

Management of Covid-19 in Nigeria: Contending Paradigms of Democratic State's Protectionist Rights Versus Individuals' Libertarian Rights

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Abstract

COVID-19 Pandemic put forward a new regime of paradigmatic contention as to the supremacy of state versus individual rights in a social contractual existence. John Locke, Thomas Hobbes and Rousseau just like other ancient and medieval political thinkers hypothesised the collective existence of man under the umbrella called state. Such existence epitomises a relatively peaceful and harmonious relationship between, first, man and his fellow man, and second, men and the state. The COVID-19 Pandemic presented with a new question: which among the two variants of rights (individual or state) owns supremacy? While the state's right advocates an express non-consultative, unconventional action to quell the pandemic, individual rights advocate a consultative, constitutional, flexible and intentional consideration of individual convenience regardless of the rampaging effects of the pandemic. Each of these paradigmatic variances claims legitimacy on law and rights. This paper seeks to examine the various COVID-19 Pandemic Management Strategies adopted by the Nigerian state and how these have affected individual rights of citizens. It is the position of the authors that consistent divestment of human rights or appropriation of state's law over human rights and freedom creates a pathway for new regime of autocratic democracy which is the rule of (not law) but institutions created by law; an event where the democratic institutions are stronger than the law itself. The paper further recommends new measures to address pandemics while keeping with the stability of the state and individual rights.

Keywords: *COVID-19; pandemic; freedom; individual rights; collective responsibility; Social contract; state's legitimacy; constitutional supremacy; human right*

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Introduction

Democratic States are liberal, fluidly, flexible and amorphous (Thandiwe Matthews, 2019). This nature of theirs presents a rather unpredictable state of affairs in that decisions taken along the lines of state's democratic principles are preceded with complex democratic protocols determined by the majority voices and votes. That does not rule out the fact that liberal democracy is a necessary foundation to support the advancement of universal human rights (Evans, 2001). For instance, the recognition of contemporary human rights, the abolition of transatlantic slave trade among other revolutionary developments in the historical experiences of social and labour systems find their origins in the early nineteenth century movements that founded the establishment of the modern democratic states (Alston, 2013). This consolidates the understanding of democracy by Cambridge Dictionary (2019), as a system of governance predicated on the belief in freedom and equality between people, where power is held by elected representatives that serve the interests of the majority.

A typical democracy is grounded on the idea of a welfare-state that recognises social rights of the people (which among all may include: access to quality health care, housing, education and social security etc) in addition to unbridled access to employment and other soft entrepreneurial opportunities (Esping-Anderson & van Kersbergen, 1992). A typical democracy is equally founded on the constitution thus known as a constitutional democracy. Constitutional democracies require that the exercise of political power (which of course seeks to address the rights and benefits of the people) as well as social, economic and political relations within a society are governed in accordance with supreme principles, rules and procedures contained in a country's constitution (Tully, 2002). In a parliamentary democracy, citizens elect representatives to a legislative parliament to make the necessary laws and provide directives that aim to directly represent the needs of the people who voted for them (Baron et al, 2011). Each of these systems of democratic governance fit into the broad definition of what constitutes a liberal democracy thus provision of the necessary welfare of the people along the lines of constitutional provisions.

However, growing concerns have been expressed regarding the rise of authoritarianism or autocratic leaders who, in response to a precarious political, social and economic conditions witnessed in the course of governance, espouse nationalist and advocative rhetoric and violate basic rights of citizens, despite the ostensibly democratic character of the political system which they tend to administer (Rodriguez-Garavito & Gomez, 2018). This however threatens and vitiates the claim to validity of the democratic as well as liberal orientations of the modern state. Scholars (AIV, 2017; Muis & van Troost, 2015) argue that these authoritarian leaders are creating pathways into an era of 'illiberal democracy' by undermining institutions and sentiments of liberal and libertarian lifestyles and the rule of law and have cautioned of its ensuing implications for the global human rights agenda. According to Zakaria, democratically elected regimes 'are routinely ignoring the constitutional limits on their power and depriving their citizens of basic rights and freedoms' (Zakaria, 1997: 22).

From the preceding foundation, we have understood that there is a mutual interrelation between state's democratic cultures and the levels of human rights orientation within the state. Thus, in the course of state administration, the state's machinery and the actions of democratic leaders function to exhibit manifest and consistent underestimation of human rights. Why are there endless contentions among the state and individual rights? Does state's protectionist rights superintend over the rights and freedoms of choice of individuals whose collective loyalty founded the state itself? These two hypothetical and rhetorical questions form the basis of the interrogation which this paper seeks to examine. The contention that exists at the confluence of these two paradigmatic binaries remained most significant during the COVID 19 pandemic period, of all times.

Scholarly Conceptualization of the Individual Libertarian Rights of Citizens

Contemporary notions of liberalism, the practice of liberal democracy, the foundation of bureaucratic and institutional frameworks designed to protect citizen's freedom can be founded in the protection of human rights and individual freedoms recognised in the Universal Declaration of Human Rights (UDHR) enacted after the Second World War. Historically, the origin of liberalism was associated with agitations fuelled by slavery and colonialism (Jahn, 2013: 25). Thus, liberals may argue that the value of human rights embedded in liberalism is to recognise that all people are born with rights, which they hold simply because they are human and these rights are preceded by a series of agitation and demands for justice and equality. In fact, according to Renshaw (2014), human rights are necessary to preserve life and individual liberties; and the role of the state in fulfilling and protecting human rights is limited to preserving life and property.

Ultimately, the crux of human rights promotion as well as other universal or localized human rights debates ought to primarily recognise the equality of all human beings as bearers of inherent human dignity (Gould, 2004). This is founded in Section 34 of the 1999 Constitution of the Federal Republic of Nigeria.

The reliance on or the use of human rights and democracy indicators has become a popular tool when gauging the strengths and weaknesses of each single democratic state, (Mathews, 2019) and scholars are more inclined to determine each state's sensibility to its citizen's welfare by understudying its responses to human rights demands. Human rights indicators seek to monitor the relationship between an activity or outcome against human rights norms, standards and values as an assessment of the promotion and implementation of human rights (UN OHCHR, 2012a: 16). When evaluating democracies, considerations are largely given to factors such as corruption, security, open government, regulatory enforcement and adherence to the rule of law, access to justice for citizens, and most fundamentally, the protection and enforcement of human rights and associated freedoms (WJP, 2018; Freedom House, 2019). These factors singularly and collectively create illustrious metrics to determine the acceptance and or rejection of human rights sensibilities within every democratic state.

Davis et al have argued that the burgeoning production and use of indicators in global governance has the potential to alter the forms, the exercise, and perhaps even the distributions of power in certain spheres of global governance (Davis et al, 2012: 4). Thus, the authors have problematized the social processes that surround the creation and use of indicators; the conditions of production that may influence the kinds of knowledge that indicators provide; and the influence that indicators in global governance may have on the nature of standard-setting and decision-making. Moreover, the effect that indicators may have on the distribution of power between and among those who govern and those who are governed has been questioned, including the nature of responses to the exercises of power through indicators (Merry, 2011). Study however examines not just the use of human rights as social indicators to the legitimacy of government, but also the setting of boundaries between human rights and powers of the state in decision making.

Protectionists Rights of Democratic States and Universal Protection of Human Rights: Conceptual Examination

Every state has the primarily responsibility to protect its citizens. This right gave impetus to the internal and external sovereignty of states. Scholars have argued that the protectionist rights of states are endemic and more domestic-driven than internationally driven (Mingst & Karns, 2012: 23). It follows that the United Nations may have very little influence at and over the way in which each state administers human rights in their respective states. One key factor to the functioning of UN is the principle of sovereign equality of its Member States and the commitment to refrain from threatening the territorial integrity or political independence of another state, including respect for the principles of self-determination and non-intervention in the domestic affairs of States. Simultaneously, the permanent members of the UN Security Council have veto powers, and as such, inequality is also embedded within the UN framework (Mingst & Karns, 2012: 32) especially when decisions are bound to be taken by the Security Council. Moreover, the UN framework presents a tension between respecting the sovereignty of states whilst also fulfilling its obligation to protect victims of internationally recognised human rights violations (Mingst & Karns, 2012) which is what creates a huge challenge to the universal protection of human rights.

Regardless of the state's right to protect its citizens, the United Nations has set out regulations regarding how the citizens of the state can themselves influence the way in which the state's human

rights policies are implemented. Particularly Article 21 of the United Nations Declaration of Human Rights (UDHR) makes explicit the relationship between human rights and democracy, by stating that everyone has the right to participate in their government, either through direct representation or through freely chosen representatives usually expressed through periodic elections, and that the will of the people shall inform the authority of government. This is in addition to the fact that the international community provides a supervisory roles over every other nation towards ensuring that human rights violations do not take place. Such fundamental laws include Convention on the Elimination of all Forms of Racial Discrimination, 1965 (CERD), Convention on the Elimination of all Forms of Discrimination Against Women, 1979 (CEDAW), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT), Convention on the Rights of the Child, 1989 (CRC) and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 (UN OHCHR, 2012b). The impressive body of international laws generated as a result of these UN instruments has served to locate human rights within the global political arena as well as reduce any likelihood of repression and oppression of human rights by state's forces (Evans, 2001; Viljoen, 2012).

Institutions such as the UN Human Rights Commission were established, initially to investigate and addressed what was perceived to be systemic human rights violations committed in apartheid South Africa and racial discrimination in Zimbabwe. Considering the universal replication of same negative trend, this agency was later expanded to address human rights violations in general. The Human Rights Commission has since been replaced with the Human Rights Council, and the Office of the High Commissioner on Human Rights (OHCHR) has become one of the primary institutions responsible for the administration of the international human rights system (Buergethal, 1997).

However, some scholars and analysts have lamented that the monitoring mechanisms of UN as well as its subsidiary agencies may be too diverse, uncoordinated and flexible to be effective. This is not only due to the fact that global funding for human rights monitoring is limited but also due to the fact that the sovereign wall of states have the capacity to shield external influences and pressures and also weaken the strengths of the UN (Mingst & Karns, 2012: 240; Evans, 2001; Tladi, 2009).

From the foregoing, it is obvious that states have the rights to protect their citizens, compel obedience, suppress external aggression and internal uprising. These protectionist rights are internally driven. They are being controlled by domestic state institutions which creates great probability for abuse and higher chances of violation. However, the international community provides regulatory standards to ensure that human rights, being a universal concern, is duly protected and shielded from abuses. But the protection of rights by the United Nations seems to be weakened by sovereignty of states which presents further danger to human rights violations within the domestic community.

The Contemporaneous Relevance of Social Contract Theorisation

The Social Contract Theory conceptualizes the transmutation of the human society from a seemingly raw social engagement to a more civilized, cordial and understandable society. The theory envisages a rather elusive and indeterminate society which reflects harmony among the people in the society; a thought which its possible reality has created an unending contention between the liberal and Marxist scholars (Sheepara, 2012; 2015; George Genyi, 2005). In fact, Marxist Scholars (Marx and Engels, 1975), have argued that in the transmutation of a state from one nature to another, the existence and superintendence of manifest bourgeoisie interest is inevitable. Thomas Hobbes (1651), John Locke and Jean-Jacques Rousseau are the principal proponents of the Social Contract theory. While each of these scholars have their varying individual submissions about the concept of Social Contract, there are confluences at some point where they have some reasonable agreement such.

The three proponents of the Theory have a consensus on the fact that man is violent by nature and shall so be if he remains untamed. They agree on the inequality and injustice, which characterised every society which have a segregated sense of coordination. As submitted by Enemuo (1997), Appadorai (1974), and Mukherjee and Ramaswamy (1999), the crux of the debate in Social Contract surmises that the state is a result of the contract entered into by men who originally lived in a state of nature; that there was only one contract, the social pact to which government was not a party. Individuals surrendered all their right to the community and therefore, after making the contract have only such rights as are allowed to them by what Rousseau called the General Will, which is Law. This contract births sovereignty. Every individual is a sovereign-being that makes up the whole sovereign community. This means that the individuals still have freedom form depending on any other one rather than themselves in a contract so entered into by them in a society. The government so formed by individuals after this social contract is very much dependent on the people. As such, people only appointed form their equals some trustees who would ensure the execution of the objectives of the General Will (common law) for the achievement of collective interest of the community. Considering the fact that it may appear impossible to have belief in one man to govern the execution of this contract, thus there arose the creation of super-human known as the government.

However, the theorists argue that the government is not a part of the social contract, rather the government is a trustee or agent charged with the duty to impartially execute the contract. Thus, it can be deduced that the government owes two duties to the people which include duty to ‘execute’ the contract and the duty to ‘account’ for its execution mechanisms, failure, success, etc. Rousseau is of the opinion that sovereignty freedom and independence of life non-negotiable rest on the people and the people have the absolute right to determine how these virtues should be administered to them. Thus, the compound interest accruing to a citizen such as justice, equity, freedoms, welfare etc. should be administered to the people the way they want it to be administered to them and not otherwise as the government wishes; the government being an executor and not a party to the contract.

From the foregoing, it will be practically easy to identify the points at which state’s protectionists rights parts ways with individual’s libertarian rights. It follows that part of the state’s duty is to protect the individual’s liberty and ensure that no external or internal force represses such rights to be free in one’s state.

Empirical Examination of State’s Strategies for COVID-19 Pandemic Management Versus Individual Rights of Citizens

Table 1: Empirical distribution of human rights violation during Covid-19 management by the Nigerian Government

Strategy adopted by Government	Violation arising from the Strategy adopted by Government	Section of the 1999 Constitution
Lockdown	-Right to Freedom of Movement -Right to Freedom of Expression -Right to Personal Liberty	-S. 41 -S. 39 -S. 34
Sanitation	-Compulsory Acquisition of Property -Right to Personal Dignity	-S. 44 -S. 34
Social Distancing	-Right to Freedom of Movement -Right to Peaceful Assembly and Association -Right to Freedom from Discrimination	-S. 41 -S. 40 -S. 42

Source: Shebbs and Irokansi (2020) Field Study on Human Rights

The Table 1 above shows the strategies adopted by the government in managing the COVID-19 pandemic and the relevant areas of human rights that had been violated in the process by the Nigerian Government. In a field study conducted by the researchers, official and government policy documents were studied which indicated the introduction of certain strategies by the government which include Lockdown, Sanitation and Social Distancing.

Lockdown

This includes restriction of movements, curfew, inter-state and intra-state movement restrictions, closure of schools, markets, banks, financial institutions and shopping malls. Within the lockdown category also, we have the installation of roadblocks by law enforcement agents and open show of force by the law enforcement agents to intimidate, coerce and persuade the citizens to state at home. The Lockdown was initiated by a Stay-At-Home Executive Order of the Federal Government which was replicated by the state governments. This violates the Rights of Nigerian Citizens to Freedom of Movement (Section 41, 1999 Constitution), Right to Freedom of Expression (Section 39, 1999 Constitution), Right to Personal Liberty, (S. 34, 1999 CFRN).

Sanitation

This includes introduction of face masks, hand washing protocols, use of hand sanitizers, towels among others. Sanitation protocols also includes regular cleaning of public places and compulsory sanitization of surfaces regularly used by the public. These rules set out by the Executive Order compelled individuals and organizations to acquire and use items they ordinarily would not have acquired on a normal circumstance. This was in violation of Section 44 of the CFRN which condemns Compulsory Acquisition of Property. Thus, no Nigerian should be compelled by policy or policy-induced circumstance to compulsorily acquire properties against their wish. Also, an event where people were subjected to checks and protocols at business and public places which was violation to the Right of Personal Dignity (S. 34 CFRN).

Social Distancing

Social distancing featured policy directives which mandated people to maintain not less than 2 metres space in between themselves in every social gathering, hosting an audience of not more than 50 (and in some cases 100) people. Right to Freedom of Movement (S. 41 CFRN) was violated as people were restricted from going into certain environments in order to ensure crowd control. Right to Freedom of Assembly and Association (S. 40 CFRN) was violated by the social distance rule as well as Right to Freedom from Discrimination (S.42 CFRN).

State vs individual rights' paradigmatic contention: Summary of Study

Considering the foundational theory of state as enunciated by our theoretical leanings, and juxtaposed with the empirical study of rights violations arising from the field study, it is necessary however, to consider the foundational cause of the contention between human rights and state's powers. These foundational causes are derived from historical evidence of legitimacy, dependency, public policy failure, and non-reparations for human rights violations in Nigeria.

The question of trust and legitimacy:

The contention that exists between the two paradigms of state supremacy and individual freedom stands out significantly because of the lack of trust and legitimacy of democratic institutions. The individuals whose collective rights established the state have lost trust on the state and do not believe in the ability of the state to secure their protection over pandemics. In the view of Thandiwe Mathews

(2019), some factor such as like autocratization, corruption, the loss of legitimacy for democratic institutions and parties, curtailing civic participation or the uncontrolled proliferation of misleading information can rock democracy to its core and can as well dissuade the persuasion every single individual may have about the political system he or she belongs.

The question of dependency and non-indigeneity of strategies:

The inability of the strategies to have an African face brings more doubts on their efficacy and potency. The constitution of each single African society has very strong bond with each of their colonial forbearers from where their political and administrative policy directions are dispensed. It follows that the measures taken by the Nigerian government towards the administration of COVID-19 pandemic prevention were borne out of western-styled orientations. This falls out and off from the generic impressions created by the Social Contract Theory which necessary mandates the government to only implement decisions of it's people along the lines of their preferences and not foreign-bound preferences.

Problem-Solution mismatch

The study gathered that problems are not solved, rather solutions are problematized to the detriment of the people. Wrong policy options are being explored by the state towards addressing the challenges which presented with COVID-19. Inability of government to come up with solution that best work create sentiments of illegitimacy against the government. Thus, when policies work, they are admired; when they don't work, they are ignored.

Non-Reparation for rights violations

In event where there are rights violations, as identified by the study, the government is disinclined to press for reparations. So, wrongs done to individuals and citizens as a result of enforcement or execution of COVID 19 protocols were not repeated and sanctions to public officers who midwived the wrongs were not initiated. A history of this non-reparation of wrongs, coupled with blatant abuse of rights could have deepened suspicion and contention among the citizens and the government. Thus, where there the state is neck-deep in unresolved contentions, more rights are abused and more reparations not granted. These create and unbroken circle of tragedies against the people and the state, protests, manslaughter, etc. which have the capacity to threaten the unity of the state itself.

Recommendations

Policy decisions which violate fundamental rights of the citizens should be backed by law and not merely expressed via executive orders.

Public policies should be formulated to include corresponding liabilities on and against public officers (individually) and agencies (collectively) in event of violations in the course of implementation of laws and policies. This will further tune-up the policy frameworks of the government regarding the relationship between the state and human rights.

Special mobile courts should be established to try human rights abuses. These courts can sit itinerantly at the rural and island communities to give speedy and quick access to human right matters.

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