

Analyzing Effective Citizenship Development, Constitutional Literacy and the Nigerian Judiciary: Integrative Approach

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Abstract

Extant literatures show sociopolitical issues involving inter alia, constitution, governmental organs power separation are mostly discussed from a single disciplinary view; whereas these issues have multi-disciplinary stance. Legal scholars discuss these issues, stricto sensu, (strictly speaking) based on the legal stance while socio-civic scholars, studied from sociopolitical viewpoint. Knowledge connectivity shows these issues can be interactively integrated whereby socio-civic and legal issues are concurrently merged in a discourse. Thus, this paper intent is to create awareness and familiarity on the possible integration of sociopolitical issues involving socio-civic and legal literatures; thus adopt a mixture review of extant literatures in both fields and so the eclectic/integrated approach is using judicial case laws to expound these sociopolitical concepts. To this end, it is discussed as multidisciplinary concept integrating knowledge, skills and values of competent citizenship participation in a constitutional democratic system. There is need for an integrated citizenship curriculum programme which offers learners the prospect to construct knowledge to become constitutional literate as evidence of effective citizenship development. As stated above, constitutional literacy, embedded in effective citizenship development barely attracts academic interest leading to major knowledge deficit lacking relevant governance concern among socio-civic learners. Also, constitutional literacy is conceptualized from a constitutional view and adopting separation of powers doctrine as the theoretical framework for the paper. Moreover, the paper discusses the judiciary as a governmental organ with interpretive and adjudicatory powers and functions among other judicial powers. In concluding, it underlines the pertinence of boosting Nigeria's constitutional democracy, gradually threatened, via constitutional education entailing integrating legal concepts into the socio-civic curriculum implementation. Essentially, this mediates knowledge awareness of the letters and spirits (content) of the constitution. Hence, the need to review socio-civic studies to imbibe constructive attitude and dispositions towards constitutional based issues and the actual practice via mock rehearsal of these constitutional issues in the school system and also via field trips. Realizing the above entails continuous professional development on citizenship practices in the teacher education programme.

Keywords: *effective citizenship development, constitution, separation of powers, Nigerian judiciary, judicial powers, socio-civic studies*

Introduction

A long journey as a legal and socio-civic educator, as revealed a deficit of literature which examine socio-political issues (concepts) from both sides of the coin, by integrating socio-civic and legal literatures in the discourse. Regrettably, socio-civic scholars examine these concepts distinctly from the discipline perspectives while legal experts' *stricto sensu* (strictly) discusses purely from legal stance. This depicts both disciplines as distinct and separable which arguably may be untrue due to knowledge interconnectivity among disciplines. This obliges the need to examine sociopolitical issues from integrated views, more so that socio-civic education strives on knowledge ecletism and integration. Literature shows that concepts like effective citizenship, constitution, separation of powers, and judiciary as an organ of government have been discussed hitherto from the distinct, segmented and separate discipline approach which is contrary to the eclectic, integrated, intra and multidisciplinary culture of socio-civic education. Thus, in approaching the above identified deficit, this paper review various legal and socio-civic literatures on the above fact in issue. The implication is that scholars, researchers, educators and learners from both sides of the divide should perceive the interrelationship of both disciplines and also, knowledge of both disciplines becomes more robust and holistic rather than the hitherto fragmented knowledge provided. This will enable socio-civic learners examine diverse issues threatening Nigeria, as a multinational-state from integrated perspectives.

Such issues involve, *inter alia*, corruption, human rights and rule of law abuse due to constitutional literacy deficit. This obliges developing effective citizenship which entails young learners instructed, inspired and made to engage in constitutional democracy. This concept embodies diverse epistemological formations, values, intellectual and participatory skills within the political domain using classroom curriculum delivery process; and the school system, as a communitarian agent has the duty of care to initiate efforts to develop constitutional literacy, as an entrenched hallmark of effective citizenship. So, the overarching concern of this paper is the political nuance of instilling in learners citizenship knowledge, values and behavior on the legality of issues in the Nigerian constitution being integrated into socio-civic education.

Effective citizenship is an ideological stance in which constitutional literacy is inevitably embedded for positive political governance engagement. This concept is inbuilt into effective citizenship development so that learners familiarize with the constitution to develop Knowledge, insight, values, behavior and judgments on the legality of the sociopolitical practices.

Constitution lacks a globally recognized definition since its spirit and let-

ter as a legal and political order, differs among states. However, the paper offers a consensual operational definition globally; in the Nigerian context from the governmental organs' perspective. The paper argue that constitution is a legal-political instrument stating the principles, structures, processes, ideologies and values of administering a state including creating governmental organs and powers to function. In all intent and purpose, constitution is discussed in this paper due to its entrenchment to restrict government excesses and ensure governance practices which are within sociopolitical norms and legislative provisions and by this no organ oversteps its ambits.

Also, the concept of separation of powers is the theoretical underpinning examined from both socio-civic and legal philosophical stance. Integrating judicial case laws into socio-civic postulations, it is argued that separation of powers serve as the check and balance among governmental organs (Executive, Legislative and Judiciary). By this model, each organ effectively functions independent of other organs having absolute, dictatorial, arbitrary, capricious and despotic power usurpation. This obliges external check on the excesses of the Executive and Legislature, which in this paper is the judiciary serving as arbiter exercising constitutionally specified powers and functions (discussed below).

The judiciary, as a governmental organ, is the oldest human institution in the search of justice and thus performs specific legal-politico roles involving the custodian of the constitution; checking Legislative and Executive excesses, safeguarding citizens' rights and settling sociopolitical-legal disputes in justice administration as a fair arbiter. Performing these taska need constitutionally set judicial powers. So, the judiciary is a governmental arm in relation to its judicial powers theorized in case law, constitutional provisos and socio-civic scholars' insights.

Overall, this paper conceptualizes effective citizenship development as a broad construct with constitutional literacy, inbuilt element, to equip learners against knowledge deficit about constitutional process, principles and values in the political system. Also, the constitution is examined along with power separation doctrine and the judiciary as governmental organ with its sources, history, forms; powers and functions. This paper's intent is to empower, equip and prepare young learners to develop intellectual and participatory skills towards engaging in sociopolitical issues from the holistic views which entail blending socio-civic and legal stance to provide robust explanation of facts in issue. Legal standpoints on sociopolitical issues should be included in socio-civic curriculum for the purpose of creating more knowledge, awareness and familiarize young learners as hallmark of effective citizenship development.

Effective Citizenship Development

Effective citizenship development is broad interdisciplinary, trans-disciplinary and multidisciplinary citizenship concept which entails integrating issues from diverse citizenship structured disciplines and human endeavors with intent for constructive participation in the sociopolitical system to attain national goals. It is the learning process underlining citizenship knowledge construction for functional participation in Nigeria governance. It is a major developmental learning process towards preparing young learners to become constructive democratic adult actors in the local and national polity.

Integrated instructional pedagogic practices (teaching/learning) are required to underpin knowledge construction, skills acquisition, and values development for competent citizenship participation in the political system. Opportunities to engage in citizenship activities should be based on integrating legal programmes into socio-civic curriculum implementation for better involvement in various societal organizations. Since knowledge is constructively contingent on adept input of citizens in public affairs in a democratic system; then, learners' knowledge of concept construction on constitution, power separation, and governmental institutions, among others should be mediated towards blending legal concepts into socio-civic contents. Thus, effective citizenship development entails citizenship knowledge construction and imbibing values and skills rooted in constitutional democracy from an integrated learning of socio-civic and legal contents. This integrated content should be to develop independent critical thinking leading to decision-making rather than being passive spectators/receivers in the political system.

It is vital to evolve integrated learning sequence classroom practices to develop knowledge, values, beliefs, and commitments towards socio-civic and legal functional citizenship at various governance levels. From the above, effective citizenship development is the integration of socio-civic and legal knowledge designed to equip young learners with the intellectual knowledge and participatory skills to imbibe constitutional values and provisions through constitutional literacy discussed below (Soemantri, 2001; Nurmalina, 2008; Wahab, & Teori, 2011; Míguez, & Hernández, 2018).

Constitutional Literacy

For this paper, constitutional literacy (CL) is the integrated curriculum implementation mediating intellectual knowledge and participatory skills about constitutional principles, values, structures, and processes. Also, it is the 'knowledge, skills and attitudes formation on constitutional notions using socio-civic and legal contents to expound on power separation, judiciary and more active-

ly discusses in relation to their practice, processes and values (Baeihaqi, 2019; Isoyama, 2019).

It entails conscious integrated learning approach by which knowledge, insight, attitudes, and behaviour about applicable law are mediated through blending legal concepts into socio-civic content as evidence of undergoing constructive citizenship development. It is an embedded element of effective citizenship development as it is based on socio-civic socio-legal content in the conduct of sociopolitical duty. It has to do with awareness of constitutional history, development, provisions on governmental organs, rights, and duties and other vital norms. Apparently, literacy is the basis for constitutional obedience and legal conformity to ensure sanctions for violations in the efforts to realize a sense of justice.

Constitution embodies legitimizing the sociopolitical contract between the rulers and ruled to legalize the political system. Literacy is the knowledge construction, as against deficit, for functional commitment. Literacy in the constitutional sense is the knowledge, insight, stance, and actions about the constitution integrated into socio-civic curriculum learning efforts intended to develop effective citizenship (Darsono, 2017).

By this concept, socio-civic learners are aided to develop hands-on knowledge and insights about legal system's institutions and operation like the judiciary; seeing the constitution as a set of positivist rules and regulations initiated to instill civility and harmony through interpersonal relations, and overcome inequity, depravity, and juvenile delinquency. Also, a legitimate and critical trait of learners' daily citizenship experiences besides being a corpus of ideas gathered during classroom instructions (Ikumelu, Eluu&Oyibe, 2014; Isoyama, 2019).

Defining Constitution

In this section, I adopt the integrated approach by attempting to expound on constitution from socio-civic and legal viewpoints. However, both discipline agreed that a globally accepted definition of a constitution is tasking and intricate as: (i) it could be defined as an abstract term based on diverse authors' conceptual thoughts, philosophies, beliefs and perspectives; (ii) it could apply to an extant operational constitution; (iii) global diversity of state's milieu vis a vis citizenship (political) history, culture and socialization. Hence, the above factors not just reflect states' citizenship evolution and culture but as well significantly define the pattern and content which differ from each other.

Consensus ad idem among socio-civic and legal scholars depict constitution as originating from the Latin verb *constituere*, denoting setting up, instituting, creating, constructing, arranging; and '*constitutio*' being the noun refers

to regulatory order, or decree in line with ordain procedures (Maddox, 1982; Ogboye. & Yekini, 2014). Also, both socio-civic and legal scholars further view constitution as a historically sporadic procedure and the product of sequential though incoherent common oaths which mirror the philosophy (vision) reinforcing set of conflicting ideas/notion. While the legal experts perceive it as a distinct inviolable legal document establishing the structure and major functions of state governmental organs as well asserting the norms administering such governmental operations.

As a socio-legal document, it embodies rules articulating governmental values, bodies, structure and process; including rights, obligations and duties which are binding on the state, citizenry and lesser law-making institutions based on prevalent civic - legality in which the amendment process is more cumbersome as against the ordinary laws (e.g. a two-thirds majority vote or a referendum is needed) (Bulmer, 2017). Thus, I view it as a socio-legal contractual agreement by which rulers in governance obtain totality of its power from the citizenry it governs. This social contract outlines governmental form, states goals, governmental arms, nexus among state and citizenry, synergy among many governmental bodies and their precincts (Bolingbroke, 1733; Tribe, 2012, 1978 in Sokefun, et al., 2008; Wade, nd).

In the Nigerian context, the constitution proclaims the three governmental levels, organs to administer at each level and define powers, control holistically as a governmental system. For the legal scholars, it is the principal single legal document from which governmental organs (executive, legislative and judiciary) derive power and authority; specifying the bond among governmental organs and Nigerian citizens. However, the court is given constitutional power to apply and interpret constitution provisions in disputed cases.

Following the integrated approach of this paper, the views of the Nigerian judiciary through the case laws dovetailed into socio-civic stance on the constitution. To this end, the case laws defined constitution at various times which included *Adeleke v. Inakoju*, where Justice James OgenyiOgebe viewed the word 'constitution' as follows:

The Constitution of any nation is the basic document which regulates the affairs of the nation by setting out the functions and powers of the different components of government, namely the executives, the legislature and the judiciary...A constitution is an organic law, a system or body of fundamental principles according to which a nation, a state, body politic or organization is constituted and governed" (Ogebe, 2006).

In *ER.N. v. Osahon*, Belgore, J.S.C. (as he then was), views constitution as follows:

Constitution of any country is the embodiment of what a people desire to be their guiding light in governance, their supreme law, fountain of all their laws. As such, Constitution is not at any given situation expected to or presumed to contain ambiguity. All its provisions must be given meaning and interpretation even with the imperfection of the legal draftsman. Common sense must be applied to give meaning to all its sections or articles (Belgore, 2006).

In a Supreme Court decision in *CPC & Ors v. Lado & Ors.*, the position of Nigeria constitution was re-emphasized by the apex court in a brief description when it opined that a constitution is the organic instrument conferring powers and it also creates rights and limitations which regulates members' affairs and its provisions are bound on them (Nwodo, 2011).

The Nigerian constitution embodies rules to check and limit governmental abuse of, or arbitrary use of power. This, ab initio, emerged from Locke's social contract theory making government agents of state's national interest. This social contract becomes a legal consensus between Nigerian citizenry and government inter alia; ensuring rights and also obligations (duties) are enforceable by the law. This is a prior consensus ad idem, fixed in Nigeria's ground-norm legalizing the binding locus terms among the parties (citizens and authorities).

From the above, I argue that the Nigerian constitution is the socio-legal organic document; a systemic body of basic principles by which Nigeria as a multinational state is constituted and governed. It is the fundamental supreme laws specifying the federal system with its underlying principles of three governmental levels and each level having its governmental arms with defined powers, functions and limits in the exercise of such powers. The constitution ensures that government officials - elected or appointed are limited and in line with legislations, regulations, rules and practices emanating from constitutional provisions in the governance business. The Nigerian constitution as the organic document creates, defines, sets out and regulates the powers and functions of the executives, legislature and judiciary. These organs have coordinate powers to execute fixed roles built on the doctrine of separation of powers (discuss below), a sine qua non for constitutional democracy.

Separation of Powers

The doctrine of separation of powers (SOP) as the theoretical underpinning of this paper is a multidisciplinary concept relevant to socio-civic, political and legal disciplines. However, it is discussed by each of these disciplines from a distinct, segmented and single discipline perspective. In this section, I discuss SOP

from an integrated approach by looking at the views of scholars in these disciplines including judicial case laws.

Nigeria, as a former British territory embraced Anglo-American governmental system rooted in Separation of Powers doctrine initiated to safeguard the rule of law thus, check arbitrary power exercise by a governmental arm. Also, operating constitutional democracy makes power separation theory expedient to ensure that the Executive, Legislative and Judicial governmental organs co-exist with independent authority and function for good governance. This is an articulated constitutional safeguard provided to allot governmental power to uphold liberty and avoid dictatorship. Of course, an unrestrained exercise of power via external checks by other organs, result in power domination whereby an organ exercises power beyond the limit of allotted authority, within a political system (Polsby, 2000; Mbah, 2007; Maduekwe, et al., 2016).

Separation of powers entails dividing government powers into three arms of legislative, executive, and judicial and each exercised by a distinct and independent governmental organ to guard against arbitrary use of power, likely to ensue if all the governmental powers are exercised by the same person/group. It is a constitutional principle whereby governmental powers are shared into above stated arms with each executed by a distinct group for checks and balances among governmental structures, processes and operation thus, protect the citizenry against tyranny (Nwabueze, 1982; Sokejun, 2002; Mowoe, 2005).

The delineation above depicts separation of powers as entailing (i) a group participating in just one governmental organ; (ii) each governmental organ be restricted to its constitutional powers and thus lacks control or interference over other organs; and (iii) a governmental organ only exercises the powers and functions allotted to it by the constitution. Such governmental powers and functions should be undertaken by different group of persons; by this the Legislature is independent in its law making; the judiciary is independent in law interpretations and the executive is independent in law execution function. Thus the maxim of absolute power corrupts absolutely depicts the advent of dictatorship which can be averted through the practice of power separation (Sokejun, 2002; Mbah, 2007; Adewale, 2017).

The socio-civic stance depicts power separation doctrine as a political theory of the ancient (classical) Greeks in which Aristotle initiated an integration of monarchy, aristocracy and democracy as a form of government since none of the above listed was perfect. Also, the mixed state notion was advocated in Plato's *Laws* and later adopted by Polybius to expound Roman government stability. In medieval Europe, the power division idea became a norm in constitution-drafting to oppose monarchs' divine sovereign power claim. Moreover, the protracted power agitation between the Crown, parliament and courts of common

law, which reached a crescendo in the 1688 Glorious Revolution depicting separation of powers and checks and balances import. Also, John Locke, an English political philosopher (1632-1704), in his writing 'Second Treatise of Civil Government' (1690) initiated theoretical partition within the executive as a requisite for each governmental organ to function independently. Thus Locke said:

It may be too great a temptation to human frailty apt to grab at power, for the same persons who have the power of making laws to have also in their hands the power to execute them whereby they may exempt themselves from obedience to the laws they make and suit the law both in its making and execution to their own private advantage (1690 cited in Adewalw, 2017).

I aver that Locke's articulation above shows constitutional democracy strive when governmental powers are allotted to diverse groups; without separation of power, there is penchant to be lured into venality when a group combines law making with execution powers concurrently. Such power given lawmakers to also execute law that were self-enacted can lead to granting immunity whereby exemption is given to legislature from obeying the law. To avert arbitrariness, tyranny and dictatorship, it is expedient to initiate constitutionally divided three fold government. It was this radical English tradition upon which separation of power was based in England and redefined by Montesquien maxim.

And so, separation of powers doctrine as currently explained was an innovative brilliance of the French jurist, Charles de Secondat Baron de Montesquieus (1689 -1755), in his book "Espirít Des Lois (The Spirit of Law)". Montesquieus examined John Locke work and perceived that preservation of citizens' political liberty in England was due to separation of Executive, Legislative and Judicial powers, and thus balance these powers against each other. Hence power separation and checks and balances is crucial for each of the above stated government arm to uphold distinct roles listed in the Constitution as sine qua non to attain sustainable constitutional democracy (Nwokoye, 2000; Tobi, 2002; Mukhi, 2007; Egobueze, nd). Montesquieus briefly captured the importance of power separation in attaining political liberty in constitutional democracy thus:

Political liberty is to be found only when there is no abuse of power. But constant experience shows us that every man invested with power is liable to abuse it and to carry his authority as far as it will go.... To prevent this abuse, it is necessary from the nature of things that one power should be a check to another.... There will be an end of everything if the same person or body, whether of the nobles or of the people, were to exercise all their powers.²²

Thus, focusing governmental powers in a group/body indeed results in tyranny as power corrupts and absolute power corrupts absolutely. Montesquieu's notion was further resonated by Nwabueze, (1982) thus:

Concentration of governmental powers in the hands of one individual is the very definition of dictatorship and absolute power is by its very nature arbitrary, capricious and despotic. (p.32)

In corroborating Nwabueze, ObafemiAwolowo said: Man loves power, in the family, vicarage, town and state, in the club, groups, association businesses, in the institution of learning, newspaper office. In this entire sphere, you see him always exacting in the use and abuse of power" (Ogunmodede, 1985).

In integrating the legal views with above socio-civic stance, I view power separation meaning from Nigeria's case law, as explicated in the Appeal Court case of *Ahmad vs. Sokoto State House of Assembly* in which the implications, as a way of defining the doctrine, was outlined:

That the same person should not be part of more than one of these three arms or divisions of government; (b) that one branch should not dominate or control another arm. This is particularly important in the bond between executive and the courts. (c) That one branch should not attempt to exercise the function of the other, for example a President however powerful ought not to make laws, indeed act except in execution of laws made by legislature. Nor should a legislature make interpretative legislation, if it is in doubt it should head for the court to seek interpretation (Salami, 2002).

In *Lakanmi and others v. Attorney General of Western State*, the court noted inter alia

We must here revert once again to the separation of powers, which the learned, Attorney General Himself did not dispute still represent the structure of our system of government. In the absence of anything to the contrary it has to be admitted that the structure of our constitution is based on separation of powers – the Legislature, the Executive and the Judiciary. Our constitution clearly follows the model of the American constitution. In the distribution of powers, the courts are vested with the exclusive right to determine justifiably controversies between citizen and the state ... we must once again point out that those who took the government of this country in 1966 never for a moment intended to rule but by the constitution. They did in fact recognize the separation of powers and never intended an intrusion on the judiciary. Section 3(1) of Decree 1 of 1966 does not envisage the performance of legislative function as a weapon for exercise of judicial powers, nor was it intended that the federal military government

should, in its power to enact decrees, exceed the requirements or demands of the necessity of the case. (Ademola, 1970)

As stated above, a true practice of constitutional democracy in a state dictates that all government organs should have separate as well coordinate powers as evidently defined by its constitution. This could have accounted for the French Declaration of the Rights of Man (1789) which asserts that ‘any society in which the rights are not guaranteed, or in which the separation of powers is not defined, has no constitution’.

Montesquieu’s socio-civic (political) and legal brilliance in redefining power separation whereby all political functions are inevitably grouped into legislature, executive and judiciary shows the need to harmonize socio-civic (political), legal and economic concerns via powers distribution involving companies, communities and towns based on the system of blending socio-civic (political) with legal checks and balances provided in their constitution. To safeguard liberty, each of these sets of functions must be separate and act as checks and balances on one another. American Federalists later adopted the propositions of Montesquieu, especially Madison, as the organizing framework of the American Constitution.

In reality, absolute power separation seems unworkable neither is it desirable for effective governance unless we realize that the doctrine is designed to avert tyranny in situation where absolute power is conferred on a person/body thus the need to check an organ by another (Ojo cited in Sokejun, et al., 2008).

Though, it seems the English power separation doctrine was wrongly analyzed by Montesquieu, however, his affinity for the doctrine spurs the spirit to redesign the theory as an authentic remedy to power abuse. To this end, limited government which is also power separation doctrine became the basis of western political thought considering the writings of John Stuart Mills, J. J. Rousseau and Jeremy Bentham. Their ideas depict constitutional democracy is *res extincta* if power separation is absent in the constitution. When power is focused in a particular organ it could lead to civil defiance and revolt. So, effective constitutional democratic governance of a state is stabilized via constitutional power division (Mbah, 2007; Maduekwe, et al., 2016).

From the above, power separation is a legal-political arrangement which recognizes a supreme law refers to as the constitution; in which the whole political system is subject to. Embedded in the constitution are defined (pre-specified) institutional procedure built on power separation and checks and balances supervised by the Judiciary which is discussed below.

Judiciary as a Governmental Organ: Socio-civic and Legal Perspectives

Socio-civic experts literarily opine that at various periods of human history, be it primitive, colonial or extant constitutional era, the judiciary is known as an active actor in inters alia, monarchy, military and democratic governance. It is an integral governmental arm covering the law courts, Judges and lawyers engaged in justice administration process in a country. Legal scholars see the judiciary as also the judicature, judicial system, and judicative arm, as well the court system for adjudicating law related disputes via interpreting, defending and applying the law in matters, issues or cases in the name of the state. The word Judiciary is from the Latin *iudiciarius* referring to a court of justice; *iudicium* “judgment giving by a court of justice; *iudicem* seen as a judge and was used jointly as a body of judges from 1788.

In the Nigerian context, it is the courts made up of judges (state or federal levels), magistrates, adjudicators and other support personnel who constitute the practical and operative tools to run the system. This body embraces the Bar and Bench both of which collaborate to effectively coordinate the Nigerian legal system. Nigerian judiciary/court system comprises two (2) sets including judges of superior courts established by the 1999 Constitution and judges of a range of lower courts—inferior to the high courts—which the national and respective state legislatures have powers to create. Also, the judiciary is an administrative institution created by socio-legal instrument called the constitution using the courts system presided by body of judges constituting vital force in the exercise of constitutional powers in the community.

Legal view argued *strictosensu*, that the judiciary, neither makes statutory law nor enforces such; but just to construe (interpret), safeguards, and ensure strict compliance of the law to a case facts in issue. In contradistinction, the commonwealth legal system, among other jurisdictions covertly empower the judiciary to change laws via judicial review process which entails the court barring extant state laws seen as paradoxical with the constitution, treaties or international law held as higher norm or primary legislation (Adewale, 2017; Nwocha, 2017). From an integrated perspective, both Socio-civic and Legal scholars agreed that globally, the judiciary is the governmental organ to provide equitable access to justice and upholding the rule of law in line with extant law. As a governmental organ in Nigeria, judiciary has inherent interpretive, applicatory and adjudicatory jurisdiction (powers) and superintends justice through settlements of issues among individual/private citizens or between private citizen[s] and government based on the laws passed by the National/State Assemblies and put into operation such extant law. As the court system operating in the

vine yard of justice, its efficacy is the best check of excellence in governance. Thus, I theorized that the citizens' expectation on the judiciary in constitutional democracy is that of certainty, promptness, fairness in justice administration and a strong 'check and balance' to other governmental organs (Bryce, 1921; Appadorai, 1974; Obikeze & Obi, 2004; Maduekwe, et al., 2016; Farlex, 2017; Lakai, 2017).

Nigerian Judicial Powers: Definition, History, Forms, Sources and Functions

Powers of the judiciary also known as judicial power, in this paper, is conceptualized from the integration of socio-civic theoretical and legal judicial case laws so as to offer robust awareness and familiarity with meaning, history and sources and functions emanating from the powers. It is a global issue of discourse dealing with constitutional adjudication originating from the power separation principle; and I aver that the developmental process leading to the concept of judicial power has broader facet than just courts' constitutional powers to adjudicate.

Legal scholars offer a prima facie, definition of judicial power as the (i) adjudicatory power barring rule of arbitrary power; and/or (ii) adjudicatory power based on set laws establishing the rule of law. Also, it is the authority given to courts (judges) by the Nigerian Constitution and other laws to construe (interpret), decide, pronounce (judgment) and carry it into effect between parties/persons bringing a case before it is based on constructive legal principles. It is right to empower judicial authorities to ascertain legal reality of issues, opinions, proofs and facts evolving among litigants, duly instituted in courts of proper jurisdiction in order to execute a sentence or a ruling (Pokol, 2010).

Judicial case laws both in Nigeria and other counties have established the definition of judicial powers. In *Bronik Motors Ltd & Anor. v. Wema Bank Ltd*, the concept of **Judicial Power** was extensively argued by late Rotimi Williams (SAN), Ladosu Ladapo learned Counsel and Idigbe then Justice of the Supreme Court.

Williams viewed judicial power as stated in section 6 of the 1979 Constitution as the totality of law courts' power (jurisdiction) established by a Sovereign Nation for disputes determination... among its subjects... or between itself and any such subjects. Judicial power is linked to Jurisdiction which is also the power of a court... to hear and decide a dispute... before it. He alluded to object of section 230(1)(b) of the 1979 Constitution which spelt out in detail the power (jurisdiction) of the Federal High Court"; and the provisions thereof "should be read against the context of the Federation judicial powers conferred on Fed-

eral Courts involving the Supreme Court, the Federal Appeal Court and Federal High Court by section 6(1) of the Constitution and States court's jurisdiction conferred over 'Federal Causes' and offices' under section 250." The prior arguments underpinned his *main submission* that the effect of section 230(1) (b) of the 1979 Constitution is to invest the Federal High Court to the exclusion of State High Courts with judicial power (jurisdiction) in respect of *all matters* in the Exclusive Legislative List in the Schedule to the said Constitution.

Ladosu Ladapo posits that judicial power is often misused interchangeably with jurisdiction as is the power to hear and determine dispute subject matter among parties to a suit; however, there is a clear distinction between judicial power and jurisdiction in that jurisdiction is the court's authority to exercise judicial power and in turn, judicial power is the courts' totality of powers exercised when it assumes jurisdiction to hear a case".

According to Idigbe (JSC) Judicial Power, is, indeed, an eclectic term which refers to the power a sovereign authority should indeed possess to settle and decide disputes among its subjects and also its subjects and itself. He used Griffiths C.J. judicial power view in *Huddart, Parker and Co. Limited v. Moorehead* as the consensus ad idem and locus classicus; where it was seen as co-extensive State power to *administer public justice; and*, again, as the State power to *make laws*; that is, 'judicial power' is co-extensive with State power to make laws and execute them as well.

Idigbe adopted the definition of judicial power by Griffiths C.J as also adopted totally by the Privy Council Judicial Committee in the Australian case of *Shell Co. of Australia v. Federal Commissioner of Taxation*, "the exercise of this power [i.e. judicial power] does not begin until some tribunal which has *power* [*jurisdiction*] to give a binding and authoritative decision (be it subject to appeal or not) is asked to take action. So, judicial power is co-extensive with the *authority* (power) of the court "to decide and articulate a judgment *and* carry it into effect between persons/parties presenting a case before it. Also, above view was noted in *Senator Adesanya v. The President of the Federal Republic of Nigeria* (1980) in this context, that the term is co-extensive with the word jurisdiction.

History of Judicial Power

The judiciary and judicial power originated from an ancient English practice several years of legal evolution. The thought of judicature or consecrated judicial power never existed until the notion of distinct governmental organs to perform diverse government roles began. Montesquieu, in 'spirit of the law' (1748), remade power separation model initiated by Locke in the second trea-

tise of Government (1690) and thus disarticulated judiciary from hitherto executive thus creating independent judicial power.

To this end, judicial power evolved from governmental powers and functions executed by the three governmental organs. Thus, judiciary as an organ is a disarticulation product from the hitherto executive law administration function. Thus, judicial power was hitherto more of executive nature and should not be misconstrued as being akin to the legislative power. So justice administration, in the past, was conducted by the executive arm using local and royal government; local courts were presided over by lords, among others, and the King led the King's Court-Curia Regis. So, it lacked clear distinct official body to administer justice system except trial by ordeal/combat. However, Henry II initiated the creation of jury of twelve local Knights to settle disputes over land ownership and another body to hear complaints of the realms and to do right while all these were under the supervision of the King and wise men as a form of appeal, alas, the origin of the Court of Common Pleas (Adewale, 2017; Besette, 2011).

Judicial power, similar to executive power entails law applications to a particular context and is open to resolving individual's matters within the confines of law as well as courts' participation in making decisions in the control and management of macro society. The other dimension is the court participation in the competition of political groups vying for decision making to gain control of society to evolve transformative outcome regarding policy. This makes the judiciary a strong and distinct domain from the legislative and the executive organs. To this end various forms of judicial power that have evolved.

Forms of Judicial Power

The Constitution as the initiator of power separation principle evolved traditional powers of the judiciary distinct from the legislative and the executive organs. However, with the process of development, socio-civic and political scholars observed that oversight roles of the modern judiciary as an effective domain has started taking shape and even expanding in form of novel powers. That is, new developments in judicial powers are evolving in different ways and among such judicial power development is the rising courts participation in decision making in the control and management of the macro society.

The other novel form of judicial power function is the increasing political judicialization (judicialization of politics) whereby judges get involved in political actors rivalry striving for decision making power in the political arena. Changing of election outcome by finding fault with opposition political groups is a common trends in Nigeria starting from the 1979 twelve two-thirds (12^{2/3}) in Awolowo and Shagari and criminal allegation by party in government against

the opposition as in the treasonable felony case between Awolowo & others versus FRN.

However, certain distinct forms of judicial power originated to balance judicial roles as supervisory agent in political governance. These entail: (a) judicial power to make rulings in inferred from Constitution provisions, conferred mostly in the Supreme Court; (b) the judiciary executive power which infers the monitoring execution of major rulings based on diverse motions filed asking for institutional remedies; (c) the judicial duty oversight duty of regulating governmental agencies' activities through courts' leave (authorization) to issue implementation orders. Overall, these diverse judicial power forms evolving overtime are: (i) judicial power as a form of controlling society; (ii) judicial power to control society; (iii) judicial executive power; (iv) judicial power to issue executive order; and (v) punitive judicial power. It should be noted that judicial power flows downwards from the Supreme Court as the apex in a pyramid scheme involving superior courts of record which secure justice and equity of legal procedures via sufficient checks and balances system. The three main functions subsumed/embedded in the courts' powers are: (i) to judge court-worthy cases fairly, (ii) to enforce law when there are constitutional norms put to question and (iii) finally, to interpret the laws properly to solve disputes. However, abuse of these powers can be properly controlled via the judicial structure intended to be a self-regulatory institution. Nevertheless, though this sounds like a fair scheme, extensive legal procedures are tedious and might lead to a waste of resources and time (Shapiro, 1994; Pokol 2010). From the above, the power of the judiciary be it traditional and/or modern as distinct from the legislative rule-making and Executives' rule implementation is not in doubt. However, where is the power source of the Nigerian judiciary?

Sources of Judicial Power

The constitution establishes Courts in a country and so properly vested with power to interpret different laws and settle disputes as stated in 6. (1) & (2), CFRN, 1999; Article 3 of the U.S. Constitution. In the Nigerian context, the Constitution and other relevant statutes inter alia, are the main legal judicial powers origin/source for the courts. The Nigerian constitution creates superior courts of record and is accordingly vested the power to interpret diverse laws and settles disputes as stated in s6, (1-2 & 6):

6. (1) the judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation.
- (2) The judicial powers of a State shall be vested in the courts to which this sec-

tion relates, being courts established, subject as provided by this Constitution, for a State.

- (6) The judicial powers vested in accordance with the foregoing provisions of this section -
- (a) shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of law
 - (b) shall extend, to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person;

Functions of the Judiciary

It is a trite law that its functions/roles emanate from power and thus, functions of the Nigerian judiciary as a court system are derived from the powers allotted in Section 6 of the 1999 Nigeria Constitution (as amended). In the exercise of its powers, it performs the functions of applying extant laws to resolve issues/matters and thereby balance conflicting interests and punish erring offenders. As an integral part of governance, it is expected to interpret laws accordingly, uphold citizens' rights, act as unbiased adjudicator, without favouring particular parties thereby sustaining peace, orderliness and good governance. Other functions of the judicial branch include: interpreting state laws; settling legal disputes; punishing violators of the law; hearing civil cases; protecting individual rights granted by the state constitution; determining the guilt or innocence of those accused of violating state criminal laws; and acting as a check upon the legislative and executive governmental state organ. Also, these duties include safeguarding Nigerian citizens' fundamental human rights citing *Shugaba A. Darman v. Federal Ministry of Internal Affairs & Ors* case.

The Nigerian Judiciary is the key bloc among the complex actors that administer justice in diverse legal systems involving the common law, Islamic law and customary law. Though the creation of the judiciary started prior to colonial era but its firm roots evolved from the British imperial judicial system and that is why it still keeps ample resemblance in patterns and functions to its colonial origins.

As a socio-civic and legal scholar, I strongly agree that judicial/court failure in a political system, apparently leads to failed state and the reference point is the first and second republics. Both failed due to judicial inconsistency contrary to lay down roles meant to stabilize and preserve Nigerian constitutional democracy. But, while executing its tasks, it has been alleged of lacking independence, impartiality and integrity which constitute a threat to natural justice. In

fact, the Nigerian Judiciary, at the federal or state level, has struggled to assert its powers in the conduct of its duties due to humiliation in the hands of both civilian and military regimes. In the current constitutional democracy, the executive arm has arrogated much powers to the extent of outdoing the judiciary as the constitution custodian, bastion and last hope of the common man whose rights are being constantly compacted (Maduekwe, et al., 2016; Okenyodo, 2018).

Conclusion

A major knowledge contribution of this paper is demystifying the monopoly/exclusivity of legal issues to stricto sensu scholars in that field. This paper has shown that Social studies and civic education scholars can integrate deep legal principles involving case laws in the discussion of socio-civic issues. Our multidisciplinary and integrative approach to issues puts us in a vantage position to explore issues from multi-dimensional perspectives. To this end, I view constitutional literacy as an embedded element of effective citizenship development and advocated for socio-civic learners to be more aware and familiarized with constitution which evolves the various governmental organs invoking separation of powers among them and dovetailing into the judiciary (as the thrust of this paper) and exercise of its powers as stated in S.6 of the Nigerian constitution.

Awareness of Nigeria's Constitution existence from a single discipline approach should be discontinuous and discouraged. Rather, the thrust should be having knowledge of its contents and workings from integrated perspectives. Socio-civic educators, scholars, researchers and learners can only make decisions on the letter and spirit of the constitution and other constitutional related issues through in-depth insight and holistic knowledge from socio-civic and legal stance. There is need to adopt and apply diverse learning approaches in socio-civic education to develop effective citizenship involving constitutional literacy. Undoubtedly, extant approaches to constitutional consciousness are inadequate; thus, socio-civic teaching and learning activities should integrate and adapt relevant curricular in familiarizing learners to constitution based issues. Such integrated content into socio-civic education learning should be able to evolve constructive passion towards engaging learners not just in classroom teaching and learning activities but in practising it in the immediate community. So, content learning activities should develop knowledge, insight, attitudes, and behaviour of inherent principles in Nigerian constitutional democratic practice.

Suggestions

On the basis of the above, I submit the following recommendations:

- The Nigerian socio-civic education should be reviewed so that learners imbibe and develop constructive attitude and dispositions towards constitutional based issues and the actual practice. Also, learners dispositional scope in constitutional literacy has hitherto been more on human rights. However, it is pertinent for more emphasis on governmental organs powers, especially the judicial powers being the recognized custodian of the constitution, bastion of democracy and last hope of the common man regarding justice administration in Nigeria.
- For effective citizenship to be learnt, imbibed and developed in socio-civic learners it is expedient to construct knowledge and insight on constitutional provisions and power separation dovetailing into judicial power and other principles inherent in constitutional democracy through case laws integrated into socio-civic curriculum. To realize the above, continuous professional development on integrated socio-civic and legal (citizenship) practices in the teacher education programme is imperative. This equips socio-civic pre service and/or on field teachers with requisite content and methodology knowledge and skills to stimulate the enthusiasm, passion and learners' interests in constitutional literacy.
- In all this, the curriculum policymakers need to provide opportunity for learners to engage in mock rehearsal of constitutional literacy within the school system and also through field trips

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