



Economic justice and the legal considerations pertinent in charting a course for economic growth in Nigeria

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Abstract

The concept of economic justice as the realization of the interface between positive social and economic output is one of the products of effective legal structures. Effective judicial systems are the platform on which economic justice is actualized. The nexus between economic justice and effective judicial systems is the rule of law and the level of its regard. The paper asserted that one of the noted dysfunctionalities of developing nations is the failure of their judicial systems to deliver economic justice and the inability of the state to coordinate the integrity of its institutions. This paper argued that the resolution of economic justice and other legal considerations could help in growing the economy, especially in the Nigerian situation. The paper concluded by suggesting that state institutions must be strengthened as well in order to derive the capacity needed to realize economic justice.

Keywords: economic justice, judicial systems, income inequality, institutions

1. Introduction

Economic justice could be said to be the elements of fairness when good official decisions engage equitable allocation of advantages amongst actors within an economic system. Economic justice is what happens when a country takes the demands of social and economic rights seriously^[1]. The interplay between social and economic rights and the achievement of economic justice is the point at which protecting the social structure of a society from income inequality and other forms of economically limiting factors becomes expedient and an institutional practice. The extent of economic justice that is available within institutional structures shows the commitment to the realization of social and economic rights. According to Lester Thurow, the contemporary study of economics came about from the cause of wanting to find a description for economic equity but there has been a deviation from that cause^[2].

Utilitarian economics has been abandoned for a discourse of choice and preference, in the measurement of societal judgment of social equity^[3]. Social equity is without doubt an alternative description of economic justice, since social equity connotes parity within a social system. The actualization of economic justice within state institutions is a right embedded in the social contract of individual persons. It is an obligation of the state towards the individual in preserving the individual essence and in justifying the essence of government and statehood.

Economic justice encompasses the functions of individual rights and the implementation of inclusive economic policies which cannot be dissociated from legal concerns. In the sense of it,

economic justice, just as it is of economic interest, poses also very much as a legal concern. There are ways in which an economy could be affected by legal concerns. One of those ways is the extent to which right to property is expressed and secured by the laws of the land^[4].

Unfortunately, one of the adverse concerns of the judicial systems of nations that have found themselves at the bottom of development is the inability to express and secure rights to property, in the kind of way that would give confidence to foreign direct investment. It is also common practice in bottom billion nations^[5] for government officials to hide behind the law to extort multinational corporations or such transnational businesses that are domiciled in their country. As the judicial systems of bottom billion nations have their powers absorbed by institutional decadence and compromised law enforcement mechanisms, economic justice becomes only a thing granted by force, and force being only a thing that could be exerted by power becomes the exclusive right of the powerful. Hence the powerful, being anyone with access to authority makes a tiny fraction of people that get economic justice.

The rest of the society having being failed by the ineffectuality of their judicial systems become marked by their powerlessness, and this is how the bottom billion nations fail to even out economic justice and to resolve other legal considerations necessary in the establishment of a vibrant and resilient economy. Even if it appears that there is hardly a point at which it can be proven whether stronger judicial systems make vibrant

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¹ Business Dictionary, *Definition of Economic Justice*, Available online at <<http://www.businessdictionary.com/definition/economic-justice.html>> last accessed June 19, 2019.

² Lester Thurow, *Toward a Definition of Economic Justice* (1973),s 'National Affairs: The Public Interest' available online at

<www.nationalaffairs.com/public_interest/detail/toward-a-defintion-of-economic-justice> last accessed June 19, 2019 p. 56

³ *ibid* 56

⁴ Alan Greenspan, *The Age of Turbulence: Adventures in a New World*, 1st edn, Penguin Press 2007.

⁵ See Paul Collier, *Guns, Wars and Votes: Democracy in Dangerous Places*, Perennial Reprint edn HarperCollins, 2009. The Bottom Billion are the nations that are marked by the features of Third World status.

economies or that stronger judicial systems are products of vibrant polities, stronger judicial systems still are a feature of developed countries and vibrant economies. Since it is already established that economic justice can only be a product of efficient judicial systems, and that economic justice should be a condition necessary for economic growth as it is also a concern for foreign direct investment, one can draw a line of measurement between countries where citizens get economic justice and countries where they do not. There are necessary set conditions for the making of strong judicial systems that the bottom billion nations lack and these conditions are legal considerations.

2. Economic Justice and other Legal Challenges in Nigeria

Nigeria being marked by the features of a bottom billion nation has many challenges, most of all, economic challenges largely stemming from maintaining a monolithic economy founded on the resource bonanza that is oil. Now it is an economic fact that the consequence of maintaining a monolithic economy founded on the prosperity of a resource bonanza would be an ineluctable crash of such an economy in the event of any market shock to the commodity, and which would be followed by a severe recession. This is having the diagnostic result of the current downward economic slide in Nigeria.

It is not a complex truth, however that socio-economic rights are issues that gain more traction especially at a time when the growth curve of a country's economy are on the upward trend. This is because at such a time, the political demands on a government to provide social security for the economically vulnerable, and to make good policies that will sustain the growth are great. Usually, during a recession, a government has a duty to protect the common people from individuals or corporations who might want to exploit the vulnerability of the system, by providing adequate regulatory covering over economic activities, to ensure a fair stability of the system. This was the reverse in the instance when there was a foreign exchange crisis in Nigeria in 2017, and commercial banks illegally traded at the short end of the currency market, which further put more pressure on the naira.

Economic contradictions and policies that repress economic liberty and market flexibility are factors to consider in noting slow economic growth. However, is there a point where legal considerations tighten on economic growth? The answer might be that economic factors result in whatever direction an economy might find itself heading, but legal considerations affect the sound implementation of reforms.

To assess how judicial transparency rankings and legal shortfalls underlying a complex web of government regulations and the incapacities of law enforcement affect the foreign direct investment portfolio of a country, it would be seen clearer, the ways in which legal considerations affect economic growth. Economic justice is tied to the efficiency of the judicial system. The ways in which the demand for economic justice affects economic growth in Nigeria is to look at the consequences of its absence. In the Niger Delta Region where insurgency started and created a security issue, it started with a discovery of the

infrastructural development disparities between the deep southern region and the northern region of Nigeria.

What followed were requests for human development and a resolution of the observed disparities. It was thought that since the government funded the courts, the courts could not realize their demands, and hence they took to arms. The same as it is with economic justice, such is it with social justice, since economic justice is an element of social justice. Social justice can only be granted by institutions with the right kind of power and influence. The reason why foreign direct investment would always be affected by the level of economic justice, is that the higher the level of economic justice realized, the more the stability of the polity. And the stability of polity equals peace and security. In Nigeria, as in many other bottom billion nations, there is a huge gap where economic justice is supposed to be a cohesive force in the social strata. It appears that judicial arrangement in bottom billion nations like Nigeria makes it possible for the lack of institutional transparency. Specific and identifiable patterns in the administrative organization of the courts, coupled with a tremendous degree of legal discretion and procedural complexities, allow judges and court personnel to extract additional illicit fees for services rendered ^[6].

One of the reasons that economic justice fails in the administration of the law in Nigeria is the mostly cumbersome character of legal and administrative procedures. Just as much as one could make the analogy of huge, slow, obsolete machines performing simple tasks to lighter, faster ones, one could refer to the structure of the Nigerian legal and administrative system as a huge, slow moving under-performing machine, needing to shed many of its complexities and ambiguous forms under which many take refuge to manipulate processes. It may be argued that the failure of the Nigerian justice system in the realization of economic justice has resulted in certain anomalies such as extra-judicial killings and several abuses against persons, hence the breach of investment confidence in the political environment that is vital for economic growth.

The thriving character of corruption within the Nigerian institutional framework is exacerbated by the lacking of the rule of law that would have evened out on the blocks of interfering influences on the terrain of judicial administration. The blocks of interfering influences on the terrain of judicial administration is linked to the fact that the Nigerian Judiciary is largely dependent on the executive in the carrying out of its functions. In fact, there is a constitutional role that has been spelt out in the provisions of Section 17(2) (e) that the impartiality, independence, easy accessibility and integrity, necessary for unimpaired judicial function shall be secured and maintained ^[7]. Section 121(3) further provides for clarification that '...any amount standing to the credit of the judiciary in the consolidated fund of the state shall be paid directly to the heads of the court concerned ^[8].

As against all expectations imposed by the constitution, the Nigerian judicial system fails in its mandate to ensure economic justice due to corruption and the flagrant disregard and contempt for the rule of law. In Nigeria where there is so much constraint on judicial functions, the constitution in envisioning a progressive judiciary, recommended an independent judiciary,

⁶ Edgardo Buscaglia, *Judicial Corruption in Developing Countries: Its Causes and Economic Consequences*, United Nations Office for Drug Control and Crime Prevention, Vienna 2001, p. 4

⁷ The Constitution of the Federal Republic of Nigeria 1999, Section 17

⁸ *ibid* S. 121

but the judiciary will hardly be independent if the executive has control over its funds. In examining how executive constraints, that is control over political power, affects economic growth, it was noted that low levels of Gross Domestic Product loss were more in countries with high executive constraints, and high levels of Gross Domestic Product loss were more in countries with low executive restraints and it was also noted that the extent of executive restraint is determined by the level of judicial and legislative efficiency^[9].

The relationship between judicial efficiency and economic function can be interpreted in the context of political control, in as much as political control is left unrestrained, it affects institutional function and when institutional function is affected, economic growth slows. To reinforce the position that economic justice as a public good can only be achieved by efficient judicial systems is to look at how many bottom billion nations have realized socio-economic justice as one of the public goods for their citizenry. The bottom billion nations can't realize socio-economic justice because of compromised judiciaries and weak institutions. Economic freedom is required as a determinant for economic growth^[10]. Two of the five components that make up economic freedom as stated by the Fraser Institute are the security of property rights and the legal structure^[11]. Since within the Nigerian legal structure, the judicial system is ineffective in delivering economic justice and that in itself affects foreign direct investment confidence, economic freedom is repressed and economic growth stunted. One would wonder how economic justice is supposed to be delivered by courts when ESCR are rarely enforceable, but maintaining institutional probity while adjudicating matters, more especially where there are varying political and financial interests, can help in getting economic justice.

3. Charting a Course for Economic Growth in Nigeria

The focal point of the arguments that has been proffered is to the effect that in considering any set template for economic growth, the strength and the integrity of institutions must be ascertained. And it is most necessary that an efficient legal structure is in place. In the analysis of the structural integrity of the Nigerian state, it was noted that the federal structure of Nigeria was such that, however its deconstruction, it still maintained a high level of power at the center and component parts that were weak^[12]. Even in the consideration of the arms of government the judiciary happens to be the weakest since funding may determine the level of efficiency that institutions have in Nigeria, and the judiciary happens to be the least funded of the three arms of government, notwithstanding, it has a duty. It has to guide legislations to become proper law. Matthew Stephenson in analyzing resource constraints for judicial reformers wrote:

If, for example, a well-functioning judicial system is a necessary precondition for large-scale economic activity, then it might make sense to devote substantial resources upfront to improving the court system. If, on the other hand, a great deal of economic

progress and social welfare can be generated with a more modest court system, then it may make sense to devote relatively fewer government resources to the court system early on, targeting these resources instead at other things—such as health care, basic education, and infrastructure—thought to be more important for priming the pump of economic growth. Of course, the productivity of these other sorts of reforms may depend on a well-functioning system for regulating service delivery and resolving disputes, which may require a reasonably effective judicial system^[13].

The question of resource constraint for the judiciary has not always been a matter of inadequate resources but of misappropriation, hence the problem. Again the issue of efficiency could be tied to the technological needs of the judicial system. With the significant technological dimension commerce is taking in the private sector, the judicial system should not be left out. In the consideration of foreign direct investment opportunities, the rule of law as a part of a legal structure is very pertinent. In his work, Barry Weingast concluded that:

The approach to the rule of law – creating certainty and equality of the law with an absence of arbitrary abuse – requires not only the supremacy of the law as traditional arguments emphasize but a dynamic component by which the law holds not only today but also in the future. This involves the concept of perpetuity. To sustain the rule of law over time, the state must become perpetually lived; that is, state institutions must live beyond those who create them so that the identities of political officials do not matter^[14].

On the question of the rule of law and the viability of the rule of law as a product of legal structures, Nigeria is caught in the meta-narrative of a faulty history whereby the constant interference in the legal process has halted the development of the rule of law. The period of the military regime where individuals would suspend the constitution had implications for the development of the rule of law. The perception of the law could no longer be dissociated from individual concerns where instead it should have been for institutional concerns. As far as institutional analyses might go, the legal prescriptions for economic growth are necessary for the framework of a public service delivery system for positive institutional perception and for the proof of the structural integrity test that is very much needed for foreign direct investment.

Conclusion

Social and economic rights are lofty goals that must be attained by every country, if income inequality and social exclusion must be tackled effectively. Many times, the governments of developing countries have scoffed at the intentions of these rights, claiming that they are in denial of the inequality of the economic capacity of states. Some people do not even know those rights exist. The importance of the social and economic rights are that they stand in as a ready-made template on which the entire economic liberation of individual persons can be built.

⁹ Professor Tim Besley, *Professor Paul Collier, Growth Challenges in Fragile States*, London School of Economics, Public Lectures and Events, 2016.

¹⁰ Kazeem B Ajide, *Determinants of Economic Growth in Nigeria* 'Vol.5 CBN Journal of Applied Statistics' 2014, p. 2

¹¹ Fraser Institute, *Economic Freedom of the World: 2019 Annual Report*, available online <<https://www.fraserinstitute.org/studies/economic-freedom>> last accessed 16 October 2019

¹² Funke Adekoya, *The Legal Issues in Restructuring Nigeria for Development*, 1991 Alumni Reunion Public Lecture, 2016.

¹³ Matthew C. Stephenson, *Judicial Reform in Developing Economies: Constraints and Opportunities*, Annual World Bank Conference on Development Economics, The World Bank, 2007, p. 5

¹⁴ Barry R. Weingast, *Why Developing Countries Resist the Rule of Law*, Working Paper, Hoover Institution, 2008, p. 19

Economic justice is not entirely a good that cannot be accessed by the poor in Nigeria and elsewhere in the developing world, it can be accessed if there is determination on the part of the government to tackle the issue of growing income inequality. What would be required is institutional willingness, when the institutions are weak, there would be no institutional willingness to deliver economic justice. Institutions can be strengthened if there is a disruption to the present arrangement of structural vices within the organization of state institutions, like cronyism and nepotism. For economic growth and for the sustenance of the growth pace, there must be dedicated effectively functioning institutions, and especially legal institutions.

The usual deliberate slips within the judicial system could hamper the delivery of economic justice in favor of individuals who can buy justice and negotiate the integrity of the judicial system, this could also forge deep mistrust of the state's institutions by foreign investors who consider these things critically. Therefore, the way forward for economic growth in Nigeria would be that the country takes positive steps towards the attainment of economic justice within its legal institutions, and in the making of its policies.

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