sovereign will. Some also used this theory to attack the state because of its injustice and to urge individual freedom and limited state action. Some of the theologians of the Middle Ages argued that the state was based upon force and injustice, and decried the origin of human acclaimed sovereignty in order to subordinate temporal to spiritual power.² Individualists and anarchists believe that the state is an evil, because of their desire for individual freedom. Socialists argue that the state resulted from the aggression and exploitation of labourers by capitalists.

The natural theory views man as a political animal, and the state as a natural result of the instinct of sociability. Aristotle says, “It is evident that the state is a creature of nature and that man is by nature a political animal. And he who by nature and not by mere accident is without state is either above humanity or below it.”³ It justified the state as a necessity determined by the very nature of man. It was not the creation of man but an inevitable and natural

¹ A. Ogbuishi, and C. Ogbo, “Uncivilized Mind in a Civilized Body.” *Political Science View*, June 2019, <https://www.politicalscienceview.com/the-origin-of-the-state/>.

² John Finnis, *Aquinas: Moral, Political and Legal Theory* (Oxford: Oxford University Press, 1998), 26.

³ C.V. Ogbo, *Music Theory of Good Life: A Search for True Happiness* (Onitsha: Greatmen Builders Publishers, 2021), 31.

result of human nature. Accordingly, man could have no existence outside the state. His interests and those of the state were identical, and the state needed no further justification. A modification of this theory viewed the state as arising to meet the essential needs of man, and justified it on the grounds of its usefulness. The purpose of the state was to promote general welfare, and it was justified in taking any action that would be conducive to justice and the general good.

This promotion of general good and the guarantee of justice were also emphasized in the social contract theory. The social contract theory starts with the assumption that man lived originally in a "state of nature," antecedent to the formation of political organization or civil society. In this condition he was subject only to such rules of natural law as are prescribed by nature itself, and was the possessor of natural rights. This primitive condition he was compelled to abandon, either, as some held, because it was too idyllic to last, or, as others held, because it was too inconvenient or terrible to be tolerated. In its place, men deliberately formed an agreement, or contract, by which they set up a civilized society.

Submitting to the control of all, they received in return the protection of all, thus losing their natural liberty but receiving in return "security". Human laws were formed to replace "natural law", and each individual became the possessor of political rights and obligations. "The State was thus of deliberate human creation, and authority was derived from the consent of the people."⁴

Although none of these earlier theories gives a satisfactory explanation of the actual historical and evolutionary nature of political origins, each contributes elements of value. The divine origin theory, while used mainly to bolster the claims of rulers and of churchmen, nevertheless suggests the

moral responsibility of political authority and points out the important part played by religion in political life of people.

The force theory overemphasizes one factor in state origin, but points out the important fact that the state, unlike all "other" associations of mankind possesses the physical power to compel obedience. Force and power are distinctive characteristics of the state, and war has played a prominent part in state origin and development.

The natural theory, while explaining neither the actual influences that created the state nor the nature of the process, emphasizes the important fact that the state is not an artificial creation but an inevitable and, at first, largely unconscious result of man's nature and needs. The social contract theory, while historically inaccurate, suggests the value of consent as the basis for the spirit of unity necessary for state existence, as well as the necessity of law in representing accepted principles of justice and correspond to the needs of human nature and the circumstances of its time and place. This theory supported the revolutions by which tyrannical governments were overthrown and served as a basis for the growth of modern democracy. This paper will often make reference to this theory as the basis for modern society in general.

The paper will be divided into different sections. We shall first look into the need for independency of the judiciary in any civilized society worthy of the name. This will lead us to the examination of some of the major functions of the judiciary in a civilized and democratic society. The next section of this paper will project our view that both government and the individual are subject to the same moral code and that only a good government can bring about existence of good citizens in any society. All of this can only be a myth without a functional judiciary, hence, the belief that the judiciary plays important role in the

⁴ Ogbuishi, and Ogbo, "Uncivilized Mind in a Civilized Body," 30.

formation and sustenance of civilized societies which will be the preoccupation of the next section. This will be followed by a quick look at how oligarchs of Nigeria have been the root cause of democratic and governance in efficiency in the country by their habitual. The last section before the conclusion will be an analysis of the role the judiciary has played particularly in Nigeria.

The Judiciary and the Doctrine of Separation of Power

The judiciary is that organ of the government that is responsible for the legal system, which includes all the judges in the country's courts.⁵ In other words, it is that branch of the government that interprets the law and administers justice to all citizens. It is the third organ of the government after the legislature and the executive, which is based on the doctrine of separation of powers. According to this doctrine, the power of the government is divided into different branches, among which the judiciary is one. Thus, it has independent powers and responsibilities vested upon it by the sovereign.

The term "trias politica" or "separation of powers" was coined by Charles-Louis de Secondat, baron de La Brède et de Montesquieu, an 18th century French social and political philosopher. His publication, *Spirit of the Laws*, is considered one of the great works in the history of political theory and jurisprudence, and it inspired the Declaration of the Rights of Man and the Constitution of the United States. Under his model, the political authority of the state is divided into legislative, executive and judicial powers. He asserted that, to most effectively promote liberty, these three powers must be separate and acting independently.

Separation of powers, therefore, refers to the division of government responsibilities

into distinct branches to limit any one branch from exercising the core functions of another. The theory of separation of powers means that, a different body of persons is to administer each of the three departments of government (The legislative, executive and judiciary). And that, no one of them is to have a controlling power over either of the others. The intent is to prevent the concentration of power and provide for checks and balances. Traditionally, the legislative branch is responsible for enacting the laws of the state and appropriating the money necessary to operate the government. The executive branch is responsible for implementing and administering the public policy enacted and funded by the legislative branch. The judicial branch is responsible for interpreting the constitution and laws and applying their interpretations to controversies brought before it.

For the purpose of preserving the liberty of the individual and for avoiding tyranny separation of powers is necessary. This doctrine according to Gettel, implies that, the three functions of the government should be performed by different bodies of persons; each department (the legislature, the executive and judiciary) limited to its own sphere of action, and within that sphere should be independent and supreme.⁶ The doctrine of separation of powers is predicated on the premise that, if a single group holds all the three powers of the government, they are bound to have unlimited powers. They could prescribe any law to serve their own interests. Because, they exercise unlimited powers could pronounce the suspect guilty without recourse to fair trial. It is because of the theory separation of powers that any given group cannot at the same time prescribe, execute and adjudicate in any case. Otherwise, there will be no justice. It

⁵ R. Sambit, *Functions of Judiciary* (Lucknow: Sneha Mahawar, 2021), 37.

⁶ A. K. Chaturvedi, *Dictionary of Political Science* (New Delhi: Academic Publishers, 2006), 35.

follows that no one branch can gain absolute power or abuse the power given to them like in despotic military regimes.

The model of separation of powers was first developed in ancient Greece and gained recognition by the Roman Republic as part of the unmodified constitution of the Roman Republic. In this model, the state is divided into branches, each with separate and independent powers and areas of responsibility in such a way that no branch has more powers than the other branches. This also, forms the concept of separation of church and state as is the practice in many countries of the world depending on the applicable legal structures and the prevailing views towards the exact roles of religion in the given society.⁷

James Harrington, an English scholar was one of the first modern philosophers to analysis the doctrine of separation of powers. Harrington in his essay, *Common Wealth of Oceana* (1656), building upon the works of earlier philosophers like Plato, Aristotle and Machiavelli, described a utopian political system that included separation of powers. In his second *Treatise on Government* (1690), John Locke an English Political theorist, gave the concept of separation of powers more refined treatment. John Locke argued that legislative and executive powers were conceptually different, and that it was necessary to separate them in government institutions. However, in Locke's conception, judicial power played no significant role.

The modern idea of the doctrine of separation of powers was vigorously explored in Baron de Montesquieu's *Spirit of Laws* (1748). He argues that "Where an individual occupies the position of both the executive and the legislature, there is the

danger of the legislature enacting oppressive laws which the executive will administer to attain its own ends."⁸

Montesquieu in the process outlined a three-way division of powers in England amongst the parliament, the king and the courts, even though such a division was not in existence at that time. Although Montesquieu never used the word "separation", he apparently believed that the stability of the English government was due to this practice of separation of powers.

It must be realized that Plato, Aristotle, Harrington, Locke, Montesquieu and other commentators saw the concept of separation of powers as a way to eliminate the arbitrary powers to check dictatorial tendencies. Ogoloma noted that one condition of liberty is the separation of the legislature from the executive, and the existence of an independent and impartial judiciary.⁹ It is also as a result of this that, Montesquieu regarded the separation of powers as an essential safeguard of liberty. According to him, there is no liberty if the power of the judiciary be not separated from the legislative and executive. Hence, for Gettel, this doctrine implies that the three functions of the government should be performed by different bodies of persons; each department limited to its own sphere of action, and within that sphere should be independent and supreme.¹⁰ In the light of this, separation of powers is understood to mean that, none of the legislative, executive and judicial powers is able to interfere with the others. For example, the Judges should be independent of the executive and legislature in theory and in practice. The doctrine is also thereby understood to mean that the same persons should not hold posts in more than one of the three branches of government.

Closely related to this doctrine is the

⁷ Fineface Ogoloma, "The Theory of Separation of Powers in Nigeria: An Assessment," *African Research Review* 6, no. 3 (2012): 127-134.

⁸ Ogoloma, "The Theory of Separation of Powers in Nigeria," 127-134.

⁹ Ogoloma, "The Theory of Separation of Powers in Nigeria," 127-134.

¹⁰ Chaturvedi, *Dictionary of Political Science*, 35.

doctrine of *checks and balances*. This doctrine states that, governmental power should be controlled by overlapping authority within the government and by giving citizens the right to criticize state actions and remove officials from office.¹¹ If this is admitted, however, what happens in situations where there is one-party dominance in a political system or in a given government? Who checks who and of what essence would the idea of separation of power be? As Ogoloma rightly noted, the whole argument in favour of separation of powers will be meaningless as well as hopeless in the above situation or circumstances.¹² It will be impossible to create such mechanisms to ensure judicial independence from legislative and executive officials. However, some scholars were of the opinion that, creating an extreme separation of powers can make government less effective because, it increases the possibility of governmental paralysis. For, where the leaders in different branches of the government disagree about fundamental objectives, the country's official business will come to a standstill.

It follows that separation of powers is almost impossible to carry out in actual practice. However, in a modified form the theory has been adopted in Nigeria as in America, France and other countries. The President and the legislature in Nigeria for example, are both elected by the people and are responsible to them. While the judges once appointed hold office during good behaviour. But the President has the legislative power of vetoing bills and the Senate has the executive duties of sanctioning appointments and treaties, while, the Supreme Court has the power to determine the constitutionality of the laws.

In India and France for example, where there is parliamentary form of government

in place, the executive is responsible to the legislature because, the cabinet members are members of the legislature and therefore performs both executive and legislative functions. In England with parliamentary system in place, there is no separation of powers because, the House of Lords performs judicial functions and the judiciary has jurisdiction over the executive officers. The cabinet performs legislative functions and its members are also the members of the parliament.

From the foregoing, it is obvious that the essence of the doctrine of separation of powers is to protect the arbitrariness of rules. The power of the executive to convene the legislature and to veto its enactments affirms its ability to check arbitrary, while the legislative power to impeach is necessary and sufficient to hold the executive accountable to examination without holding him hostage. The people also look forward to the judiciary for the dispensation of justice. But is this the case in practical Nigerian democracy? The answer is of course no. The system somehow permits the President to act like a demigod with powers to do and undo virtually everything thereby threatening the liberty of the other arms and of the people in general. Such a dictatorial tendency must be condemned if the country will not remain the same forever.

While separation of powers is essential to the workings of any democratic government, no democratic system exists with an absolute separation of powers or an absolute *lack of* separation of powers. Governmental powers and responsibilities intentionally overlap; they are too complex and interrelated to be neatly compartmentalized. As a result, there is an inherent measure of competition and conflict among the branches of government.

¹¹ A. Appadorai, *The Substance of Politics* (New Delhi: Oxford University Press, 2003), 196-97.

¹² Ogoloma, "The Theory of Separation of Powers in Nigeria: An Assessment," 127-134.

This notwithstanding, the idea of separation of power should help to dispense with executive usurpation of powers, check corruption of elected officials and manipulation of electoral processes.

Some Functions of the Judiciary

The primary function of the judiciary is to ensure justice for the people. The courts play a huge role in deciding the fate of parties in a dispute. It also punishes people for committing crimes. When a case goes to court, the judge is responsible for ensuring justice for the parties by applying relevant laws present at that time. In order to do this, there is need for the right interpretation of the law itself.

Laws are made by the sovereign of the country to regulate specific acts, and their ultimate goal is to maintain law and order in society. The role of the judiciary is to apply these laws to the cases that come before it to reach the correct decision. Throughout the years, the courts have developed ways to apply laws more effectively, which include the rules of interpretation. According to these rules, the courts may use the literal rule, golden rule, mischief rule, or any other rules of interpretation based on the requirement.¹³ Since there are cases of varying degrees, no matter how extensive the provisions of a statute are, they may not be adequate to cover all the issues of a case effectively. Thus, rules of interpretation help the courts to interpret the appropriate meaning of the terms of a statute so that it can remove the absurdity caused by the literal interpretation and do justice to the case at hand.

Furthermore, it is the duty of the judiciary to protect the rights of the citizens. The judicial system is empowered to strike a balance between the rights and obligations

of citizens in the administration of justice. Since both the legislature and the government have the power to alter the rights of people, there has to be someone to play the role of a protector. The judiciary protects the rights of citizens whenever there is an overreach on the part of the government. In a democratic system, there ought to be a balance between the legislature and the judiciary. But when the legislature tries to go beyond its limits and take away people's rights, the judiciary makes sure that such action is declared unconstitutional or illegal. The judiciary also makes sure that the legislature doesn't modify the constitution to its liking in the garb of amendments. It is, thus, the guardian of the constitution.

Since the judiciary is the protector of rights and the guardian of the Constitution, it goes out of its way to ensure the legislature is not making laws that restrict the rights of the people. Judicial review is the proactive measure used by the judiciary to review the actions of the legislature and the executive.¹⁴ There are three kinds of reviews, review of legislative actions, review of decisions, and review of administrative action.¹⁵ A review of legislative actions means the power of the court to determine the constitutionality of Acts made by the legislature. Judicial review of decisions includes determining the lawfulness of a particular decision or action made by a public authority. Administrative actions, although do not decide a right, they have the capability of affecting the rights of people. Thus, a review of administrative action includes determining the constitutionality of a particular action.

The judiciary also performs the function of an arbitrator when there are disputes between the different state governments or

¹³ Sambit, *Functions of Judiciary*, 38.

¹⁴ Appadorai, *The Substance of Politics*, 197.

¹⁵ Appadorai, *The Substance of Politics*, 197.

between the central and state governments. For example, there are issues on which either the central or the state government can make laws, or whether both can make laws. Sometimes these issues become a battle between the authorities of different governments. In such cases, the judiciary plays the role of an umpire, making sure both parties come to a reasonable agreement.

Bad Government as an Efficient Cause of Bad Citizens

According to Saint Thomas Aquinas, law provides the only possible basis for morality and politics. He is of the view that one of the natural goods to which human beings is inclined is “to live in society.” This is in line with Aristotle's assertion that “he who by nature and not by mere accident is without state is either above humanity or below it.”¹⁶ There is a possibility of course that one's supernatural calling may necessitate that one live outside of political society. Following “the Philosopher” Aquinas believes that political society (*civitas*) emerges from the needs and aspirations of human nature itself. Thus understood, it is not an invention of human ingenuity (as in the teachings of modern social contract theories) nor an artificial construction designed to make up for human nature's shortcomings. It is, rather, a prompting of nature itself that sets humans apart from all other natural creatures.¹⁷

To be sure, political is not simply *given* by nature. Rather, it is something to which human beings naturally aspires and which is necessary for the full perfection of their existence. Meanwhile, the naturalness of politics to man is not the same as the naturalness of the five senses to man. Instead, it is compared to the naturalness of

moral life to man, since, even though human beings are inclined to moral virtues, acquiring the virtues nonetheless requires both education and habituation. Similarly, even though human beings are inclined to live in political societies, such societies must still be established, built, and sustained by human industry.

The fact that man is a naturally political animal has far-reaching implications. A human being is more importantly identified as a citizen. Achieving genuine human excellence must always mean achieving excellence as a citizen of a political society. To be sure, Aquinas noted that the requirements of good citizenship vary from regime to regime, but more generally conceived the good citizen is the one that places the common good above his own private good and acts accordingly. What sense does it make to speak of a good citizen in a bad regime?

One does not need to consider the worst sorts of regimes to see the difficulty inherent in achieving good citizenship. In any bad regime there always remains the possibility that promoting the interest of the regime and promoting the common good may be in conflict. The full potential of the good citizen will never be realized unless he lives in a good regime. In other words, only in a good regime do the good citizens and the good human being coincide. It is true that even the best regime will fall short of producing perfect citizens, since no society exists where everyone is virtuous. However, a bad regime of government worsens the moral and political conditions of its citizens. But what is the good regime of government? Following Aristotle, Aquinas argues that this can be determined according to two criteria: how the regime is ruled and whether or not it is ruled justly (i.e. for the common

¹⁶ Ogbo, *Musical Theory of Good Life*, 35.

¹⁷ Saint Thomas Aquinas, *Summa Theologiae*, trans. Fathers of the English Dominican Province (Westminster: Christian Classics, 1981), I.65.7.

good).

It is in line with this that Ogbo citing Aristotle says, "State exists for an end and this is the supreme good of man in both moral and intellectual life. The state comes into existence for the purpose of life but it continues in existence for the sake of good life...Therefore, the state has an important role in man's life: as exercising for the positive function of serving the man; the leading of good life or the acquisition of happiness."¹⁸ The fact remains that the individual human being attains his proper development and perfection through his concrete life in the state, while society attains its proper end through the perfection of its members. It follows that the state is subject to the same code of morality as the individual. The leading of good life or the acquisition of happiness is the very reason for the formation of civil society in the thoughts of social contract theorists. This cannot be possible without human laws as we shall see below.

The Judiciary in the Formation and Sustenance of Civilized Society

Saint Thomas Aquinas asserts that human laws are essential for the maintenance of any organized and civilized society.¹⁹ This is because the purpose of law is to promote the common good of society. Aquinas' argument for the necessity of human law in the formation and maintenance of a civilized society includes the observation that some human beings require an additional coercive incentive to respect and promote the common good. By means of law, those who show hostility to their fellow citizens are restrained from their evildoing through force and fear, and may even eventually come "to do willingly what hitherto they did

from fear, and become virtuous."²⁰ Aquinas mentions two specific dimensions of the common good that are of particular concern to human legislation, one of which is peace.

By this term (*pax*), he means the requirements for maintaining a social order in which citizens are free from the aggression of wrongdoers and other preventable threats to safety or livelihood. This is in line with the thinking of the social contract theorists who believe that the reason for the abandonment of the state of nature to embrace a civilized society is born out of the need to escape from natural disorder, aggression, threats to life, selfishness, survival of the fittest, and shortness of life that characterize the state of nature. It is only by law that all of these can averted since the law has the common good as its proper object. In addition, the law also seeks to promote and preserve justice as a certain kind of fairness.²¹

Now, this task of making the citizens just behooves on the judges or the judiciary. They do this by cultivating in them the "perpetual and constant will to render to each one his right [*ius*]."²² In addition to this, the judiciary ensures that the *ius* of particular situations between individuals is established or restored, and that each person receives what is due to him/her such that certain equality is maintained among citizens. When a judge orders a person to pay N100 to another for a service rendered, for instance, that judge re-establishes the equality of their relationship before the service was performed. In such a case, the N100 owed to the provider of the service is his/her *ius*, which must be returned if justice in this case is to be accomplished.

This backdrop is to emphasize the fact without the judiciary there cannot be a

¹⁸ Ogbo, *Muslim Theory of Good Life*, 35.

¹⁹ Aquinas, *Summa Theologiae*, 1.65.7.

²⁰ Aquinas, *Summa Theologiae*, 1.65.7.

²¹ Finnis, *Aquinas: Moral, Political and Legal Theory*, 26.

²² Aquinas, *Summa Theologiae*, 1.65.7.

civilized society. The real meaning of law is what the judges decide during the course of giving their judgments in various cases. From the citizen's point of view, Judiciary is the most important organ of the government because it acts as their protector against the possible excesses of legislative and executive organs. This is to say that life would still be “nasty and short” to use Thomas Hobbes terms as was the case in the state of nature. A society without a trusted judiciary is uncivilized and not worthy of the name “political society.”

The judiciary enjoys a big importance in the eyes of the people and hence in the sustenance of a civilized society because it acts as:

- The dispenser of Justice
- Protector of the rights of the people
- Guardian protector of the Constitution of the State
- Arbiter of centre-state disputes
- Safeguard against Legislative and executive excesses
- Check against arbitrary exercise of powers by the power-holders
- Guardian of Rule of Law and Justice

An independent judiciary is always considered to be the most essential part of every democratic government worth its name. A government without judiciary is almost inconceivable. A government without “independent” judiciary is always held to be an authoritarian government.

The chief quality which helps the judiciary to faithfully administer justice and to perform its functions efficiently is judicial independence. It is only when the judiciary works independently without any interference of the other two organs of the government that it can carry out its responsibilities. “The independence of judiciary,” writes Sharan, “is a corner stone of every democratic government and upon it

is built the structure of civil liberty.”²³ Judiciary can perform its functions only when it is free to administer justice according to law. This freedom cannot be possible if the system is such that the judiciary serves the President or the executive like a slave.

The Judiciary and Administration of Justice in Nigerian Society

The judicial system in Nigeria consists of the Supreme Court of Nigeria, the Court of Appeals, the High Courts, and others such as the Magistrates Courts, Customary Courts and other specialized courts. The judiciary in Nigeria plays essential role in administering justice to the people. Most legal disputes end up in the hands of the courts, and the judges ordinarily ensure that the aggrieved party gets justice. The constitution allows citizens to approach the court when their fundamental rights are violated. This shows the intention of the judicial system to provide justice and weed out injustice of any kind expeditiously.

Time and again, the courts have prioritized the need for justice and have stood for what is right, even if it means going against the wish of the “very powerful” or that of the majority in order to provide justice to the weak or the minorities. For example, in Mazi Nnamdi Kanu case, Kanu was discharged and acquitted by the court irrespective of the fact that the case was between Kanu versus the federal government. Although this judgment was quickly compromised, it shows the determination of the judiciary to administer justice in the country not minding who is involved.

Meanwhile, justice itself demands right interpretation of laws. The Legislature often creates a substantive and procedural law dealing with a particular area, and the judiciary is expected to interpret and apply

²³ Sambit, *Functions of Judiciary*, 36.

the law appropriately. Sometimes the case in hand would be subjected to injustice if the words in the statute were interpreted in their literal sense or if the literal sense of the words is thwarted and manipulated. In these circumstances, the courts are empowered to modify the meaning of the statute to make it appropriate for the case at hand or to uphold the truth of the literal sense where that is the case. For example, in *Mr. Peter Obi vs President Tinubu* case currently before the Election tribunal, the Constitution was clear on the demand for a President to score the mandatory 25% in the Federal Capital Territory. It is left to the Court to uphold this literal understanding or manipulate it to suit a pre-determined ruling.

In Nigeria also, the judiciary makes laws indirectly. The legislature is the institution that primarily makes laws in Nigeria. Bills are introduced in the senate and they are enacted after a long process that includes voting and the assent of the President. But although the legislature is responsible for the majority of laws that exist in the country today, it is not the sole law-making body. The judiciary in Nigeria has the authority to make laws too. The Supreme Court does this through the pronouncement of judgments, and these are binding on all the lower courts. The lower courts have to follow the precedents set by the Supreme Court while dealing with future cases.

The judiciary in Nigeria is very inactive when it comes to restricting the legislature from enacting laws that solely serve their own needs and laws that affect the fundamental rights of citizens. Any law that is infringing on the rights of people ought to be declared unconstitutional by the Supreme Court, and that law ceases to exist. For instance, some of the principles establishing the immunity of government officials ought to have been revisited but this have never been the case. This power would

have been limited had it only been applicable when a case comes to court. But the Court can take *suo motu* cognizance and review the rules and legislation made by the legislature.²⁴ It is the judiciary that, thus, guards the constitution and the fundamental rights of the citizens.

Again, the judiciary in Nigeria has the power to set up inquiry commissions to look into matters of concern that need expert-level intervention. This power is exercised in very serious matters such as election disputes, or when it is evident that the government or the executive has failed to take due care while acting on a serious matter. For example, to investigate the matter of 2023 election disputes, certain commissions and panels were set up in both state and federal levels. The panel will pronounce judgment concerning the rightful winners of elections under disputes. The result of the court may also be contested in the Supreme Court if any party is not satisfied with the outcome.

Any civil society will fail and may collapse into “state of nature” if the judiciary fails to carry out its fundamental function of administering justice. The Nigerian judiciary has been criticized for various reasons including lack of transparency in administration of justice and in the appointment of judges. The judiciary, being a public institution, should not shy away from being transparent. The right to know is a fundamental right, and knowledge is something desired by all man.²⁵ But our judiciary does not seem to be interested in bringing the institution under the purview of the right to information. For instance, in *Mr. Peter Obi vs President Tinubu* case cited earlier, the prayer to televise the proceedings of the court was rejected by the court during its pre-hearing sessions.

Transparency is crucial because the

²⁴ Appadorai, *The Substance of Politics*, 197.

²⁵ Ogbo, *Music Theory of Good Life*, 35.

public needs to be sure before placing their trust in an institution that has the responsibility of protecting their rights. Nigeria also needs reform in the appointment of judges especially the chief judge of the country. Except this is done, the desired separation of power will not be feasible since the person appointed by the President will likely be answerable to him. Cases of unlawful dismissal and unnecessary transfer of judges and appointment of others are not remote to the country's history of governance. In the USA, judges are elected by the public, and just like politicians, the judges campaign for the elections.

What about the question of pendency of cases? William Ewart Gladstone once said that *justice delayed is justice denied*. But has this been adopted by the judiciary, which is the sole institution responsible for ensuring justice? Numerous cases are pending across all the courts in Nigeria over the years. The courts have taken notice of this issue for years but have failed to do much in this regard. It should be noted that delay in reasoned judgment amounts to a violation of the human rights guaranteed under the constitution. This backlog is increasing day by day. Even though this issue is clearly evident to the judges and the public alike, it is frustrating to see high-profile cases getting priority hearings which leads to further delay in cases involving parties that do not have this luxury; and the hearing of some high-profile cases themselves are unnecessarily delayed.

Consider, for instance, the case of Nnamdi Kanu who has been the custody of Nigeria's DSS. The Appeal Court discharged and acquitted him on the 13th of October, 2022. Yet he is still under detention as at August 2023 based on "stay of court order" pleaded by the Federal government. On the 11th day of May, 2023, the hearing of the case was adjourned to the 14th day of September, 2023. Before this appointed date, the hearing of the matter was further

postponed under the guise that the 14th of September 2023, earlier scheduled for the hearing of the case, has caught up with the Supreme Court's annual vacation. To say the least, it is a shame for the apex court to tell the public that it was unaware of the fact of vacation in September when it fixed the date for hearing of Kanu's case.

Indeed, based on the reality of pendency of cases, a lot of innocent people are being imprisoned for crimes they did not commit. Even worse is the fact that prisons all over the country have a high percentage of under-trials rotting in jail, waiting for their fates to be decided. This problem has also been recognized by the judges. But the problem is that they sometimes serve the interest of one party against another. Some of them their time till retirement and then leave the system, making space for another judge, and this process continues. On the other hand, those under-trial prisoners spend the majority part of their lives waiting for justice.

Therefore, like the other arms of government, the Nigerian judiciary is not immune from corruption. Countless accusations against influential people getting the desired day in court or bribery have been made over the years. Yet, thousands of judges who had once broken oaths remained in power. There have been cases of judges forcing defendants to languish in jail without lawyers and no state agencies overseeing their conducts. Judges of the USA and UK courts too have been accused of corrupt practices. Many courts in various African nations have also been accused of corruption. It goes to show that these practices are widespread and that both underdeveloped and developed nations face such hurdles.

The Judiciary and Institutionalized Oligarchy vis-à-vis Values and Governance in Nigeria

Authoritarian rule by an institutionalized oligarchy constitutes the main structural

obstacle to deepening democratic rule in Nigeria. Oligarchic rule in Nigeria is founded on two reinforcing structural factors: total economic dependence on redistribution oil revenue, and the centralization of financial and political power in the office of the presidency. Whatever stability is achieved by the patronage among the regional interests constituting the national oligarchy, the positive contribution is undermined by the resulting political uncertainty, judicial weakness, and economic disorder. This combination of insecurity, oil-dependency, and the need to hold or have access to the presidency derives members of the oligarchy to fix elections, organize political violence, constantly reshuffles alliances, and avoid institutionalizing stable political parties.

The informal exercise of power by Nigeria's political oligarchy exerts greater control over daily life than do formal institutions: be it the executive, the legislature or the judiciary. Meanwhile both the formal and informal powers converge in the office of the president who largely monopolizes national revenues to reward and cement this network. This centralization of power, security, and financial resources in the presidency constitutes a major obstacle to the realization of Nigerian democracy.

The president of Nigeria often exercises his function building on the old authoritarian system of the military rule in Nigeria before the emergence of democracy. This is evident in the incessant systematic marginalization of the judiciary which continues to cast a shadow over the rule of law in Nigeria. One can then easily perceive that the judiciary simply serves the interest of the president in most cases, and as such, the country is totally in a mess. The country is not only in a mess but also its political environment dominated by criminal-minded individuals all because of the judiciary. The judicial system is rotten because the judges are easily bought over

with money. This enables them to set bad precedence by giving surprising and sometimes laughable judgments to the chagrin of well-meaning Nigerians. Today, the phrase "go to court" even when the person saying it is caught in the act is becoming a slogan.

One can recall, for instance, how the electoral petition judges vehemently refused to allow the live broadcast of the election petition proceedings which would have allowed the whole world to know everything happening between the petitioners and the declared winner of the election. But on the day of verdict, the same judges wanted to look clean before the eyes of Nigerians and the whole world by promising and indeed broadcasting the judgment live.

Another disturbing development in the question of value in Nigeria governance is the issue of inclusion. Good enough, the intense inter-ethnic competition of the past through ethnic-based political parties is fast disappearing in the quest to grab power. The largest parties today, the PDP, APC, and the LP are vast multi-ethnic coalitions, reflecting the many faces of their oligarch founders. The end result is that ethnic competition now occurs at the party level, rather than at the government level as was the case earlier. In all instance, meanwhile, politics in Nigeria remains an elite game, generally the rich, male, and old. The poor, women, and youth are fundamentally excluded, except one would simply be there to run errands for the oligarchs. Another key barrier to inclusion is the widespread discrimination against citizens known as non-indigenes, no matter how strong their ties to the communities in which they live. The rights that are systematically denied to non-indigenes runs directly counter to the constitution's guarantee of freedom against discrimination, and remain a source of considerable resentment among many Nigerians.

The obvious fact is that good governance

is found wanting in Nigeria. Although the “third-term” effort clouded many aspects of his presidency, President Obasanjo must be credited for implementing a range of important reforms since 2003. His introduction of the Economic and Financial Crime Commissions (EFCC) in the late 2003 breathed new life into the anti-corruption agenda. Yet corruption is still the stock-in-trade of Nigerian democracy, rooted in the centralized nature of politics, already described. Obviously, political elites misappropriate considerable public funds for their personal gain, while most of their constituents lack access to basic social amenities such as water, good roads, electricity, hospital, schools.

As good governance continues to be found lacking by majority of Nigerians who live without access to basic public services, religious organizations have stepped in to fill the void. To be sure, this has not helped out anything. However, religious organizations do provide some services that should have been provided by the government. All of these are symptomatic of a broader overarching democracy and governance problem in Nigeria, which relates to an oligarchic control of political power, both formal and informal, by unaccountable political elites.

This oligarchic control of political power contributes to patterns of inefficient centralization, a dearth of meaningful representation within the political system, and a culture of impunity that dates back to military rule. This has created a stark gap between the rulers and the ruled leading to a general dissatisfaction and cynicism regarding governance combined with growing sentiments of injustice which are fuelled by attempts to manipulate elections. This directly threatens political stability, which, according to USAID (2006) is extraordinarily fragile. There is no gain saying that democratic reform is necessary for the contemporary Nigerian society. This is already taking place but in a very slow

rate. For instance, the increasing demands placed upon the political elites by the population means that the frailties of the existing political system have become raw and exposed, and threaten to cast the political order into conflict and turmoil.

Therefore, urgent measures should be put in place to strengthen the democratic system to provide increased stability and security. To deepen democratic reform by civil society in Nigeria, the society should be engaged through the voice, advocacy, and participation of citizens. In this way, good governance will be promoted. But promotion of good governance cannot be possible is the judicial function and process is not strengthened. This will assist in the development of a more effective justice system necessary for the sustenance of a civilized society.

Conclusion

The basis of political society, according to social contract theorists, is that contract by which first, the people agree to be governed by giving their collective will to the government in order to gain security and freedom and wellbeing which lack in the state of nature, and by which secondly, the government undertakes to ensure and promote the common good, well-being, security and freedom of the citizens. When the requirement of this contract is not kept by any party, a political society fundamentally lacks a justifiable basis for existence. Meanwhile, the burden to sustain a political society lies on the government. The ability of the government to follow the letters of the social contract influences the moral life and social wellbeing of the citizens. Now, since every society comprises of human beings with different interests, disputes are bound to result. As such, the ruler or the government cannot govern effectively without an independent and impartial judicial body. Indeed, a civilized society without the judiciary is inconceivable. Given the diversity of human

interests, a civilized society cannot come into existence without the judiciary nor can it sustain itself in existence without the judiciary. Therefore, any society whose judiciary is corrupt and is simply serving the interest of a powerful few is not only doomed but is on its way to annihilation.

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