Law and the Politics of Impeachment in Nigeria: Interrogating the Basis of Judicial Control of a Political Process

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Abstract
The paper submits that contrary to widespread perception, the widely-acclaimed change in attitudes of the Nigerian courts towards the political process of impeachment is not a product of any material differences in the texts of the provisions of the 1979 and the current 1999 Constitutions. Rather, the shift from complete detachment to measured intervention in the legislature's exercise of its constitutional powers to remove chief executives of government was a policy somersault by a judiciary that risks being consigned to irrelevance in the face of growing and wanton disregard for due process by the political organs of government in the discharge of their constitutional duties. While the paper canvasses judicial enforcement of constitutionally sanctioned obligations for sustenance of a democratic system under the rule of law, the authors conclude that the political character of impeachment proceedings necessarily foists on the judiciary the need to exercise caution and ensure that its interventionist policy does not draw it into an arena it is least fit to operate.

Keywords: Impeachment, Legislature, Judiciary, Constitution, Democracy

Introduction

The realms of politics and law in the governance of modern society are inextricably linked. This is because "law is one of the central products of politics and the prize over which many political struggles are waged" (Whittington et al, 2008:23). This is particularly so in a democratic state where matters of politics and governance are expected to be conducted within clearly defined limits of constitutionalism and the rule of law. To that extent, all actions and inactions of government, including high-wired politics involving intense struggles for power

among individuals and groups, are expected to be regulated by some legal mechanisms, which involve moderation through judicial intervention. Yet, the nature of the judicial power does not permit of undue interference in matters that are patently political. The extent to which the judiciary could seek to regulate matters that have high political contents, particularly those relating to access to and exit from positions of power freely given by the people in the exercise of their sovereign power, has, therefore, attracted intense jurisprudential discourses in time and space (Barkow, 2000:247-248).

No contemporary issue of politics has come to overtly exemplify the thin line between the two worlds of politics and law than, perhaps, the exercise of the power of impeachment of chief executives by the legislatures. Being overtly political, the exercise of the power by a legislature ought not to ordinarily attract any significant attention from the judiciary. This could be in deference to the oft-repeated doctrine of separation of powers or to the widely acclaimed apolitical tradition of the courts of law, whether in jurisprudence or in political theory (Stoner, 1992:33). However, modern practice of government has taught the lesson that human beings invested with political power tend to abuse the power and may remain arbitrary in the exercise of such unless subject to some limitations. Thus, while impeachment is intended to be mainly political, the exercise of the power has been subjected to legal regulation, thereby constraining the judiciary to descend, willingly or otherwise, into the 'muddy' waters of politics. It may be reasonable to insist that the power vested in a few (albeit accredited) representatives of the people (the legislature) to undo the act of the generality who freely elected the chief executive in an election could not be left unfettered without some measure of control. However, while the contemporary idea of checks and balances may so permit, such judicial intervention has brought to the fore the issue of whether (and if yes, the extent to which) the judiciary could dabble in such political matters without serious consequences for the courts in particular and the political system in general.

The dilemma associated with the involvement of the judiciary in the exercise of the legislature's power of impeachment is illustrated by the attitudes of the judiciary and the political class to the exercise of this power within the limited period of constitutional democracy witnessed in Nigeria. Although the presidential constitutions recognise the political nature of impeachment exercise, each of them contains some provisions intended to prevent abuse in the use of that power by the legislature. The goal, perhaps, is to strike a balance between the politics of impeachment and the imperatives of a constitutional order. In this paper, the authors examined the politics of impeachment under the constitutional regimes of the Second (1979-83) and Fourth Republics (since 1999) of Nigeria, highlighting the constitutional imperatives that guided the exercise of the power and the judicial attitudes to the interpretation of the constitutional provisions. They found that while the framers of the Nigerian constitutions had intended to uphold the political nature of the exercise of the impeachment power of the legislature, opportunities for judicial intervention are permitted as a way of preventing arbitrariness in the exercise of the

power. The extent to which the judiciary is able to maintain the delicate balance without an affront to the doctrine of separation of powers enshrined in the constitution is the major thrust of the paper.

The paper is arranged in five sections. The next section provides the theoretical background for the paper, attempting to situate the concept of impeachment within the context of the twin doctrines of separation of powers and checks and balances (judicial control). The succeeding section gives a brief account of the development, nature and patterns of the impeachment process, highlighting the political character of the exercise across political systems. The core of the paper, dealing with the judicial attitudes towards the exercise of the power in Nigeria, examines in detail the key decisions of the Court of Appeal and the Supreme Court. Subsequently, we try to explain the changing attitudes of the apex courts in terms of political expediency rather than changes in the texts of law. The concluding section appreciates the current position of the courts while at the same time maintaining that impeachment is a political exercise for which judicial intervention, *albeit* cautious, needs be sustained as Nigeria seeks a consolidation of its nascent democracy under the rule of law.

Political Power Regulated by Law

Jurisprudential issues that come into play whenever the subject-matter of impeachment is discussed generally may be viewed in the light of two distinct but interrelated themes. The first relates to the nature of the relationship that exists or ought to exist between the judiciary on the one hand and the other arms of government, notably the legislature, on the other hand. Under this theme, the idea of separation of powers, in theory and practice, has been of immense analytical utility in discussing judiciary-legislature and judiciary-executive relations. The core of the argument here is that as co-equal organs of government, each arm should be separate, distinct and supreme within its own sphere of competence and that no one arm should act in sabotage of the other (Gerangelos, 2009:320; Alabi, 2010:98). While the practicability of the 'pure' separation thesis is doubted, the logic of power separation itself has an inherent logic that necessarily forced some measure of intercourse and interrelationships among the arms. In this sense, each arm could serve as a veritable check on the tendency towards excessive use (and hence corruption) of absolute power, the declared goal of advocating power separation in the first instance. To this extent, judicial intervention in the exercise of legislative and executive powers has found some justification as the cornerstone of limited government, a key liberal democratic tradition that dominates contemporary discourses on governance issues, at least at the threshold of the Twenty-First century.

While the notion of judicial review seems to enjoy a near-universal acclaim, however, a related theoretical theme has developed around the question of the extent to which judicial intervention in the spheres of other branches could be permitted, particularly when the issues at stake are patently political (Entin, 1990:175-7). While thinkers and scholars are *ad idem* that the interpretative powers granted the courts

necessarily constrained them to so intervene, discordant tunes remain as to what the permissible limits of such intervention are. This raises the issue of whether the judge should be a detached literal interpreter of the law (*jus decere*) or an active participant in the policy process (*jus dare*) who seeks to explore the mind of the law giver or use interpretation to achieve a desired end result (Edlin, 2008:68). Whichever way the role of the judge is perceived, a wide gulf of difference also exists among analysts and jurists as to the proper limits of the province of judicial intervention in issues that have high political contents, such as the impeachment process. This is because judges, whether of the Anglo-Saxon or Continental (Europe) or oriental traditions, have prided themselves as impartial arbiters who ought to be detached from the vagaries of day-to-day politics. The issue of whether and to what extent judicial intervention is permitted in the realm of politics has, no doubt, been a leading issue of contemporary jurisprudential dialogue.

Nature and Dimensions

Although the word 'impeachment' as the term has come to be understood in political discourses in Nigeria is a derivative of its usage in the United States, the traditions that guide the process derive from at least three sources. Generally, impeachment as a constitutional tool for sanctioning high state officials who are not subject to civil/criminal proceedings in the ordinary courts has its origin in Great Britain (Melton, 1998:5-6). It was used from the 14th Century to punish royal ministers accused of misconduct (Romney, 2002:16). The American colonies inherited this tradition and wrote it into the Constitution of the United States, but with necessary modifications to guide against its abuse (Gerhardt, 2000). The judiciary is not involved in the process, although the senatorial power of impeachment has been used to remove judges (Smelcer, 2010). The tradition of involving the judiciary in the process belongs to the Germans (Basic Law, Art 61). Impeachments proceedings in other parts of the world have followed either of these models with appropriate adjustments to reflect the specific conditions and historical experiences of the different countries (Baumgartner and Naoko Kada, 2003). As would be shown shortly, these varying traditions are also reflected one way or the other in the impeachment process enshrined in the presidential constitutions of Nigeria.

Although the Nigerian version of impeachment proceedings is a product of the adoption of a presidential system patterned after the US model, the provisions of the Nigerian Constitutions are unique in more than one respect. In the first instance, the word "removal" and not "impeachment" is used in the Nigerian Constitution, and some jurists have paid attention to that particular difference (*Inakoju v Adeleke* at 74). Although "impeachment" is used in Sections 146(3)(a) and 191(3)(a) of the 1999 Constitution in a manner suggesting it is different from "removal in accordance with section 188 or 189", that appears to be a product of poor draftsmanship as there are no other provisions on "impeachment" in the Constitution. More importantly, the procedural details contained in the Nigerian Constitution are absent in the US Constitution. Also, both houses of the bicameral legislature have equal and

coordinate powers in the impeachment process, unlike in the US where the Senate has the final say. Moreover, unlike in Nigeria, the Chief Justice presides over impeachment proceedings in the US and Senators are placed under oath when sitting for that purpose. Finally, a two-thirds majority vote of the Senators *present* could secure a conviction in the US whereas the Nigerian Constitution prescribes two-thirds of *all* the members of each house of the bicameral legislature is required for removal (1999 Constitution, S. 143). At inception under the 1979 Constitution, impeachment was wholly the legislature's affairs, including provisions that ousted the jurisdiction of the courts and permitted the legislature a wide latitude in defining what constituted 'gross misconduct' for the purpose of impeachment. While successive Constitutions have retained these provisions, the judiciary is now more involved in the process. This is because the head of the judiciary (and not the presiding officer of the legislature) now constitutes the investigative panel that could, at least theoretically, terminate the impeachment process without recourse to the legislature. Like elsewhere, the impeachment 'sword of Damocles' has been infrequently used, even though several threats of its use have often overheated the polity.

Impeachment is essentially a political process for checkmating executive recklessness and excesses, and is useful as an instrument for instilling the principle of accountability in governance. The justification for its use is anchored on the need to prevent those who are found guilty of gross misconduct from remaining in public office. It is also useful as a democratic means of ensuring observance of the rule of law, respect for rights of citizens, due process, accountability and control. The grounds for impeachment are stated in national constitutions in specific terms as "treason, bribery or high crimes and misdemeanours" (US Constitution, Art II S 4), "culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust" (Philippines, 1987), or in broad terms as "gross misconduct" (Nigeria, 1999). In whatever terms the grounds are couched, impeachment remains a political weapon for removing government officials from office through the legislative process when they have been formally accused of high crimes or misconduct (Lipset, 1995). This means that the power is not intended for use as a means of redressing just any manner of crime or official inadequacy, for political vendetta, or any frivolous allegations. In Nigeria, any accusations that will warrant impeachment must be onerous or gross, that is, "glaringly noticeable, because of obvious inexcusable badness, or objectionableness or a conduct in breach of the Constitution" (*Inakoju v Adeleke* at 183). While the range of misbehaviour that may justify the use of the power is not susceptible to definitive itemisation, Niki Tobi has enumerated some acts which the Nigerian courts would regard as constituting grave violation of the provisions of the Constitution. These include such "extreme negative conduct" as;

> interference with the constitutional functions of the Legislature and the judiciary by an exhibition of overt unconstitutional executive power; abuse of the fiscal provisions of the Constitution; abuse of Code of Conduct for Public Officers; disregard and breach of

> Chapter IV of the Constitution on fundamental rights; interfering with Local Government funds and stealing from the funds or pilfering of the funds including monthly subventions for personal gains or for the comfort and advantage of State Government; and any subversive conduct which is directly or indirectly inimical to the implementation of some other major sectors of the Constitution (*Inakoju v Adeleke* at 64-65).

The list, not exhaustive though, was extended by the learned Justice to include refusal to perform constitutional functions, corruption, abuse of office/power, sexual harassment (by male or female), certified forgery or racketeering, drunkenness, using or diverting public funds for electioneering campaigns or for personal use, and a host of other violations.

Although the process of impeachment is mainly political, it is *sui generis* and cannot be classified with such other patently political means of changing public office holders as election, recall or suspension. It has a special procedural requirement of its own. It is political to the extent that the power is vested in the accredited representative of the people, requiring a majority support of legislators, and therefore characterised by political possibilities rather than the clearly measured principles and remedies of the law. Nonetheless, the uniquely procedural details involved in the proceedings invariably taint its supposed political character. Thus, the political nature of impeachment proceedings has not precluded judicial intervention. While the scope of the power is not yet judicially determined in the US (Tribe, 2009:215), as the courts detach themselves from political settlements, there is nothing to suggest they cannot intervene in appropriate cases if review is sought (Tushnet, 2002:1213-5). It is also doubtful if the British notion of parliamentary supremacy would preclude judicial intervention where the issue touches the rights of a citizen to seek redress for perceived wrongs (Kirby, 2010:30-33). The uniqueness of the Nigerian courts lies in their ability to draw extensively on both the British and the American traditions.

Judicial Control of Impeachment Power in Nigeria

The politics surrounding the removal of heads of the executive government by the legislature predates the adoption of the presidential system of government in Nigeria. However, the removal procedure under the independence Constitution of 1960 left no doubt that it was purely a political matter. In the only incident that occurred then, an intra-party dispute in the Western Region caused a major constitutional crisis at the time. The prospect of a judicial resolution was overtaken by events with the attendant consequences (Dudley, 1973), thereby effectively removing the whole process from the realm of legality to that of practical politics. This development confirmed the general perception of removal proceedings as being more political than legal, and characterised by occasional roughness and at times lawlessness, which are visible manifestations of the personalised nature of Nigerian politics generally. Such measure of legislative "arrogance" was demonstrated in the

political developments that culminated in the removal of Governor Balarabe Musa of Kaduna State during the Second Republic. In that instance, an opposition political party used its overwhelming majority in a State House of Assembly to thwart all efforts by the Governor to comply with the provisions of the Constitution (Nwabueze, 1985) and used the same as grounds of impeachment on a Notice of Allegations served on the Governor. The House also spurned all interlocutory orders (for stay of proceedings) by courts of law, and went ahead to find the Governor guilty as charged and removed him. In the ensuing litigation, ***Balarabe Musa v Auta Hamza and others***, the Federal Court of Appeal declined jurisdiction and did not make any pronouncement over allegations of violations of constitutional provisions by the House on the basis that "the moment the legislature commenced removal proceedings under Section 170(2), the jurisdiction of the court was ousted by section 170(10)".

The decision of the Court in ***Musa v Hamza*** further reinforced the wide perception of impeachment as a political process and hence outside the province of cognisable powers of the courts of law. This further emboldened the legislature although the abrupt termination of the Second Republic by a military coup d'état prevented any further re-occurrence of the impeachment saga. Nonetheless, the decision generated intense discussions in political and legal circles for considerable time thereafter (Akinsanya, 2002:15). The Federal Court of Appeal was particularly criticised for failing to look into the complaints of violation of constitutional provisions. Describing the judicial position as "an abdication of role", Alabi (2002: 269) insists that the court should have exercised its supervisory jurisdiction "to determine *prima facie* the truth or falsity of the alleged irregularities". More categorically, Nwabueze (1985: 339) states that:

> The staggering import of this decision is that a governor (President) removed on an impeachment is without a remedy in the courts of the land where, for example, the notice of allegations of gross misconduct is signed by less than the prescribed one third of the members of the House of Assembly; or where the allegations are not served on him and no opportunity is given to him to appear before the investigation committee to defend himself against the charges, or where the resolution that the allegations should be investigated is passed by less than the prescribed two-third majority, or where a sole individual instead of the committee of seven is appointed to conduct the investigation or where the committee is made up of seven members of the Assembly who signed the notice of allegations, or where the final resolution to remove the Governor is passed by less than the prescribed two-third majority or is passed notwithstanding a finding by the investigating committee that the allegations have not been proved, or where the act or omission charged does not amount to misconduct in law.

Notwithstanding these and several other criticisms of the decision, which did not go on appeal to the Supreme Court, the Court of Appeal re-affirmed its position some 20 years later in the case of ***Chief Enyi Abaribe v The Speaker, Abia State House of Assembly and another*** (2002). In this case in which the complaint was that the Deputy Governor was not afforded his fundamental rights of fair hearing since the impeachment process against him was voted upon by the House "three days before the expiration of time allowed the appellant to submit his reaction", the Court felt uncomfortable with "the awesome and unregulated powers" conferred on the legislature but nevertheless affirmed the decision of the trial Judge declining jurisdiction in the case.

The decision in ***Abaribe v Speaker Abia*** opened a floodgate of impeachment threats that tended to heighten the festering legislative-executive discord at the federal and various states and local government areas across the country. The gale of impeachment threats and attempts tended to undermine the democratic process, threatened the rule of law, and stressed the peace of the society (Sagay, 2007:44-5). They were particularly worrisome and frightening, especially when done with impunity and without regard for the due process of law inherent in the constitutional provisions on the impeachment process. It is within this context that one can understand the intervention of the judiciary in a process that is essentially political. As Dahiru Musdapher, JSC observed in the case of ***Hon. Muyiwa Inakoju, Ibadan South East & 17 others v Hon. Abraham Adeolu Adeleke(Speaker) & 3 others*** (2007) which set the new judicial attitudes:

> Whenever politicians begin to engage in self destruction, bastardizing the rule of law and the flagrant abuse and disregard of the constitutional provisions, the courts have the duty as the guardians of the Constitution to intervene and appropriately pronounce on the legality of the legislative function be it impeachment or otherwise.

The justification for judicial intervention in the political process of impeachment is better appreciated when viewed from the perspective of what Omololu Fagbadebo calls "absurdities and flagrant breaches of the Constitution" (Fagbadebo, 2010:18) in the impeachment of Governors Ladoja (Oyo State), Obi (Anambra State) and Dariye (Plateau State). The legislators in each of these instances were so emboldened by the initial timidity of the Court that they disregarded the clear and express wordings of the Constitution in the process of removing the Governors. In the case of Ladoja, the Supreme Court catalogued such infractions to include: Holding of the proceedings in a hotel instead of the premises of the House of Assembly; absence of a notice of allegation and non-service of same on the Governor; non-involvement of the Speaker in the proceedings as required; failure to obtain the constitutionally required two-thirds majority of all members of the House of Assembly for the removal of the Governor; unconstitutional procedure adopted in the suspension of the Standing Order of the House of Assembly, among others. In these circumstances, the Court voted 6 to 1 to nullify the impeachment proceedings.

More brazen affronts on the constitutional provisions were identified in the removal proceedings that led to the case of ***Michael Dapialong & 5 others v. Chief (Dr.) Chibi Joshua Dariye & another*** (2007). In a "theatrical rehearsal"(Ologbenla, 2007:86) that took place outside the legislative chamber and the State (*The Guardian*, Oct 9, 2006), 10 of the 24 members of a State House of Assembly declared the seats of the remaining members who decamped to a new political party vacant. They subsequently removed the Speaker and Deputy Speaker, elected a *Speaker Protempore* among themselves, and went ahead to conduct impeachment proceedings against the Governor in clear defiance of the procedural rules contained in Section 188 of the Constitution. The Court of Appeal and the Supreme Court voided all the steps taken towards the removal of the Governor – unconstitutional removal of the Speaker and Deputy Speaker, signing of the notice of allegations by the *Speaker Protempore*, actions of the Acting Chief Judge of the State, removal of the Governor by less than 16 members of the House, among others. In another case, ***Obi v Independent National Electoral Commission (INEC)*** (2007) the majority group in a divided (15-13) State House of Assembly met in a hotel outside the state, issued by paid advertisement in some newspapers a notice of allegations to commence impeachment proceedings against the Governor, and directed the Chief Judge to set up a panel of investigation. All attempts to halt the process through court orders were ignored, and the "House" sat at about 5am in secret proceedings within the premises of the house and voted to remove the Governor. The removal was challenged on the grounds of non-compliance with the provisions of the Constitution – meeting outside the Assembly premises, lack of quorum, sitting in un-parliamentary hours, non-service of notice of allegations, etc. The judgment was sought to be arrested when the Chief Judge of the State attempted to transfer the case to another court on the eve of the judgment day. The Court of Appeal later voided the removal proceedings and ordered re-instatement of the Governor.

Such were the manner of abuses and wanton disregard for the due process that provided the needed justification for judicial intervention in the political process of impeachment. The courts come to this conclusion on the logic that subsections (1) – (9) of sections 143 and 188 are conditions precedent for invoking the ouster clause in subsection (10). This is the import of the dictum of Onnoghen JSC, in ***Dapianlong v Dariye*** that:

> It is true that section 188 (10) of the 1999 Constitution oust the jurisdiction of the courts in respect of the impeachment of a Governor or Deputy Governor but that must be subject to the rule that the legislature or the House of Assembly complied with all the constitutional requirements in section 188 needed for the impeachment as the court have jurisdiction to determine whether the said constitutional requirements have been strictly complied with or not.

It appears then that where a court forms the opinion that the impeachment power of the legislature is exercised in substantial compliance with the stipulated

procedures and the proceedings are conducted in accordance with the Constitution, notwithstanding any political colouration, the constitutional ouster clause will take effect.

Law, Politics and Judicial Attitudes

It is clear from the analysis in this paper that the Nigerian courts have sought to respect the thin line between the realms of politics and law in their interpretation of the constitutional provisions on impeachment. The judicial attitudes are reflective of the constitutional policy in this regard. Like elsewhere, successive Nigerian constitutions have sought to maintain a balance between ensuring that the impeachment process maintains its political character while at the same time preventing abuse inherent in any exercise of (legislative) power unrestrained by law. The recognition, perhaps, underscored the provisions of the first presidential constitution (1979) on the subject-matter. The entire process – from the initial ordinary resolution, through the investigation process to the actual special resolution to impeach – was designed to be conducted by and on the direction of the legislative house concerned. Even the power of appointing a 7-man committee to investigate the allegation levied against the chief executive was vested in the Senate President/Speaker with the approval of the Senate/House of Assembly as the case may be. To complement the power of the House, the Constitution gives it a wide power to determine what constituted "gross misconduct". The Constitution also ousts the jurisdiction of the courts of law from "anything done or purported to be done" by the House or the Investigating Committee in the course of the impeachment proceedings. The only practical limitation on the power of the house in this regard is if the investigative committee returns a verdict of "not proved"; even then, nothing precludes the legislature from commencing a fresh proceeding. It is, perhaps, these provisions that informed the statement of Karibi-Whyte, JCA in ***Balarabe Musa v Auta Hamza*** that "the moment the legislature commenced removal proceedings ... the jurisdiction of the court was ousted". Whether this is intended to be so in view of the constitutional powers of the courts to serve as arbiter in disputes among the organs of the Nigerian government remains an issue of continuing scholarly discussions (Ikhariale, 1990).

The 1999 Constitution maintains the political character of impeachment proceedings by retaining the provisions of the 1979 Constitution except in some important respects. Notable in this regard is the substitution of an investigating "Committee" appointed by the Senate President/Speaker for a "Panel" appointed by the Chief Justice of Nigeria/Chief Judge of the State. The involvement of the head of the judiciary clearly robs the legislature of its perceived exclusive competence on impeachment matter. As suggested in ***Inakoju v Adeleke***, the Chief Judge (in the case of a Governor) or the Chief Justice of Nigeria (in the case of the President) may refuse to set up a panel where there is failure to comply with the constitutional provisions by the legislature. The court may even request a certificate signed by the Senate President/Speaker that all the conditions precedent to the setting up of the

Committee/Panel had been met. What is not clear is whether the use of the word "panel" as opposed to "committee" is intended to emphasise the quasi-judicial nature of the work of the investigating body. Like before, the investigating panel may determine the impeachment process by a verdict that the allegations contained in the Notice of Impeachment are not proved. Notwithstanding these differences, however, the 1999 Constitution, like its predecessors, continues to underscore the political nature of the impeachment process by giving the legislature some freedom in determining the grounds of impeachment and by ousting the jurisdiction of the courts in impeachment matters.

The above shows that there are no such material differences in the provisions of the second and the fourth republican constitutions that could explain the wide gulf between the attitudes of the courts in construing the provisions of the two documents. While the involvement of the head of the judiciary in composition of the panel may signpost an intention to make the exercise cognisable by the court, such a position is not canvassed before the Supreme Court, neither was the decision in ***Inakoju v Adeleke*** rationalised on this basis. This is particularly so since, notwithstanding the differences the Court of Appeal still went ahead in Year 2000 ***Abaribe v Speaker, Abia*** to affirm its 1982 position convincingly stated in ***Musa v Hamza***. The change in judicial attitudes from 2007 can therefore be appreciated only in terms of the determined position of the courts, particularly the Court of Appeal and the Supreme Court, to arrest the tendency towards "the excesses of the Executive and overbearing and abrasive tendencies of the Legislature" (*Abaribe v Speaker Abia* at 1571), which pose frightening threats to Nigeria's nascent democracy. Unfortunately, the courts have, through their previous pronouncements, wittingly or unwittingly, contributed to the perceived legislative absolutism on impeachment matters. However, the courts could not have permitted such legislative rascality to continue without seriously compromising their role as the guardians of the Constitution.

It is therefore the position of this paper that the attitudinal change was definitely not borne out of any material change in the legal texts of the *grundnorm*. It was, rather a policy somersault by a judiciary that risked "organised disenchantment with the judicial process" were it to continue to defer to its hitherto apolitical tradition of complete detachment from the policy process in the face of obvious and deliberate infractions on clear provisions of the constitution by functionaries of government. The change of attitudes was, indeed, more of political expediency than a commitment to legalism.

Conclusion

Judicial control of the legislature's exercise of the power is as necessary an evil as the legislature's oversight of the exercise of executive powers. These checks and balances are necessarily part and parcel of the separation of powers doctrine inherent in the presidential constitutions. Such intervention, when necessary and justifiable, enhances the status of constitutional instruments as the *fons et origo* of democratic tenets and practices. However, the logic of separation of powers also

requires that each organ of government be permitted to operate within the province of its constitutional powers without undue interference by the other arms.

The provisions of the Nigerian Constitutions, particularly those of 1979 and 1999, on the exercise of the power of impeachment are, perhaps, designed to maintain a balance between these seemingly contradictory ends (mutually reinforcing goals). Sustaining the political character of the impeachment process necessarily reinforces the democratic essence of a system of government anchored on the will of the people through majority rule. Sustainable democracy, however, also incorporates an abiding regard for the due process and the rule of law. This is why the exercise of the legislative (and executive) powers is subsumed under the interpretative powers of the courts of law. Ironically, the courts, to quote Felix Frankfurter of the US Supreme Court in ***US v Butler*** (1936) "are not the only agency of government that must be presumed to have the capacity to govern". They must therefore be cautious in brazenly entering into the "miasma of the political cauldron", particularly on matters for which it is least suited to take legitimate decisions without having its garment of impartiality seriously bloodied.

Judicial intervention in the political process of impeachment will be legitimate where it is exercised to ensure compliance with the rule of law and protect the citizens against naked and arbitrary exercise of political power. For the judiciary, timidity could be as dangerous as indiscretion. *Ipso facto*, complete detachment could be as dangerous as emersion in the murky water of politics. The practice of democracy and good governance demands that the judiciary recognises when to intervene and when not to intervene. For all intents and purposes, any dynamic and measured incursion of the judiciary should be properly anticipated and justified, as a potential conflict detonator, in the interest of democracy and the rule of law.

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