

Civil Collateral Effect and Implications for Human Rights in Statecraft

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ABSTRACT

Using Nigeria's political history as a case study, the paper the paper is an attempt to examine the contradiction between the functions of state authority as defender of human rights and enforcer of national interests. The study also x-rayed connected conceptions of sovereignty and statecraft that shed light on the nature of human society and individual citizens' loyalty to state authority in order to comprehend the basis of civil collateral impact in the moderation of competing human interests inside the state. The study argues that while it may be simple for states to resolve political threats by annihilating questionable individuals or groups; this approach not only harms the state's international corporate image, but also undermines public trust in the state's stewardship role, often leading to an increase in the influence they seek to eradicate. The paper adopts descriptive and analytical approach. The paper concludes that Rather than destroying a few people in order to save the larger society, it advocates for defusing the potential for dissidence through subtle approaches that increase public confidence in political authority, political awareness, and the incorporation of popular expectations into national interest conceptualization. It further asserts that the norms established by human rights principles may also be effective in rescuing the country from the domestic tensions that fuel dissidence and averting further violations of rights in the process of deescalating them.

Keywords: Civil Collateral Effect, Human Rights, Statecraft.

Introduction

The statutory responsibility of the state to maintain order and ensure the general good has frequently come in conflict with the obligation to protect the rights of their

citizens, in part as a result of devolving complexities in the administration of national interest concerns, but also owing to the arbitrary and inherently conflictual interests under its stewardship. The need to moderate this dilemma and ply competing interests into a homogenous national vision, occasionally require an admixture of persuasion and coercion, for which purpose the mechanics of governance have over time evolved specialized organs. The vortex of coercion resides with the executive arm of government, complemented by the legislative and judicial arms of the state. As a result, the various appendages of law enforcement including the military have come to play a critical role in the administration of coercion. The realities of competing interests in human society have been highlighted by various theories of human society, including the Hobbesian Leviathan¹ and Darwinian principles of natural selection.² The political thoughts of Niccolo Machiavelli³ and Henry Kissinger⁴ also make evident the need in statecraft to administer correctional or fatal doses of coercion, to effectively moderate over competing interest. In addition to punitive coercion, the task of homeland security has also increasingly made demand on the adoption of extraordinary measures, in many cases guided more by strategic considerations than by rigid laws that make it difficult to adapt security operations to the perpetually adaptive antiques of culprits. It is this conflict between operational necessity in law enforcement, and state stewardship of civil rights that the current chapter examines, in relation to statecraft in contemporary Nigeria as a microcosm of third world democracies.

Clarification of Terms

Civil Collateral Effect: Civil collateral effect is an attempt to distinguish collateral effect associated with conflict situations or military operations, from the more civil variant associated with the discharge of civil authority, where the military merely functions as an apparatus of civil governance. Generically, collateral effect refers to the unintended or inevitable losses that result from decisive state action, including but not limited to, injury or damage to persons or objects that would ordinarily not be lawful targets under prevailing ideals of governance at the time. In contemporary period, these ideals of human dignity are defined by sentience of national law and multilateral instruments of civil rights such as the universal declaration of human rights and similar protocols that emphasize the responsibility of state governments as ultimate guardian of civil rights within their boundaries.

Originally employed in the context of security and military intervention, the concept of collateral effect has devolved into civil space to also refer to conflict unrelated contexts such as the politics, economics and other ramifications of national interest. The notion of collateral effect presupposes that in the enforcement of the supreme will of the state over competing and often indiscriminate domestic interests, state authority may occasionally incur civilian casualty among the population whose rights and interests it seeks to protect. The principle of alternative cost increasingly fashionable in the medicine bag of statecraft.

Human Rights: Human rights may be defined as inalienable rights to which a person is inherently entitled by virtue of being a human being, regardless of their age, ethnic origin, location, language, religion, ethnicity, or any other status.⁵ They derive from commonly held norms of human dignity held to be organic to the cultures of peoples across the world. In 1948 these rights were enshrined by the United Nations in a thirty-section long human rights declaration. They include the rights to self-determination, liberty, due process of law, movement, religion, expression, assembly, and association, among others. The idea of distinguishing certain rights as essential across various traditions of sovereignty is informed by the need to ensure minimum standards of dignity and humanism in the world, irrespective of nationality, race, religion and any other arbitrary divisions.

The role of state authority as first-place custodian of these rights, is significantly complemented with the appearance of oversight agencies such as the International Criminal Court (ICC), Amnesty International, Human Rights Watch, and various levels of multilateral partnerships that foster compliance. In the laws of many countries, the values extolled by the universal rights declaration predates the 1948 instrument and invokes a moral obligation of state authority to ensure basic dignity of life for all subjects, irrespective of contrarities. Not only have the observance of these values become fundamental hallmarks of democracy, they are among the most prized credentials on the checklist of thriving democracies. The role of state authority as first-place custodian of these rights, has also been significantly complemented with the appearance of oversight agencies such as the International Criminal Court (ICC), Amnesty International, Human Rights Watch, and various levels of multilateral partnerships that foster compliance. Yet these values appear to occasionally come in conflict with critical imperatives of political, economic and social sanity, which place state authority in the dilemma of violating them and saving the peace, or respecting them and entertaining the threat factor.

Civil Collateral Effect and Implications for Human Rights in Statecraft

In Nigeria and other third world democracies, institutions of governance have frequently been invoked to reprise or to neutralize perceived individual and group threats to political rivalry in overtures that challenge sentiments of civil dignity as conveyed in the domestic and multilateral instruments of human rights. There have been allegations against democratic governments of infracted interpretations of the law or their outright suspension, to witch-hunt opponents, foil dissidence, and neutralize civil (and sometimes legitimate) resistance to public authority. The emergency procedure has been to single out resistance leaders and sometimes entire dissident groups for persecution by puppet strung government agencies, trumped up charges, and extrajudicial action. In October 2015, a foremost agitator of self-determination in Southeastern Nigeria, Nnamdi was arrested on treason charges in Lagos, and detained for more than a year, despite various court orders that ruled for his release. In September 2017, Kanu's home was raided by the Nigerian military, leading to the killing of 28 members of the Indigenous People of

Biafra (IPOB).⁶ Members of the group have come under heavy security crackdown, leading to several deaths, and in September 2017, IPOB was labeled a terrorist organization by a federal High Court in Lagos.

Civil collateral effect in internal security not only violates enshrined human rights, but have in various circumstances failed to achieve a lasting solution or resulted in the degeneration of domestic dissent. For instance, twenty-six years after the execution of the Ogoni 9 by the military administration of Gen. Sani Abacha, the issue of Niger Delta exploitation and environmental degradation has snowballed into widespread regional outrage and security concerns that have scarred public confidence in state authority as custodian and defender of human rights. Similarly, collateral onslaught against the leadership of the *Jama'atu Ahlis Sunna Lidda'awati wal-Jihad* became a rallying point of dissent for the escalation of the Boko Haram crises. Even where they are served in outright self-denial or with legally crafted justifications appealing to the imperatives of strategic national interest, the complicity of government agencies in the violation of civil rights has tended to provoke distrust and degrade public confidence in the stewardship of government institutions. The parody of jural complicity in the suspension of enshrined civil rights, continue to raise questions about the neutrality of the judiciary, its impartiality and independence from political or executive influence, such as over the rights of citizens to fair hearing, peaceful protest and assembly.

Other national experiences with the dilemma of civil collateral effect relate to the handling of political opposition and activism. For instance, in November 2020, the Central Bank of Nigeria froze the accounts of supporters and alleged sponsors of the “endsars” protests on account of an *ex parte* order issued by a federal court in Abuja. The Nigerian government has also frequently resorted to the confiscation of travel documents, attacks on the businesses, as well as social and financial privileges, to deal with individuals of dissenting political opinions. It is for instance alleged that the unceremonious deposal in March 2020 of former Emir of Kano, Sanusi Lamido, was in retribution for his frequent criticisms against the government. His political persecution would lead through a series of hyped allegations and finally, his exile to Nassarawa state.

Nigerian security forces are frequently alleged to have carried out arbitrary arrests, torture, forced disappearances, assassinations and extrajudicial executions. These abuses typically occur within the context of the Nigerian government's security operations or are directed against political and religious organizations and individuals. In December 2015, the Nigerian Army allegedly massacred 347 members of the Islamic Movement of Nigeria (IMN) in Zaria, Kaduna State and buried the bodies in mass graves. Other instances of security onslaughts in the recent history of statecraft in Nigeria include summary executions by Nigerian security forces at Odi in 1999, Zakibiam in 2001, the clampdown on Mohammed Yusuf and other leaders of *Jama'atu Ahlis Sunna Lidda'awati wal-Jihad* in 2009. The dictum of destroying a few people to preserve the larger society highlights the contradiction between the government's role as both moderator of human rights and enforcer of national interests, which pose a moral contradiction between the responsibility to protect the dignity of its citizens, and the occasional need to maintain order through punitive or preemptive deployment of force against its own citizens.

The paradox of coercion and salvation in statecraft is probably as old as the imperative of governance itself. In the modern era it crystalizes with the appearance of specialized institutions of governance under the modern state system. Since after Westphalia, the sovereign powers of the state have devolved into three principal organs of governance, (the legislative, executive and judiciary) with the apparatus of coercion coming to reside primarily in the executive arm of government. In fulfilling its statutory responsibility to protect lives and property, the executive arm of the state is empowered and guided by the laws passed by the legislature and interpreted by the judicial arm of government. The generic tradition of administering this force provides that these organs of state work together (or in fusion) to apprehend defaulters of the law, and to accordingly mete out various degrees of sanctions ranging from detention, bail payments, imprisonment, and execution as may be necessary to punish offenders, preserve order and safeguard the overall national interest.

In more desperate situations however, extra-constitutional measures such as selective or targeted elimination of individuals or groups appears to be gaining popularity in the corridors of statecraft, especially in third world democracies. This paper examines the moral balance between government stewardship of human rights, and the imperative for selective coercion in the pursuit of national interest. It also considers the normative basis for this balance, its operationalization, as well as the bearing between popular expectations of human rights on the one hand, and national interest on the other. The paper throws the question of conflict between human rights and strategic interest back to Nigeria's experience with political heterodoxy. On the basis of historical experience, it maintains that neutralizing threat-agents whether individuals or groups not only defeats ideals of human rights, but also does not always guarantee a conclusive solution to tensions of an ideological or existential nature.

Although the values heralded by the human rights charter have enjoyed considerably wide acceptance at national and multilateral tables of policy, the struggle rights stewardship and the enforcement of order has remained alive in the national experience of most signatories to the charter. The foremost proponent of these values, the United States of America has occasionally been fingered for breaches of human rights in both domestic and foreign dealings, as have other champions of democracy. The targeted elimination of minority threats through assassinations and stage-managed conflicts have frequently led to religious crises, genocides, ethnic and civil wars in various parts of Africa. This state of affairs highlights a latent struggle between paper ideals and the reality of compelling alignment to the collective national cause as determined by state authority. Adeyeri and Ogunniyi confirm that the pursuit of national interest and preservation of fundamental human rights concurrently can be a daunting task for the state due to political, security, economic and social considerations.⁷

Proponents of realism such as Hans Morgenthau, George Kennan and Yan Xuetong envision the continuous survival of states as a perpetual contest between deleterious internal and external forces, against which as is typical of the Hobbesian state of nature, survival is paramount. For them, resort to coercion against and advantages in

power are a natural cause of action in an anarchical political system. Morgenthau argues that political realism, though aware of the moral significance of political action and the inescapable tension in morality, is unwilling to redeem the tension by conceding on favorable options.⁸ Kennan admonishes states actors to deal in straight power concepts, rather than vague and unreal notions such as human rights and idealistic thought that avails little good.⁹ These propositions reinforce the dictum of survival with expression in the quest for power among states.

At both domestic and foreign levels, the dictum of violence as the midwife of societal change,¹⁰ and of political power as emanating from the barrel of a gun¹¹ have become crucial components in politics of self-preservation within and among states. Internally, the place of force as a necessary appurtenance of statecraft is highlighted in the jural symbolism of Lady Justice whom, wearing a blindfold, serves the blade according the swing of her scale. The symbolism of neutrality and dispassion draws attention to the dissonance between legal and conventional morality, as well as the implied prerogative of state authority to act now and explain later, or never explain at all, in upholding the highest good as framed by interest considerations.¹²

The imminent conflict between sentiments of humanism and decisive action in furtherance of national interest resonates with the typical Hobbesian society, and the need for a mechanism administered by the Leviathan, to compel desired behavior among elements of questionable discipline and commitment to the collective good.¹³ The carrot and stick approach to governance is as old as the notions of right/good and wrong/evil in human sociopolitical organization, on which basis have evolved the legal instruments of sanctions. No gainsaying, the concept of statehood has descended from an organic tradition of collective responsibility, that endorses the adaptation of its strategies to evolving needs in the responsibility of public stewardship. Its operational principles recognize that in the business of moderating competing individual interests, the apparatus of state authority may find need to tame the excessive ambitions of individuals, while protecting the interests of conforming sections of its population.

How to protect of lives and properties of subjects, while ensuring that the sanctity of rights for all (including defaulters), is a fundamental challenge to all national governments.¹⁴ Adeyeri and Ogunniyi believe that in pursuing and advancing national goals and objectives, each state should conform to certain norms and standards of behaviour, one of which is the respect for and observance of fundamental human rights.¹⁵ This makes law and policy an indispensable requirement for state survival, being the first medium through which a state categorically makes its intents known. Although laws are generally believed to portray sacrosanct ideals of morality, their interpretations do not always agree in intent with their original drafts. Raz maintains that the law is valuable but can also be the source of much evil.¹⁶

From the realist viewpoint therefore, the enforcement of national interest by resort to preemptive elimination of threat agents may therefore be thought of not in terms of good and evil (as with conventional morality), but rather in terms of imperatives and results. Concerns over the increased potency of non-state aggression in the wake of

terrorism, arms proliferation and sophistication in smuggling and other illegal enterprises have been met with considerable increase in resolve capability of states. For instance, collateral effect in domestic national interest campaigns has left a conspicuous trail of conflicts between Nigerian government and factional interests among its own nationals. In part, this conflict between civil rights and national interest highlights the disconnect between popular expectations and national interest. It also highlights controversies associated with defining morality, which raises the question of whether both unlawful and law-abiding citizens are equally entitled to the protection of national law.

Eso observes that although much has been done by human rights organizations in Nigeria to the advance the cause of human rights in state policy, it has been difficult to isolate cases of default since both the oppressor and the oppressed often claim sanctuary in human rights.¹⁷ The National Action Plan for the Promotion & Protection of Human Rights in Nigeria notes that although fundamental human rights have been entrenched in domestic Nigerian law since the 1960 Independence Constitution the guarantee of fundamental rights and liberties in the country has suffered considerable misfortune both at the hands of military interruptions and democratic governments.¹⁸ In Nigeria, rights-unfriendly force has also frequently been employed to salvage order beyond the courtrooms, at the behest of extra executive prerogatives that argue for the temporary suspension of human right considerations.

In the context of state force therefore, it seems from historical experience that selective destruction in the interest of the nation whether justified or not, is not so much a question of how easy, as it is about effectiveness in proffering a conclusive solution to the alarmed concern in question. Human rights is a critical component of the global political and development agenda, and incurring civil collateral effect in the handling of political or security challenges tends to attract reproach to the corporate image of the country,¹⁹ which in turn rub off on foreign policy concerns.²⁰ The civic outrages in the wake of hardcore enforcement options have often tended towards disrupting economic and social life, and setting affected regions several years behind in development. The country has suffered massive exodus of corporate investment on the heels of recurrent insecurity concerns that trace to desperate, extra-constitutional attempts to sequester erring elements or groups.²¹ Even where hardcore options have worked against civil resistances, the peace in their wake has often turned out to be short-lived.

Also associated with civil obedience is the level of trust that citizens hold for their governments, and the understanding of civic responsibility and commitment to the collective national interest. In most cases where the application of coercion is required across Nigeria, there has been an established disconnect in communication between dissident elements and state authority. Variances in the understanding and sentiments of civic obedience across regions, and individual alignments in domestic politics have no doubt continued to swell the potential for civic dissident. The level of citizen welfare and education also bear directly on the potential for anti-social, or anti-state action, and have also been found to be poor in the periods preceding the outbreak of sectarian or individual outrages against Nigerian government from the troubled regions of the Niger

Delta region and the Northeast. Aka argues that the standards set by human rights values are the best insurance against domestic tensions that fuel dissidence, one that spares the government the dilemma of further violation of rights, in an attempt to forestall the escalation of civic dissent.²²

Conclusion

The paper has examined the conflict between the roles of state authority as guardian of human rights and enforcer of national interest, using Nigeria's political experience as a case study. To understand the basis of civil collateral effect in the moderation of competing human interests within the state, the paper has further x-rayed associated ideas of sovereignty and statecraft that shed light on the nature of human society and obedience to state authority among individual citizens. It observes that although it may be easy for states to resolve political threats by targeting questionable individuals or groups for annihilation, this approach not only compromise its international corporate image, but often corrode popular confidence in the stewardship role of the state, often resulting in an escalation of the influence they seek to eradicate.

Rather than destroy a few people to preserve the larger society, the paper advocates defusing the potential for dissidence through subtle approaches that increase public confidence in political authority, political awareness, and the integration of popular expectations into the conceptualization of national interest. It maintains that the standards set by human rights values may also be useful in salvaging the country from the domestic tensions that fuel dissidence and avert further violation of rights in the cause of quelling their escalation.

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