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THE PLACE OF LAW IN NATIONAL DEVELOPMENT

"A lawyer lives for the direction of his people and the advancement of the cause of his country"
– Christopher Alexander Sapara Williams (1855–1915), first indigenous Nigerian lawyer.

Background

In the last week of August, the Nigerian Bar Association (NBA) held its 55th Annual General Conference which had a theme that has resonated through ages – “Lawyers and National Development”. The role of law in the development of human societies cannot be overemphasized. Man’s journey through history, has therefore been constantly shaped by law in its various forms including customs, norms, edicts, rules, regulations, legislation and judicial precedents, such that it would have been impossible for humanity, in its various spheres of evolution, to have survived without the instrumentality of the law.

Law’s greatest gift to mankind, perhaps, is the evolution of Fundamental Human Rights as inalienable rights; recognized in virtually all jurisdictions worldwide. The basis of the existence of civil, economic and social freedom, guaranteed in democratic societies, is traceable to these inalienable rights that have now been universally codified and given the force of law.

This article traces the origin of the nexus between law and development from the ante-diluvian age to the days of the Magna Carta in medieval England, then to the post-World War II era and today’s increasingly integrated global economy. Taking the Nigerian experience over the years as a case study, the law shall be shown as an indispensable vehicle of development and advancement of a people and a nation, wherever.

In The Beginning

Naturalists believe that certain, universally acceptable moral principles pre-exist the human society, which are discoverable by human reason and act as the standards against which the validity of man-made positive laws must be tested. The inherent recognition of these inalienable rights has been the cause of man’s struggle, through history, to be truly free from invasion, slavery and other forms of limitation and oppression.

But for the development of the concept of the rule of law as an instrument of social control, the struggle for personal liberty and property right would largely have been overridden by the rule of might and the condition of survival of the fittest which characterize Thomas Hobbes’ idea of the pre-law and pre-order State of Nature.

One of the earliest instances of the influence of law on governance and social development was the creation of the Magna Carta in England, 800 years ago (on 15 June 1215) as a binding charter between the then King John and his Barons who had rebelled against the king’s authoritarian rule and protested against the denial of natural inalienable rights to personal liberty and property ownership. Before that time, human beings who were subjects of monarchical authority in England and elsewhere were not better treated than mere chattels; and the king could do no wrong with his absolute powers.

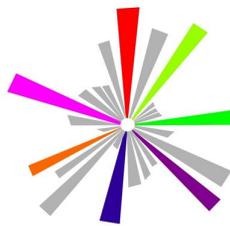
One of the clauses of the 1215 charter, which has survived till this day, says:

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“No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land. To no one will we sell, to no one deny or delay right or justice”.

The works of natural law theorists such as Thomas Aquinas, Hugo Grotius, Lord Edward Coke, Thomas Hobbes, John Locke, Jean Jacques Rousseau and Thomas Paine further espoused the natural inalienable rights that were granted by the Magna Carta. Grotius famously wrote that “natural law is so immutable that it cannot be altered even by God”, since “He cannot cause that which is intrinsically evil be not evil”. In his 1792 book, “The Rights of Man”, Paine expanded the scope of man’s natural rights to include what he called ‘social rights’ such as; right to education and the right to social security, such as pensions, family allowances and full employment.

Most of these early legal theories were recorded to have contributed to agitations for better living conditions and socio-economic freedom, which later culminated in the enactment of the 1689 English Bill of Rights. The same prompted the 1776 American Revolution and Declaration of Independence, as well as the creation of the American Constitution and the subsequent 1789 Bill of Rights. So also, the French Revolution of 1789 and the resultant Declaration of the Rights of Man and of the Citizen were similarly instigated.

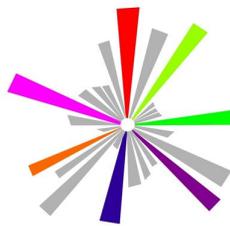
Notable Developments On The International Stage

Sir Williams Pitt, who was Prime Minister of Great Britain between 1766 and 1768, once famously declared that “where laws end, tyrannies begin”. So, citizens of nations where authoritarian rule had not given way to the rule of law after the medieval period, continued to suffer from tyranny, apartheid, feudalism and all forms of social and economic slavery.

Unlike in the Western countries of Europe and America (the Global North), where human natural rights had been established through enacted laws and charters of liberty, poverty and underdevelopment were the results of absolutism and authoritarianism that reigned supreme in nations of the Global South, particularly in Asia and Africa.

History records that attempts by certain groups and nations to revolt against the recognition of individual liberty, democracy, rights to freedom of speech and against discrimination, economic right to ownership of property and the right of individuals and countries to trade in the liberalized markets of the global economy, among other factors, eventually led to both World War I & II.

As part of global efforts to restore law and order in the post-WWII era, the United Nations General Assembly adopted a set of thirteen articles of global governance, leading in 1948 to the Universal Declaration of Human Rights (UDHR). Following the declaration, two other international treaties were formulated – the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols. These two Covenants were in 1966 merged with the UDHR to make up the International Bill of Human Rights (IBHR).



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After a sufficient number of nations had ratified the IBHR, it took on the force of international law in 1976. The Constitutions of most countries of the world today are widely known to have domesticated the clauses of the IBHR while most international treaties executed among sovereign States ever since, for example, the African Charter on Human and Peoples' Rights which was adopted in Banjul in 1981 by African nations; have borrowed copiously from the IBHR.

Kevin Davis and Michael Trebilcock in their 1999 research paper, "What Role Do Legal Institutions Play In Development?" noted that the post-WWII period marked a growing interest in the poor nations of the world among scholars and policymakers in industrialized countries, particularly the United States; which advocated for modernization policy as a panacea for development. "Modernization theorists contended that a society's underdevelopment was both caused by and reflected in its traditional (as opposed to modern) economic, political, social and cultural characteristics or structures. In order to develop, underdeveloped societies would have to undergo the same process of transition from traditionalism to modernity previously experienced by more developed societies". The nucleus of modernization, which had helped transform economies of world's advanced nations into open and progressive societies, is a well-developed legal and judicial system.

It was agreed that law would provide the necessary elements for the functioning of a modern market system, including contract and private property rights, and universal and uniformly applied rules that allow for predictability and planning. Furthermore, modern law was viewed as essential to political development as it would help create a pluralist, liberal democratic state, and serve as the primary restraint on arbitrary state action. This was the beginning of the development of economic law as a catalyst for national development.

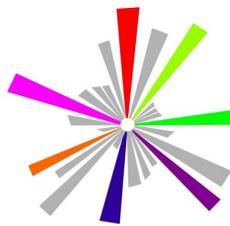
How individual nations have fared in development indices is a measure of the degree of freedom allowed, through the instrumentality of their respective laws, for private talents and capital to be harnessed alongside States' social works. It is also a function of how relevant laws are constantly enacted, which will promote adequate participation of their local economies, in the increasingly capitalistic global economy.

Law And Development: Nigeria's Experience

Through the efforts of lawyers, most of whom had participated actively in Nigeria's struggle for independence and the various constitutional development processes in the pre and post-independence eras, the essential clauses of the Magna Carta and the major development-triggered laws and treaties which had evolved therefrom, have been entrenched in our Constitution.

The Fundamental Human Rights (FHRs) provisions, which guarantee freedom of expression and association etc., and protect the citizens' rights of property ownership, as well as the power of the courts to adjudicate fairly between parties based on the rule of law, where allegation of unlawful derogation from the FHRs is made; are entrenched in Chapter IV (Sections 33 – 46) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

Chapter II (Sections 13 – 25) of the Constitution states the Fundamental Objectives and Directive Principles of State Policy. All executive, legislative and judicial powers of the federation are to be exercised in conformity with the Chapter; which provides direction for Nigeria's sovereignty and political,



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economic, social, educational, foreign policy and environmental policies; as well as frameworks for the nation's cultures, mass media, national ethics and citizens' duties.

With this constitutional background, personal liberty and economic development are legally enhanced: All laws enacted in the various sectors of the economy and the Nigerian Legal System generally, are required to conform to these underlining principles to be valid.

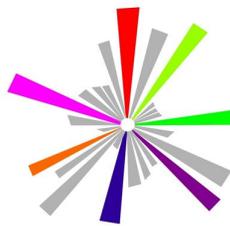
Nigerian courts have upheld the constitutionally entrenched rights of the citizens without prejudice in many cases. In ***Governor of Lagos State v Ojukwu* ([1986] 1 NWLR pt. 18, p. 636 & 647-648)**, the Supreme Court held that "In the area where rule of law operates, the rule of self-help by force is abandoned. Nigeria being one of the countries in the world even in the third world which proclaims loudly to follow the rule of law, there is no room for the rule of self-help by force to operate ... here in Nigeria even under a military government, the law is no respecter of persons, principalities, governments or powers and that the courts stand between the citizens and the government, alert to see that the State or Government is bound by the law and respects the law".

Similarly in ***Olatunbosun v NISER* ([1988] 3 NWLR pt. 80, p. 25 at 49)**, Oputa JSC in emphasizing the fundamental right of citizens to fair hearing, cited with approval the dictum of Fortescue J in the 18th Century English case of ***R v Chancellor, Master and Scholars of the University of Cambridge* ([1723] 93 ER 698 at 704)**, and stated that "the laws of God and man both give the party an opportunity to make his defence, if he has any ... Even God Himself did not pass sentence upon Adam, before he was called upon to make his defence ...". These instances are examples of the influence of law on liberty, equality, and development in our jurisdiction.

Worthy of note is the fact that social, political, environmental, economic, and foreign policies of a country will not bind elected and appointed leaders until the policies are backed by enabling laws. Similarly, national development goals and policy directives, however laudable, remain mere wishes or at best some sorts of moral suasion which are non-binding on policy makers and regulators, until they have the force of law. This was the main reason why many national planning schemes in the past like the Vision 2000 or 2010 for example, did not achieve targets or make tangible contribution to national economic growth until investment promotion laws that opened up the economy and enhanced private participation in public enterprise; began to translate policy thrusts into national development.

In April 2014, Nigeria rebased its national income figures to become world's 26th biggest economy and Africa's largest. The attainment of this new economic status was facilitated through laws that opened door for the privatization of sectors which previously were managed exclusively by the government. Some of the notable milestones reached in recent times, through the instrumentality of the law are hereby outlined:

Privatization of public enterprises and promotion of local and foreign investments, with the attendant growth of the economy and national development, were achieved through setting up of relevant legal frameworks for their operations pursuant to constitutional foundation already laid. The enactment of the Privatization and Commercialization Decree No. 25 of 1988 began the liberalization of the Nigerian economy to bring private sector expertise and funds into transforming inefficient public utility corporations; and in line with the *laisse faire* policy promoted in that era by the Bretton Woods institution. The Public Enterprises (Privatization and Commercialization) Act of 1999 which established



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the Bureau of Public Enterprises (BPE) was later enacted to provide a legal regime for divesting government's interests in major public enterprises.

Telecommunications: The success of the Telecoms sector privatization is one major result of legal reforms, which has boosted national development substantially in Nigeria. The Nigerian Communications Commission (NCC) Act of 2003, which repealed and replaced the NCC Act No. 75 of 1992 and the NCC (Amendment) Act No. 30 of 1998, provides for the licensing of private investors into the telecoms business which under the old Act; had been operated as a monopolistic public utility. The liberalization of this sector led to a revolution which has seen private telephone operators providing up to 120 million mobile lines to the public between 2001 and 2014. Telecoms services contributed 8.69 percent of the 2013 rebased GDP figure of \$510 billion.

Power Sector: The unbundling of the giant inefficient power utility known as NEPA, first through PHCN as a special purpose vehicle, into several privately owned Generation and Distribution Companies (GENCOs & DISCOs) and the Transmission Company of Nigeria; was made possible by law reforms. The Electric Power Sector Reform Act 2005 repealed and replaced the old NEPA Act, and set the legal framework for the power privatization and the resultant inflow of private capital from local and foreign sources, to improving the sector.

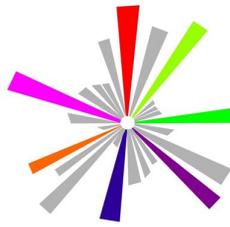
Export Promotion: The Nigerian Export Processing Zones Act No. 63 of 1992 (NEPZA Act) and the regulation issued pursuant to it – Investment Procedures, Regulations and Operational Guidelines for Free Zones in Nigeria 2004 – were enacted to promote companies which locate their businesses in the Free Trade Zones (FTZ). Levies, duties, and foreign exchange regulations do not affect operators in these zones while certain tax exemptions with duty-free export of material inputs are also enjoyed within the zones.

Investment Promotion: The Nigerian Investment Promotion Commission Act (NIPC Act) of 1995 promotes industrial and enterprise activities in Nigeria. Tax holidays, especially pioneer status-related exemptions, are enjoyed by businesses which are into infrastructure development ventures and transfer of special foreign technologies into the country. There are other incentives under the NIPC Act such as guarantee for repatriation of dividends and profits for foreign investors, as well as protection of private enterprises from expropriation by the government.

Conclusion

Law reforms are also liberalizing other sectors and enhancing public private partnership (PPP) in almost all the areas of our national economy. For example, the Infrastructure Concession Regulatory Commission (ICRC) Act of 2005 provides the framework for concession contracts between the Federal Government and private investors; for the development of public infrastructure. Much of the wide infrastructure gap in Nigeria has been plugged through concession agreements at federal and state levels in the country.

Other aspects of our national development plan, such as mortgage refinancing; agriculture; education; transport; banking, insurance and capital market; oil & gas; commercial arbitration & litigation etc. are equally being revitalized through law reforms.



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Without the various laws and regulations that back up the various policy reforms and national development plans, there would have been little or no result which personal wishful thinking or national ethical values could produce. The place of law in national development is so crucial that it will continue to attract the attention of scholars, professionals and policy leaders globally.

The Grey Matter concept is an initiative of the law firm, Banwo & Ighodalo