

THE RULE OF LAW AND DEMOCRATIC PRACTICE IN NIGERIA IN THE LIGHT OF THOMAS HOBBS' CONCEPT OF CIVIL LAW

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Abstract

This work focuses on Thomas Hobbes' theory of civil law in relation to Nigeria's political situation. Hobbes postulated that there must be civil law in the civil society in order to check the excesses of the people who go into social contract. He upheld the supremacy of the law and advocated for the equality of all before it in order to forestall lawlessness and man's inhumanity to his fellow man. The same law must be applied/administered to everybody at the same time and at all times and nobody should be deemed above it. However, the reverse seems to be the case in Nigerian context. The civil law seems to be made only for the poor and the less privileged in the society while the rich and the influential flout it without attracting proportionate punitive measures. The problem is that the poor masses are gradually waking up from their age long moral, legal and political slumber and might resort to self-help in order to extricate themselves from the shackles of sociopolitical slavery and abuse. This work therefore adopts the methods of conceptual and textual approaches in an attempt to advance solutions capable of saving Nigeria from its political quagmire. Adopting and applying Hobbes' political theory within Nigerian political space could be the desired socioeconomic and political catalyst for change. This article aims at giving both the leaders and the led a good sense of direction in order to save Nigeria from free fall into anarchy.

Keywords: Law, Civil Society, Commonwealth, Democracy

1. Introduction

There is no doubt that no country can survive without an efficient and effective operation of rule of law. For the polity to thrive, the principles of the rule of law which include, among others – the supremacy of the law, equality before the law and neutrality of the law must be fully enforced. A situation, where there is a different set of laws for one group and a different set for others will never thrive. The need for civil law in the civil society was prompted by the constant state of strife and anarchy in the state of nature. Hobbes opined that life in such horrible state was nasty, brutish and short and perceived that as not befitting to any being endowed with the sense of rationality. This implies that such a barbaric state is only good for lower animals living aimlessly in the wild; where there are no laws and no respect for life and properties. Survival of the fittest is the order of the day in such clime and the weak suffer constant abuses and marginalization as a result. While the strong keep amassing wealth from the weak and keep growing economically, the weak and the less privileged keep getting impoverished. Civil law was introduced to liberate man from the state of nature beveled by anarchy and lawlessness. It aims at restoring sanity to the society and upholding the principle of equality of all men before one another and before the law.

2. Thomas Hobbes Concept of Civil Law

For Hobbes, civil law represents those laws made by the sovereign that men are therefore bound to observe, because they are members of the commonwealth. It is those rules which the government commands by word, writing or other sufficient sign of the will to enable man distinguish right from wrong. That is to be able to differentiate between what is contrary and what is not contrary to the rule. For Hobbes, civil law is the command the sovereign issues to his subjects for the smooth running of the society. The state of nature created the need for civil law in the society. So, civil law came to be an important law to order and organize the society and form the basis for the growth and wellbeing of society. For Hobbes there is need for law in order to keep man in awe. Etymologically, the term civil law was coined from the Latin word '*civitas*' which means a commonwealth. Consequent upon these few illustrations, Hobbes defines it as those "laws that men are therefore bound to observe, because they are members, not of this or that commonwealth in particular, but of a commonwealth."¹ He further asserted that:

Civil law is to every subject those rules which the commonwealth hath commanded him (by word, writing or other sufficient sign of the will) to make use of, for the distinction of right and wrong, that is to say of what is contrary and what is not contrary to the rule.²

Civil laws are dictates of reason carefully and systematically crafted to enable men differentiate right from wrong. Going by this postulation by Hobbes, it will not be out of place to assert that civil law is founded on the natural law principles. Hobbes maintained that all real law is civil law, commanded and enforced by the sovereign. According to R. Morris et al, civil law is "A rule of civil conduct prescribed by the supreme power in a state commanding what is right and prohibiting what is wrong."³ This must emanate from or be prescribed by the highest power or authority within a given society. No one wakes up and starts enacting and promulgating civil laws without being chosen to render such service in the society. Any law made under such circumstances is weak and of no effect. For a civil law to enjoy all its attributes and characteristics, they must be made and promulgated by the person or those who have the care of the community. So, due process must be followed for newly enacted civil laws to be respected and observed.

Furthermore, Hobbes asserted that "the civil law is a speech, defined by the will of the State, which commands the individual things that must be done."⁴ For the sake of clarity, the term 'municipal law' could be used synonymously with the term 'civil law'. Civil law is the command the sovereign issued to his subjects for the smooth running of the society. Laws should always be enacted for the common good of the people within a given society. This singular reason alone could inspire people to be law abiding. The thought that a particular law has been enacted for the general wellbeing of the people and not just for some selfish reasons could motivate people to abide by it. Accordingly, Hobbes stated that:

By civil laws, I understand the laws, that men are therefore bound to observe, because they are members, not of this, or that commonwealth in particular, but of a Commonwealth.⁵

This lends credence to the fact that human beings are expected to obey the laws emanating from the state (a commonwealth) and not merely from different groups each person belongs to or comes from. This commonwealth must be under the leadership of a sovereign who has the power to rule and to enforce the laws of the state on his subjects.

However, he is equally expected to provide security for lives and property of his subjects in return for their liberties and rights which they surrendered to him. From the stand point of Hobbes, Civil law comes not from private reason which could be conflicting and contradictory. However, it comes from the reason of the artificial man (the commonwealth). Civil law must be promulgated to attain the full stature of law by the person who has the care of the community. The civil law and the law of nature have a common objective and focus in that both of them are aimed at creating a peaceful and habitable environment for man. None of them aims at disorganizing the state but to create proper symphony of brotherhood/sisterhood among the inhabitants of any given society. The civil law is dependent on the natural law for sense of direction while the natural law needs the civil law for effective adherence. So, they are interdependent. Civil law came to be an important law and was crafted to order and organize the society and form the basis for the growth and well-being of society. Hobbes was politically foresighted by perceiving the need for law in the society. He noted that there is need for law in the society in order to keep man in awe. Consequent upon these few illustrations, Thomas Hobbes defined civil law as those “laws that men are therefore bound to observe, because they are members, not of this or that commonwealth in particular, but of a commonwealth.”⁶

3. Rule of Law in the Civil Society

There are three different arms of government in every democratic government and they are the judiciary, the executive and the legislative arm. The three arms are meant to act as checks and balances to one another. Each of them is meant to curtail the excessive power the other commands. While the judiciary is saddled with the responsibility of interpreting the laws enacted by the legislators; the executives enforce the law as interpreted by the judiciary. One of the most important aspects of democracy and governance in any civil society is respect for the rule of law. The degree of sense of civility of any government is measured by its ability and willingness to respect the rule of law as dictated by the judiciary. The government is expected to lead always by example for her citizens to emulate. It is an aberration for a government that has no respect for the rule of law or the law of the land to expect her citizens to be law abiding.

Moreover, Aristotle postulated that the rule of law was preferable to that of any individual.⁷ This was a pointer to the fact that no single person is above the rule of law

including the leaders and the led in a democratic setting. J. M. Elegido lent credence to this when he asserted that:

The rule of law demands that all actions of government or government officials be justified in law and that no government official, however exalted in rank, be entitled to disregard the law in the name of “reasons of state.”⁸

The primary objective of this aspect of the rule of law in a democratic government is to protect the freedom and right of the poor masses and check the excesses of those in power who might cease the opportunity of their position and rank to suppress the poor. A. V. Dicey corroborated this view by stating that:

The rule of law has two basic relevant meanings: First, “that no man is punishable or can lawfully be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land.” Second, no one is above the law...every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals.”⁹

However, government officials are allowed to encroach on the rights and freedom of the ordinary man only when he has constituted himself as a nuisance to the society; that is as a threat to the life, peace and harmony of the people in the society. So, their freedom could be encroached on only on the basis of clear legal authority.

4. Rule of Law in Nigeria

Respect for the rule of law in Nigeria has not been encouraging. Flagrant disobedience to the rule of law on the part of leaders has become a common occurrence. The current government led by APC (All Progressive Congress) has been synonymous with the abuse and lack of respect for the rule of law. Evidences abound of political prisoners whom the court has ordered for their release on bail but the government in power bluntly refused to adhere to the injunctions of the court. There are the cases of Elzakzaky (Shite Islamic Cleric), Sambo Dasuki (PDP Chieftain), Namdi Kalu (IPOB Leader), et cetera. From Thomas Hobbes’ perspective, civil law consists of the rules which the commonwealth makes in order to guide the subjects in taking necessary actions and in making decisions. These rules specify all the dos and don’ts in a state. The sovereign being the leader of the commonwealth is the sole legislator. He alone has the power to abolish or resist civil laws. This does not in any way imply that the sovereign has the right to be reckless because of the absolute power he tends to wield.

Furthermore, there is a notable relationship between natural and civil laws from the fact that they complement and contain each other. Promulgation is required for civil laws to attain the full status of law and these laws are not made to be hidden on the pages of books but must be made known. There must be a creation of full awareness by the legislators of civil laws in order to achieve full compliance by the subjects. The primary focus of this article is that civil laws are rules which also embody moral virtues like justice and equity in the same manner with natural laws. However, such

laws attain the status of civil with the formation of the commonwealth (in a written form). This can be likened to what we know today as the national constitution. Even Nigeria as a republic has her own constitution which is a written document or body of laws which govern a state, a country or an organization. Those laws are expected to pass through some legal procedures before being certified and qualified as the constitution of a country.

Again, constitutionalism could be referred to as the act of being governed by a constitution. It is the total trust and belief in the constitution of a government as is perceivable in the social contract theory. In speaking about the issue and meaning of constitutionalism, S. Eboh wrote that:

Constitutionalism is one of the characteristics of an ideal state and an intrinsic part of good government. The acceptance of the supremacy of law by both state and citizens is a mark of a good state and the foundation of political freedom. It is a lawful rule in the sense that government is carried on by general regulations and not by arbitrary decrees; the government does not flout standing customs and conventions of the constitution.¹⁰

In line with the above, the concept of constitutionalism applies to both the citizens and their rulers. A Constitution becomes binding to everyone within the territory of such a country or state. The implication of this is that if a Nigerian travels to United States of America, he comes automatically under the influence and authority of the American constitution. Nigerian Constitution cannot be applied in America and American constitution is null-and-void and of no legal effect within Nigerian territory. To elucidate more on this, Maru Bazezew defined constitutionalism as:

...the doctrine that governs the legitimacy of government action, and it implies something far more important than the idea of legality that requires official conduct to be in accordance with pre-fixed legal rules.¹ In other words, constitutionalism checks whether the act of a government is legitimate and whether officials conduct their public duties in accordance with laws pre-fixed/pre-determined in advance.¹¹

In summary, constitutionalism is nothing but a body of fundamental principles which a nation, state or a body is constituted or governed. In order to sincerely achieve a common good for the interest of the nation, rule of laws must be established and followed judiciously. The principles of the rule of law and the constitution should be applied equally to all persons of different tribes, creeds and languages. Everyone can only be favoured when this bond (constitution) is respected by all and applied impartially. Consequently, to respect the rule of law then implies that all the actions and engagements of the citizen must be in conformity with the body of laws through which the state and nation are governed. All the citizens must be rated equally before the laws of the land without exemption. A Yoruba man must be viewed from the same spectrum as the Igbo man and the Hausa man must not enjoy undue privileges more

than the other tribes. Everyone must be weighed using the same legal scale of measurement. In other words, this means that both the government and the citizens ought to be regulated by the same law of the land. This is in line with Hobbes' stand that the formation of the contract is a free will activity and the contractual terms should be binding on all. Thus, according to B. Nwabueze, whenever a particular section of the society, some people or groups are singled out for preferential treatments with regard to law-making, it is tantamount to oppression and favoritism.¹²

Sequel to this, the failure of the three former Nigerian Presidents in the persons of Muhammadu Buhari, Ibrahim Babangida, and Abdul Salami Abubarka to appear before the Human Rights Abuse Investigation Panel (the Oputa Panel) is a clear evidence of not only ineffectiveness and irregularity of our legal system, but also a political imbalance despite the weighty allegations of murder and human rights abuses leveled against them. A panel was constituted by the former president, Olusegun Obasanjo to investigate human rights abuses perpetrated by the past military rulers in Nigeria. According to BBC News Report on the failure of the trio to appear before the panel:

...the generals have questioned both the legality of the commission and its power to summon them. Beyond the issue of whether former rulers appear personally, correspondents say the ruling also throws into doubt the validity of any order or recommendation that any other commission or enquiry set up under the same might make.¹³

The most pathetic aspect of it all was that not the presidency, the legislator, or the judiciary was able to call them to order. The actions of these past heads of state were bereft of any iota of sense of civility. It was a stark disrespect to the rule of law in Nigeria. Sadly, some of them had the effrontery and were impudent enough to contest for elections later and some political sycophants in Nigerian still voted for them. To be exact, Muhammadu Buhari was later elected as the president of the Federal Republic of Nigeria and his government led by APC disobeyed many court orders.

Furthermore, we understand that the constitution grants immunity to some political office holders in Nigeria especially the president, which is also seen in the Hobbesian description of the office of the sovereign but the immunity should stand only when they are still in the office since the immunity is essentially for the office that such persons are occupying and not necessarily for the individual persons. Accordingly, the immunity that they enjoyed while they were still in the office was not meant to follow them to their graves. It has an expiry date and should terminate as soon as one completes one's tenure in office. So, it does not make an ex-leader non-labile to any act committed during his tenure in office. We should recall that in 1997, South Korea's former president, Park Geun-hye was sentenced to 24 years in prison after being found guilty of abuse of power. According to the BBC News Asia:

Park was found guilty of 16 out of 18 charges, most of which related to bribery and coercion. The court ruled that she had colluded with her close friend, Choi Soon-sil, to pressure

conglomerates such as electronics giant Samsung and retail chain Lotte to give millions of dollars to foundations run by Choi. She was also convicted of forcing companies to sign lucrative deals with firms owned by Choi and donate gifts to Choi and her daughter.¹⁴

If one carries out a cursory and careful analysis of the offences she was convicted of, one will discover that she was neither accused of murder nor attempted murder but most of the offences were related to bribery and corruption. But virtually all the former presidents invited to face the Oputa Panel set up by the government had heavier/unprintable charges leveled against them ranging from murder to embezzlement of public funds. Most of them are walking freely till date. This leaves one with one painful conclusion and that is the fact that laws are seem to be made mainly for the ordinary man in the street and not for the powerful in the society. This and many other cases of the sort around Europe and other places are examples of true application of the rule of law. But in the case of Nigeria, people have been alleged to have assassinated political opponents, looted and embezzled public funds which are against the law, but no one has the authority to question them.

5. Human Rights and Liberties in the Civil Society

Obedience to rule of law also implies respect of human rights and liberties. It rejects all forms of absolutism in governance. Encouraging absolutism is to create enabling environment for despotism to thrive arbitrarily and this is quite inimical to constitutionalism and the rule of law in a democratic state. As constitutionalism advocates that there should be no favouritism and that the same law should be applicable to every citizen equally, there is the need that leaders should rule with stipulated laws for the common good. This was exactly what compelled John Locke to appropriate some parts of the message which King James addressed to the parliaments in 1603, into his concept of an ideal leader who is guided by the social law thus:

I will ever prefer the weal of the public and of the whole commonwealth, in making of good laws and constitutions, to any particular and private ends of mine, thinking ever the wealth and weal of the commonwealth to be my greatest weal and worldly felicity.¹⁵

Thus, the principle of good democracy demands that the law of state should transcend every other personal interests, laws and principles. The masses are grumbling about hardships, and political recklessness being exhibited by their leaders. Their body language suggests that the only panacea to these anomalies is civil unrest and mass protests. However, these might snowball into anarchy, lawlessness, and breakdown of law and order if hijacked by hoodlums.

6. Recommendations

1. Obedience to the rule of law: One of the major distinctions between the state of nature as Hobbes described it and the civil society is obedience to the rule of law. Anarchy and lawlessness can be avoided in any society if both the leaders and the led can take a cue from Thomas Hobbes' concepts of social contract and civil law as practiced in the civil society.
2. Good leadership: The core problem of Nigeria is bad leadership. The first step towards her recovery from economic depression and political divisions is having patriots as leaders; leaders that share the same philosophy with the founding fathers of this great nation and consolidate on their legacies.
3. Equality of all in the state: No preferential treatment is to be given to anyone no matter his/her status, rank, religion, gender, race or intelligence.

7. Conclusion

The only yardstick for measuring the degree of sense of civility of any government is its obedience to the rule of law. Every civil government should represent the pinnacle of moral and political refinements. Unity, peace and love are the major recipe for economic, social and political growth in any civil society. Every sovereign nation including Nigeria needs them for a sustainable development. However, these cannot be achieved in isolation. There must be conscious efforts and unity of purpose from all and sundry for a meaningful progress to be made.

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