

**THE RULE OF LAW AND THE CHALLENGES OF LAW
ENFORCEMENT**

BEING A PRESENTATION

BY

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"... the world may know, that... THE LAW IS KING. For as in absolute governments the King is law, so in free countries the law OUGHT to be King; and there ought to be no other"

Distinguished audience, I am honoured to present a paper at this occasion and heartily thank the leadership of the Police Service Commission for giving me this opportunity.

My approach will be to first discuss the definitional and practical issues associated with the concept of the Rule of Law and thereafter proceed to engage the challenges that arise out of policing the nation within the parameters of the Rule of Law. I will conclude the presentation with the advantages accruable to the Police Force from observance of the Rule of Law.

WHAT IS THE RULE OF LAW?

For a hallowed concept, the expression is said to have become meaningless as a result of ideological abuse and overuse.²

¹ Thomas Paine

² Judith N. Shklar (1987), "Political Theory and the Rule of Law", in Hutchinson and Monahan (eds.) *The Rule of Law: Ideal or Ideology* (Toronto: Carswell, 1987), p. 1. For a discussion of Shklar's view, see J. Waldron (2002), "Is the Rule of Law an Essentially Contested Concept? (in Florida)", in *Law & Philosophy*, vol. 21/2, 2002.

Whilst the general principles are often clear and indisputable, the ultimate goals are often obfuscatory and are largely a function of the paradigm through which the user approaches the concept.

As propositioned by its most famous exponent, Albert Venning Dicey³, the concept of the rule of law has three essential lodestones:

1. That the law is supreme over and above any form of arbitrary power and discretion of any man or government.
2. That there should be equality before the law. Thus all classes of people or institutions are to be treated equally without favour by the law and its enforcement agencies.
3. That human rights and liberties are assumed out of good morality and legal practice and should not necessarily be a function of codified laws or regulations.

The locus classicus and the basis of Dicey's writings on the concept arose from the case of ***Entick v. Carrington*** where two officers of the King were successfully sued for having unlawfully broken and entered the plaintiff's house. The trial court held that in the absence of a judicial precedent or a statute, the action was illegal.⁴

³ Law of the Constitution (10th Ed., 1959), pp. 187. See also E. C. S Wade and A. W. Bradley: Constitutional and Administrative Law (10th Ed1985), pp 91-105

⁴ (1765) 19 St. 1030, 10677, 1073.

In reality however, the concept of the rule of law is first associated with Plato⁵ who stated that the rule of law "implies both obedience to positive law and formal checks and balances on rulers and magistrates." The concept is to be found in early Islamic jurisprudence which insisted upon the equal "subjection of all classes to the ordinary law of the land, where no person is above the law and where official and private citizens are under a duty to obey the same law. There were a number of cases where even caliphs had to appear before judges as they prepared to take their verdict"⁶

In practice, there are divergent shades of opinion as to the scope and application of the concept. For instance, if all are equal before the law, what kind of laws are we talking about. Just laws or unjust laws? Whilst a treatise on the academic and practical limitations of the concept is outside the scope of this presentation, allow me however to adopt Lord Bingham's summation of the practical limits and application of the concept. On the occasion of the Sir David Williams Lecture in the Law Faculty of Cambridge University, he came up with the following eight sub-rules of the Rule of Law which he admitted would be subject to fierce criticism but represent the modern understanding and application of the concept.⁷

- the law must be accessible and so far as possible intelligible, clear and predictable.

⁵ Ibid

⁶. Weeramantry, Judge Christopher G. (1997), *Justice Without Frontiers: Furthering Human Rights*, Brill Publishers. 132 & 135,

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questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion.

the laws of the land should apply equally to all, save to the extent that objective differences justify differentiation.

the law must afford adequate protection of fundamental human rights.

means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve.

ministers and public officers at all levels must exercise the powers conferred on them reasonably, in good faith, for the purpose for which the powers were conferred and without exceeding the limits of such powers.

adjudicative procedures provided by the state should be fair

the state must comply with its obligations in international law, the law which, whether deriving from treaty or international custom and practice, governs the conduct of nations.

Having done with the conceptual problems, I will discuss the issue of how a nation should be policed within the parameters of the Rule of Law and the peculiar challenges the concept of the Rule of Law present to the operations of the Police Force.

Policing functions are built around the prevention, detection and investigation and prosecution of criminal activities. Consequently, in the execution of these functions, the Police Force is required to act within the ambits of the law. The following represent some of the recurring factors which if not addressed, would portray the Police as failing to meet the challenges of the Rule of Law.

1. PUBLIC PERCEPTION/EXPECTATIONS

Public relations practitioners believe that "perception is reality". Now perhaps the psyche of Nigerians has been militarised over the years and their expectation of the Police is to have a quick fix solution to any crime. For most people, the barometer for measuring the effectiveness of the Police Force is when high profile individuals are paraded on Television or in the Newspapers in handcuffs or chains. In Nigeria, unless a mob sets a suspect ablaze, they will believe that justice has not been served. These expectations of the Police are not in consonance with the rule of law. Neither would the Rule of Law support arbitrary application of justice by a mob. The Rule of Law would require the Police to thoroughly investigate and establish a case before effecting an arrest as an arbitrary arrest without good

basis could lay the Police open to civil liability . It might be tempting to reach over board to satisfy the public and end up breaching the law. The challenge therefore for the Police is to remain true to professionalism, distil and eschew these public expectations that are not in consonance with the law. There are a long line of cases supporting the proposition on when the Police or any law enforcement agency can effect an arrest. In the case of **Fawehinmi v. I.G.P**, Justice Uwaifo clearly stated the rule that:⁹

It is unlawful to arrest until there is sufficient evidence upon which to charge and caution a suspect. It is completely wrong to arrest, let alone caution a suspect, before the Police looks for evidence implicating them

Further cautioning the Police, Galadima J.C.A in **Johnson v. Lufadeju** stated that:¹⁰

The Police have not...been given the power to deprive citizens of their liberty while the case against them is still being investigated.

2. POLITICAL INFLUENCE

A challenge for the Police Force in ensuring that it works within the framework of the Rule of Law comes from political and societal influence. The Nigerian environment is such that political office holders, friends and family members will at all times seek to influence the Police even where the influence will lead to an illegality. In this context, the Police may do well to remember that it is an independent institution. Indeed where it

⁸ See the case of Ronke Fowler v. State, JIC Taylor through the cases, which clearly states that not only the Police but also citizens could be liable for arrest and detention without good basis.

⁹ (2002) N.W.L.R (Pt 767) 606 at 681

¹⁰ (2002) 8 N.W.L.R (Pt 768) 192 at 218

operates at Local and State levels, it is at all times an agency of the Federal Government and is not compelled to take instructions from the State or Local levels.¹¹ As to the Police being used as a private force by friends and relations, the courts have long condemned this and the celebrated jurist Taslim Elias in the case of **Ajao v. Ashiru**¹² condemned the action of the Police in assisting a group of people to take the laws into their hands.

3. TRAINING

It is beyond pettifogging that the level of sophistication in criminal activities has far outstripped the capacity of the force. We live in a world of cyber crimes and multi-faceted financial crimes. These are not the days of simple theft or indeed of breaking and entry. While these "old school" crimes do occur, the majority of criminal activities in today's global economy devolve largely from complex financial transactions, esoteric cybercrimes, murders using sophisticated chemicals and the like. An effective Police Force must therefore be sufficiently trained and be as knowledgeable about these methods as the perpetrators themselves otherwise it will make nonsense of having a Police Force in place at all. It is impossible for a poorly trained and equipped Police Force to work within the law. An ill trained Force will not be sufficiently professional and the courts in **Kalu v. State** lambasted the Police Force for lack of professionalism. According to the trial judge, "The Police investigation was unsatisfactory. It exhibited lack of commitment and facilitated the escape of the real perpetrators..."¹³. Time and time again, good cases that would have led to a conviction and thereby upholding

¹¹ See the decision of the Supreme Court in the case of State v. Commissioner of Police, Anambra State (1982) 2 N.CR 252.

¹² (1973) 8 N.S.CC 525

¹³ (1993) 3 N.W.L.R (Pt 279) 20 at 33

the rule of law have been lost merely because the Officers involved do not know the law and what to do under any circumstance. An example is given in the case of *Aiguoreghian v. State*, where it was held that where the Police fail to investigate an alibi raised by the accused, the trial judge is bound to give the benefit of doubt to the accused.

4. FUNDING

The statement that "if you pay pea-nuts, you will only get monkeys" is of global application and the Police is no exception. Low funding inhibits capacity building, staff welfare, infrastructural development and a positive image. These are challenges against the Police working within the law. In the absence of capacity and equipment, improper investigation and resultant arbitrariness could occur. It is therefore impossible to even begin to talk of the rule of law where the requisite infrastructure required to achieve proper policing functions are absent.

4. INADEQUATE/UNACCEPTABLE MANPOWER

News outlets in recent years have been awash with stories of criminally minded elements recruited into the Police Force. If this is true, how will the Force observe the rule of law? You cannot expect a person with a criminal background to have any respect for the law. Apart from compromising his/her position, such an officer would abuse individual rights, have no regards for judicial processes and generally inhibit any that is legal. These classes of officers give the Force a bad name and have often drawn the opprobrium of courts. Commenting on the killing of

a Constable by an Assistant Superintendent of Police, the court in **Abogede v. State** commented that:¹⁵

This is a gruesome murder of a defenceless Police Constable by the appellant who is a superior officer...He had all the world at his feet to either recommend disciplinary measures or discipline the deceased if he found his conduct unprofessional....So much will be wrong with "force discipline" if the only procedure for a superior officer to discipline his subordinate is to kill him in the way the appellant did.

Advisedly, the Police should flush such people out of the Force as their conduct at times is equated by the Courts to "area boys"¹⁶

5. UNACCEPTABLE DATA STORAGE AND RETRIEVAL SYSTEMS

This is the age of information technology. Information is not only power but is the bedrock for effective investigation. Thus the challenge for the Force is to acquire and put in place effective central data storage and retrieval facility. This will be a repository for criminal records and will effectively sort out issues such as employment of unqualified people into the force and will be the basis of properly investigating cases before effecting an arrest.

6. UNACCEPTABLE DETENTION FACILITIES

Suspects have the right to be detained under humane conditions. What obtains however is an undesirable practice of suspects being treated as criminal and subjected to inhuman detention. To the extent that the law requires humane detention of suspects, the Police do have an

¹⁵(1995) 1 N.W.L.R (Pt 372) 473. Per Niki Tobi, J.CA at 487

¹⁶ Ibid at 483

obligation Criminals have rights too. Whilst, poor detention facilities might be a direct function of funding raised above, it does not detract from the fact that the rights of detainees would be breached if kept in in-human conditions.

7. CORRUPTION AND EXTORTION

Again, it is beyond petti-fogging that there are some bad eggs in the Police Force who eschew professionalism and extort money from complainants or suspects. This practice is arbitrary and antithetical to the tenets of the rule of law.

8. EXTRA-JUDICIAL KILLINGS

On several occasions, the Police have been associated with extra-judicial killings. The Rule of Law Espouses the supremacy of law and the accidental or deliberate killing of a suspect or fellow officers¹⁷ without recourse to judicial processes means that the Police has assume the role of the Investigator, the Prosecutor and the Judge.

The foregoing represents a limited sample of activities which if not curbed would place the operations of the Police Force outside the purview of the Rule of Law. I have been taken up these issues but it is particularly necessary to conclude with a postulation on why it is in the interest of the Police to protect, practice and advance the Rule of Law.

¹⁷ See the case of Abogede V. State, supra

WHY WORK WITHIN THE LAW?

In an enlightening proposition, Dr Eamon Butler, the Director of the Adam Smith Institute in London has established that the Rule of Law is a sine qua non for economic development. His proposition is that:¹⁸

If you want to get rich, you need economic growth. To create economic growth, you need people to be creative, to produce things, and to bring them to market and exchange them. But producing and creating things needs investment - education, training, buying capital equipment, and so on. That's risky, because your business may not work and you could lose money. But if you have no secure rights over your own property, it's suicidal. That is why you need property rights and the rule of law".

The Police as law enforcement agents are therefore the direct agents of economic development since there is incontrovertible basis for the assertion that an economically developed economy and society could lead to lesser levels of crime. So it is in the interest of the Police to ensure that they not only directly work within the parameters of the law but also encourage the achievement of the rule of law.

The Police, in protecting and operating within the law will be seen institutionally as good Corporate Citizens. The Police are builders of a nation but must never go the way of the Napoleonic expression that "he who builds a nation breaks no law"

In any case, we in Nigeria experience a phenomena that perhaps can be associated only with other lesser developed economies. The pay of an individual is often shared amongst several unemployed extended family

members and friends. The end result of a prosperous economy which is a function of the rule of law therefore will be several job opportunities and therefore reduced dependence on the salary of a Police Officer by several people.

Dr. Butler, relying on the early Studies of Adam Smith has also pointed out that "prosperity depends only on peace, low taxes, and a good system of justice."¹⁹ Apart from the issue of taxation, the matters of peace, prosperity and good justice systems fall squarely within our earlier accepted 8 tenets of the conceptualisation of the rule of law. Peace and prosperity is a legacy we must leave for our children and these we can achieve only when we work within the rule of law.

I thank you for your time and attention.

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