

Search the web



British Journal of Humanities and Social Sciences

ISSN 2048-1268



About the Journal

Editorial Board

Submission

Manuscript Preparation

Articles

Editors

Editor-in-Chief

Nick James, University of Oxford

Editorial Advisory Board

Gwendolyn V. King, Alabama State University

Gwynn Davis, University of Bristol

Ibrahim Al-Kaabi, University of Qatar

William Brown, Texas A&M University

J. Peter Pham, James Madison University

Linda Botterill, University of Canberra

Robert Ashcraft, Arizona State University

Elizabeth Mcness, Bristol University

CBobbi Bjornholt, Royal Roads University

M.A. Omolewa, University of Ibadan

Bill Bray, University of Hong Kong

Razvi Abdali, University of Cambridge

Wei Chong Lee, University of Shanghai

Abiri Leey, University of Ilorin

Brown Hopkin, Texas A&M University

A. Abdullahi, Federal College of Education, Okene

J.A. Alaya, University of Ibadan

J.B. Ipaye, University of Ilorin

Masrop Benth, Kolej Universiti Islam Selangor

Adderley, Claflin University

Kathy Agard, Grand Valley State University

William Brown, Texas A&M University

Mark Thissen, University of North Carolina

Norman Maris, University of Amsterdam

Kathy Agard, Grand Valley State University

Arzu SENER, Hacettepe University

Alexandros Reev, University of Sheffield

Managing Editor

Rachel Filp, PhD

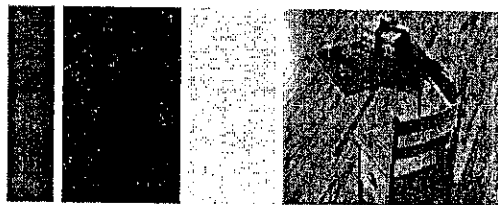
All rights reserved

Search the web



British Journal of Humanities and Social Sciences

ISSN 2048-1268



About the Journal

Editorial Board

Submission

Manuscript Preparation

Articles

Articles: Vol. 1(1)

Articles: Vol. 1(2)

Articles: Vol. 2(1)

Articles: Vol. 2(2)

Articles: Vol. 3(1)

Articles: Vol. 3(2)

Articles: Vol. 4(1)

Articles: Vol. 4(2)

Articles: Vol. 5(1)

Articles: Vol. 5(2)

Articles: Vol. 6(1)

Articles: Vol. 6(2)

Volume 6 (2), August 2012

Click on the titles to view the article.

A Contemporary Matter on Art: Modernism

Murat Bayazit, Sedat Cereci(pp. 1-9)

Behaviour of Islam with the followers of other religions

Salahuddin Mohd. Shamsuddin,Zuraidah Mohd Don (pp. 10-21)

Combating Election Malpractices and Promoting Democratization in Nigeria: The Role of the Police

Olugbenga Akingbehin (pp. 22-34)

All rights reserved

Combating Election Malpractices and Promoting Democratization in Nigeria: The Role of the Police

Olugbenga Akingbehin 

ABSTRACT

Electoral process plays a significant role in the political life of citizens in any traditional or modernizing political system. It is the mechanism for making a political choice and a requirement of legitimacy of government in international law. Unfortunately, elections in Nigeria are usually fraught with avalanche of malpractices which usually result in anarchy, instability and general state of anomie. Yet, it is crystal clear that effective law enforcement mechanism and adequate policing cannot be under-estimated in any electoral and democratizing process. However, a perturbing development today is that the police performance in relation to electoral process and promotion of democratization in Nigeria has been far below expectation. It is observed that the police constituted themselves to veritable tools in the hands of influential power seekers and desperate politicians to manipulate political process. Against the backdrop of the foregoing, this paper therefore analyzes the typology of electoral malpractices in Nigeria. The writer also critically appraises the role of the police in combating electoral malpractices. The paper exposes the instances of police condemnable attitudes, through a line of decided cases, towards thwarting democratizing process, especially, with the selective enforcement of the provisions of the moribund and oppressive Public Order Act. The writer concludes and proffers appropriate recommendations towards attaining the promotion of democratization and conduct of credible elections in Nigeria.

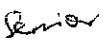
Keywords: Democratization, Election, Police, Malpractices, Governance, Constitution.

INTRODUCTION

In any political system, traditional or modernizing, electoral process plays a significant role in the political life of citizens. It is an instrumental factor in the determination of variations or changes in leadership positions at all levels of political authority in a political system, especially, in a democratic political system. Precisely, it is the mechanism for making political choice in a political system.

Election and political choice give meaning to the right to government by consent, a requirement of legitimacy of government or state in international law¹. Hence, the sovereignty of any state without a transparent electoral process is indeed in dire strait. Electoral process also involves such variables as structures, which in this context refer to the constitution, political parties, institutions or organs². Other variables include the electorates, political actors, voting behaviours, political culture, political leadership and so on.

However, the effectiveness of these structures and institutions depend largely on the extent to which they are congruent with the operative culture within the environment in which the variables subsist. Unlike autocratic, aristocratic or oligarchic forms of government, democracy prides itself as a law-based government under which all organs of the state operate in accordance with their competence as defined by


* E. O Akingbehin., LLB (Hons), BL, LLM., Ph.D., Lecturer, Department of Public Law, University of Lagos, Nigeria.

¹ See D. Nwatu, "Electoral Process and Democracy in Nigeria: A Behavioural Perspective" in *Constitutional Essays in Honour of Bola Ige* (2004) Chenglo Publishers, p. 135.

² These include Electoral Commissions, Tribunals, etc.

the constitution or some other law, and the constitution as the fundamental or highest law in the land is binding on all.³

Unlike the 1999 elections, which were conducted in vacuo and in the absence of an operative constitution, the 2003 elections were conducted within the framework of the 1999 Constitution⁴ and the same situation was applicable to the 2007 and the recently conducted 2011 elections. The 1999 constitution compelled the Independent National Electoral Commission⁵ to issue elaborate guidelines and a schedule which should be in conformity with the requirements of the Constitution⁶.

The recently Amended Electoral Act, 2011 is the extant law on the conduct of elections in the country. It embodies copious provisions inter alia designed to forestall malpractices and misconduct by various actors with the attendant stringent sanctions to be imposed on the contraveners.

However, the universal truth today is that elections are usually fraught with an avalanche of malpractices ranging from rigging, result falsification, occasioning the disappearance of ballot boxes, etc. The end results of these myriad of malpractices are anarchy, instability and general state of anomie, which are antithetical to democratic tenets.

The 2007 general elections have been reported to be the most contentious and irregular in the annals of political history of Nigeria. The election was berated both locally and internationally, as not meeting the basic standard of participatory democracy. Sequel to this development, several political victories declared by the Independent National Electoral Commission (INEC) had been nullified in months after the April General Elections, due to one malpractice or the other.

The first casualty of the judicial activism that followed upon the flawed election was Andy Uba of Anambra State, whose election was nullified on the ground that there was no vacancy as at the time INEC conducted election into the Anambra State Governor's Office. Hence Governor Peter Obi, who took three years to retrieve his mandate stolen in 2003 election was promptly returned to office. Other elections that were nullified subsequently included those of Governor Ibrahim Idris of Kogi State, Governor Celestine Omehia of Rivers State, Governor Sullivan Chime of Enugu State, Governor Murtala Nyako of Adamawa State and Saidu Usman Dankingari of Kebbi State. It is also worrisome that the election of the Senate President David Mark was nullified⁷.

An enigmatic problem of democratization within the past two decades is how to conduct free and fair elections for a smooth political transition from one regime to another. The problem is more endemic when it comes to electoral process from one civilian transition to another. Hence, in the light of the existing literature and political experiments in various nations, effective law – enforcement agents and adequate policing cannot be under estimated in the electoral and democratizing process⁸.

³ A. Oyeboade, "The Judiciary and Constitutionalism in a Democratic Society", in *Law and Nation Building in Nigeria* (2005) Published by Centre for Political and Administration Research (CEPAR) Lagos, p.118.

⁴ See *Constitution of the Federal Republic of Nigeria*, Promulgation Act, Cap. C.23 Laws of Federation of Nigeria 2004 (hereinafter referred to as CFRN 1999).

⁵ Hereinafter referred to as (INEC).

⁶ See sections 71 – 73, 76, 114, 118, 222, 225, and 226 of the CFRN 1999 (Ibid).

⁷ These elections were nullified based on various electoral malpractices and irregularities, usually aided or facilitated by the police. David Mark won a re-run election to retain his seat as the Senate President.

⁸ A. A. Idowu., "The Role of the Police in Elections: The Nigerian Situation" in *University of Ado-Ekiti Law Journal* (2003) 2 UNAD, L. J. p.91

The Nigeria Police Force is charged with the responsibility of maintaining public safety and public order. The Constitution⁹ further stipulates that the Police shall have such powers and duties as may be conferred upon them by the law¹⁰ and by virtue of the Police Act,¹¹ the Police are employed for the preservation of law and order, inter alia.

A perturbing development today however, is the fact that the Police performance in relation to electoral process and promotion of democratization has been far below expectation. Our Police have constituted themselves as easy tools in the hands of influential desperate power seekers and incumbent politicians, to manipulate the Nigeria's political process and they have also resorted to aiding and abetting electoral malpractices.

Apart from the deficient attitudes of Nigerians to law and order, one other serious problem which confronted the police during the elections was lack of official vehicles to accompany electoral officers to polling centres and other designated places. While commending the Independent National Electoral Commission (INEC), the editor of Saturday Punch once recommended that INEC should address the problems of security and transportation. He noted among other things as follows:

a situation in which electoral officers unaccompanied by policemen wait endlessly at bus stop for public transport is unsavoury. Such a lapse could provide trouble makers the chance to snatch ballot boxes from electoral officers and cause confusion¹².

The thrust of this paper shall therefore be to critically analyze the role of the Police in the electoral process and the promotion of democratization in Nigeria. The expected role of the Police in enhancing good governance and democratization shall also be evaluated against the backdrop of few recently decided electoral cases. In concluding, we shall explore the feasibility of an independent Police that is free from factional politics and the prospect of the on-going call for community policing in combating electoral malpractices.

2. Typology of Electoral Malpractices:

'Malpractice' has been defined as a professional misconduct or unreasonable lack of skill¹³. It has also been defined as the improper treatment of a patient by a doctor or illegal action taken in one's own interest by a person in a position of trust.¹⁴ The foregoing definitions are definitely not the intendment of this paper. Unfortunately, the term "malpractice" is not contained in the interpretation section of the Electoral Act.¹⁵ Sequel to the foregoing, it appears that the use of the word malpractice to denote illegal acts in electoral process is a misnomer. However, this anomaly seemed to have been remedied by the Act itself when it described such acts as offences.¹⁶ Hence electoral malpractices can simply be construed as such acts that are criminalized under the Electoral Act and described as electoral offences.

The Amended Electoral Act 2011 made provisions for stringent sanctions for despicable acts such as purchase of voters' card (or the voters themselves?), tampering with the ballot box, intimidation of voters,

⁹ Section 214 (2) CFRN 1999.

¹⁰ Which includes the Electoral Act.

¹¹ Section 4 of *Police Act*, Cap. P.19 Laws of Federation of Nigeria, 2004.

¹² *Saturday Punch*, Editors Column, Jan. 16, 1999.

¹³ H. C. Black, *Black's Law Dictionary* 6th ed. St. Paul Minn. West Publishing Co, 1990, p.959.

¹⁴ *The New Webster's Dictionary of the English Language*, (Lexicon Publications) New York (2000), p.604.

¹⁵ See Section 156, *Electoral Act* (Amended) 2011

¹⁶ See Sections 117 – 132 of the *Electoral Act* (Amended) 2011

abusive campaign songs, use of political thugs, and other acts.¹⁷ According to Oyeboade, these acts had soiled electioneering in the country in previous exercises¹⁸. For example, anyone who offers any inducement at a political campaign to potential voters with the aim of influencing them is now liable to a fine of ₦500,000.00 or imprisonment for 12 months or both.¹⁹

Other criminalized electoral acts under the Electoral Act are nomination offences,²⁰ improper use of voters' cards,²¹ impersonation,²² dereliction of duty by polling officers,²³ breach of requirement of secrecy at the polling station,²⁴ disorderly behaviour at political meetings,²⁵ and registration offences.²⁶ Another integral aspect of the sanctions contained in the Act relates to certain acts that are proscribed on the election day.²⁷ The Act proscribes doing certain acts or things within 300 metres radius of the polling station on the day of the election. These acts include canvassing for votes, persuading voters not to vote at the election or not to vote for a particular candidate, shouting slogans concerning the election, being in possession of any offensive weapon, wearing or displaying of any insignia of a particular party or candidate, loitering without lawful excuse after voting, snatching or destroying election materials or blaring of sirens.

It must be emphasized that the afore-proscribed acts are indeed unprecedented and are far-reaching measures aimed at sanitizing the electoral process once and for all, in order to give the current democratic experiment a chance to succeed. However, the barometer of measuring the success or failure thereof rests on the enforcement mechanism of the said law.

In line with the doctrine of separation of powers,²⁸ the legislative arm, having enacted the Constitution and the Electoral Act, has discharged its obligation under the joint enterprise. The responsibility of enforcing the law to make it effective is reposed in the executive arm vide the Police whilst, the judicial arm is saddled with the responsibility of interpreting the laws together with the punishment of the violators.

The poser at this juncture is, to what extent has the Police fared in discharging its obligations in the electoral process? The answer constitutes the gravamen of the next segment of this paper.

3. The Role of The Police In Combating Electoral Malpractices

The Police is the department of government that is responsible for the preservation of public safety and order, detection and prevention of crime and the enforcement of civil or public law.²⁹ Its principal function is to ensure the preservation of polity and its institutions and ensure the protection of lives and property of the citizens.³⁰

¹⁷ See Akin Oyeboade, "1983, 1993 and 2003: The Quest for a Difference" *Law and Nation-Building in Nigeria* (Op cit) p.105.

¹⁸ Ibid.

¹⁹ See Section 124 (b) & (4) of the Amended *Electoral Act* 2011.

²⁰ See S. 118 of the *Electoral Act*.

²¹ See S. 120, Ibid.

²² See S. 122, Ibid.

²³ See S. 123, Ibid.

²⁴ See S. 125, Ibid.

²⁵ See 119, Ibid.

²⁶ See 117, Ibid.

²⁷ See section 129, Ibid.

²⁸ B. D. Montesquieu, *L'esprit des Lois*. See also Hood Phillips, *Constitutional Law of Great Britain and Commonwealth* p.14. Also, see K. C. Wheare, *Modern Constitution* (2nd ed) pp. 24-29, 112 – 116.

²⁹ See *The New English Dictionary and Thesaurus*, Geddes & Grosset, 1994, p.458

³⁰ S. Nchi., *The Nigerian Law Dictionary*, (Zaria, Tamara Publishing), 1997 p. 12.

However, the Police with its control of violence, tries to enforce state power by the application of such violence, and from so doing, the Police may emerge as a threat to civil society and its values, especially, when it becomes a servant and an ally of a despotic state.³¹

The essence of civil as opposed to political society is not to supersede the State. Rather, it is to tame and curb the excesses of the State, which seek to take away the basic freedoms and autonomy of individuals and groups. The mission may be to seek a constructive engagement with the State and to challenge it to curb the excesses that seek to contract the social, political and cultural spaces necessary for the realization of the human person.³²

However, since the Police is an apparatus of state power, it may, in a sense, be opposed to civil society in a democratic system. Hence, in any confrontation with the state, the Police is apt to be on the side of the State and become an instrument of terror instead of one to protect civil values and ensure social cohesion³³.

A panoramic view of the role of police in various countries reveals that police officers are expected or bound to carry out their duties under some important international instruments. Articles 1, 2 and 3 of the United Nations Code of Conduct for Law Enforcement Officials and the Guidelines for the Effective Implementation of the Code of Conduct³⁴ provide that all law enforcement officials are to fulfill the duty imposed on them by law, respect and protect human dignity and use force only when strictly necessary³⁵.

Specifically, on the role of the police in elections, the basic elements of good and effective ^{policing} policy in a democracy must ensure that every eligible person is given the opportunity to take part in the government of his or her country and be allowed to exercise his civic duty, in free and fair elections which express the will of the people as the basis of the authority of government.

The 1999 Constitution of Nigeria establishes only one Police Force for the Nigerian federation and prohibits the establishment of any other Police for any part thereof. The Police is to be organized and administered in accordance with the provisions of an Act of the National Assembly.³⁶ Although the Amended Electoral Act 2011 did not expressly vest specific functions or roles in the Police, the role of the Police is derived from the general powers of the Police to prevent the commission of crime, protect and preserve lives, inter alia. The Police is also saddled with the responsibility of enforcing the provision of the Constitution and any other laws (which includes the Electoral Act).

It is also important to say that certain major functions of the Nigeria Police Force have been stated in various guidelines for elections, issued by the Federal Electoral Commission (FEDECO) 1979 – 1983 and the Independent National Electoral Commission (INEC) 1999 – 2003 and 2003 – 2007. These functions are:

³¹ See also, S. Nchi, "The Rule of Law and the State Legitimacy" (1990) Vol. 3 *UJLJL*.

³² A. Gana, *Civil Society, The Consolidation of Democracy in Nigeria*. (1999 NIALS).

³³ See Hay et al, *Adbion's Fatal Iree* (Garnibdworth: Penguin, 1997).

³⁴ Both adopted by Resolution 34/169 of the U. N. General Assembly on 17 December, 1979. See also the Council of Europe Declaration on the Police, adopted by Resolution 690 (1979) of the Parliamentary Assembly of the Council of Europe on 8 May, 1979

³⁵ See Ralph Crawshaw, *Police and Human Rights* (1999) Kluwer Law Publishers, The Hague, Netherlands, p.31.

³⁶ See the *Police Act*, (*Op cit*), n.11 ante.

- (i) Physical presence at every polling centre to maintain law and order. Such police officers are expected to be as civil as possible and not to coerce voters to vote or not to vote in favour of any candidate.
- (ii) Escorting electoral officers when transporting election materials from one place to another.
- (iii) Ensuring that voters are not intimidated by staying behind the last prospective voter on the queue
- (iv) Ensuring that election materials are not stolen, destroyed, or unlawfully tampered with by any individual.
- (v) Effecting the arrest of persons disturbing the peace at polling centres and other places in the country.
- (vi) Assisting electoral officers to make the electorate comport themselves within the electoral rules, regulations and procedures.
- (vii) Taking all other security measures to ensure that the elections are conducted in a peaceful and violent free atmosphere.³⁷

As earlier stated, the provisions of sections 117 to 132 of the Amended Electoral Act, 2011, proscribe certain acts with necessary sanctions. These acts include impersonation, tampering with ballot boxes and ballot papers, conducting oneself in a disorderly manner and so on. All these prohibited acts can only be prevented with the assistance of the Police in combating electoral malpractices. Each polling booth is to be manned by at least one Policeman who ensures the preservation and safety of the box and the ballot papers and that no rally, canvassing or soliciting for votes is allowed within 300 metres radius. The Police is also supposed to be present when votes are being counted and returns are being made.

Section 124 of the Constitution³⁸ provides the constitutional basis for the establishment of the Nigeria Police Force. The force is charged with the responsibility of maintaining public safety and public order. Section 214(2) of the same Constitution clearly stipulates that the Nigeria Police shall have such powers and duties as may be conferred upon it by the law,³⁹ and by virtue of Section 4 of the Police Act,⁴⁰ the Police are employed for the preservation and detection of crime, apprehension of offenders, preservation of law and order,⁴¹ protection of property and the enforcement of all laws and regulations with which they are directly charged.

It is however perturbing to realize that the history of the performance of Nigeria Police over the years, as it relates to electoral process and promotion of democratization has been far below expectation and such acts are replete with recriminations. Our Police have constituted themselves into ready tools in the hands of influential desperate power seekers and incumbent politicians to manipulate the Nigeria's political processes. Times without number, they have also been seen to have aided and abetted electoral malpractices.

In the celebrated case of **Mohammadu Buhari and Anor v. Olusegun Obasanjo and 264 Ors**,⁴² Pats Acholonu JSC (As he then was) while commenting on the dastardly acts of the police in the conduct of the 2003 presidential election, put it succinctly thus:

³⁷ See copies of the FEDECO Guidelines (1979) and INEC Guidelines (1999 – 2003, 2003 – 2007) for elections, Published by the Federal Ministry of Information, Abuja, Nigeria. See also *Constitutional Rights Journal* (Nigeria) Oct. – Dec. 1998, Vol. 8, No. 29 pp. 15 – 16.

³⁸ CFRN 1999 (*Op cit*), n.4 ante

³⁹ Including the Amended *Electoral Act* 2011.

⁴⁰ Cap. P19 Laws of the Federation of Nigeria 2004.

⁴¹ Including the Amended *Electoral Act* 2011.

⁴² (2005) 7 SC (Pt. 1). In that case, the appellant challenged the result of the 2003 Presidential Election where Chief Olusegun Obasanjo was declared the winner of the election. The Court of Appeal though declined to nullify the result, stated that the

...that in this day and age in the country that has been independent for 45 years, we can still witness horrendous acts by security officers who suddenly turned themselves into agents of destruction, and introduced mayhem to what ordinarily would have been a civilized way of exercising franchise by the people who are sovereign, is regrettable. I ascribe the nefarious activities of thugs and the few security officers and party men to lack of understanding of the dynamics of election processes. It is scary to send police men to election places when they have not been properly tutored that in the exercise of their duty to maintain law and order in election areas, their allegiance is to the constitution.....⁴³

Prior to the above decision, the Supreme Court had to adjudicate on another case where the nefarious acts of the Police were equally unjustly applauded under the guise of legal technicality.⁴⁴ It must be expressed with due respect to the Supreme Court that the attitude of the Police in accepting to remove a sitting Governor under the pretext of compliance with court order leaves much to be desired. A further discussion of this case shall constitute the thrust of the next segment of this paper inter alia.

4. Conspectus of the Role of the Police in Promoting or Thwarting Democratization in Nigeria
Democracy is the government of the people, by the people and for the people. It is a system of government that allows for freedom, liberty and rights. It also provides alternatives as well as platform for the actualization of democratic principles through the instrumentation of political parties. Thus, political parties are allowed to evolve and compete through election for the control of the apparatus of power periodically.⁴⁵

Democracy usually conjures in the popular consciousness images of public office seekers, political hustling, rallies and the razzmatazz of electioneering campaign, a fanciful, albeit incomplete scenario of popular sovereignty and the critical role of the ballot box in the scheme of things. Hence, the vibrancy of democracy lies in its appurtenances - tolerance of dissent, respect for human rights, especially, the right of association, peaceful assembly and freedom of speech, the secret ballot, readiness of contestants to accept defeat in a free and fair election, the right to have meaningful day in court, independence of judiciary, and so on, all of which can be conveniently subsumed under the fabric of rule of law. It is no exaggeration therefore, to posit that whenever and wherever the rule of law is in place, the viability of any democratic project is so much enhanced.⁴⁶

It is however saddening today to note that desperate men make desperate mistakes, especially, when operating within a situation of stymied political development and socio-economic atrophy. Nigeria has moved from Westminster to the White House and appears to be seeking its way to the Champs Elysees, with the majority of the people totally disenchanted, disoriented and disillusioned.

It is in the midst of this seemingly endless motion without movement that we received the clarion call to contemplate the life and times of liberal democracy in our unhappy republic by examining the place and function of the rule of law within the democratic process.

result in Ogun State was rigged. It is submitted that this dastardly act could not have been perpetrated successfully without the connivance of the Police.

⁴³ See also J. S. Asagh, "The Supreme Court and the Resolution of Election Petitions. Expediency as Factor" *The Uwais Court: The Supreme Court and the Challenge of Legal Development*, pp.152 – 153.

⁴⁴ See *A. G. Anambra State v. A. G. Federation & 35 Ors.* (2005) 7 MJSC. I.

⁴⁵ A. B. Sulu-Gambari, "The Role of Traditional Institutions in a Democratic System", in *Constitutional Essays in Honour of Bola Ige*, (2004), Chenglo Publishers, p.209.

⁴⁶ A. Oyebo, "Executive Lawlessness and the Submersions of Democracy and the Rule of Law", in *Law and Nation-Building in Nigeria*, (Op cit). p 86.

In a bid to conduct an intellectual excursion into the jurisprudential discourse of the characteristics of the rule of law in line with the role of the Police in promoting or thwarting democratization, one is inspired to suggest that the rule of law should imbibe propriety, morality or some such values as the basis or for its substance. It should not rest on positivism which is the view that the justification for law lies in its normativeness or effectiveness. In other words, the positivistic school contends that law is self-sufficient and that so long as it does not harbour any trait of invalidity, it requires obedience from all and sundry howsoever distasteful, draconian and unjust.

Accordingly, defenders of oppressive, self imposed, self-centred and self-perpetrating regimes have always leaned on positivism for support in their bid to justify the ends of "law and order." It is against this premise that one got shocked to the marrow on the decision of the Supreme Court in the case of *A. G. Anambra State v. A. G. Federation & 35 Ors.*⁴⁷ where a judge who patently lacked jurisdiction, sitting in Enugu State,⁴⁸ made a consequential order that the Inspector-General of Police should remove the then incumbent Governor of Anambra State, having earlier stated that he ceased being the Governor pursuant to a purported resignation letter signed and submitted by him.

The said judgement was to be executed by one Mr Raphael Ige (now late) an Assistant Inspector-General of Police having been delegated by the Inspector-General of Police to do so. Upon the inability of the said AIG to remove the said Governor from office, the Inspector-General of Police thereafter ordered the withdrawal of all the security aides and detail of the Governor.

Quite unfortunately, hiding under the cloak of technicality and positivism, Katsina-Alu JSC, delivering the lead judgement of the Supreme Court said,

...it is now settled law that the plain and unqualified obligation of every person against, or in respect of whom an order is made by a court of competent jurisdiction is to obey it unless and until that order is discharged. It is so even in cases where the person affected by the order believes it to be irregular or even void, so long as the order exists, it must be obeyed to the letter.⁴⁹

Hence, the position of the Supreme Court here seems to be that an order by a court, however, awkward or bizarre it may be, is presumed right and must be obeyed until such order is varied or set aside by an appropriate appellate court.

It is submitted with due respect that this interpretation by the highest court of the land in relation to the case at hand is highly unjust. A judgment by a court that patently lacks jurisdiction cannot be said to have emanated from a court of competent jurisdiction. A court of competent jurisdiction is a court that has jurisdiction to adjudicate over a matter. This case has exhibited the degree of how the Police have accepted to scuttle a democratic process with the connivance of a corrupt, unconscionable and intellectually inelegant judge.

Another specie of Police efforts in truncating the democratization process rather than promoting same can be gleaned from the phenomenon of the selective enforcement of the provisions of the Public Order Act⁵⁰

⁴⁷ (Supra) n. 44 *ante*.

⁴⁸ Hon. Francis Nnaji of Enugu High Court.

⁴⁹ Other cases cited by the Supreme Court in reaching this decision include *Mobil Oil (Nig.) Ltd. v. Assan* (1995) 8 NWLR (Pt. 42), 129, and *Military Governor of Lagos State v. Ojukwu and Anor.* (1986) 1 NSCC (Vol. 17) Pt. 1) 304.

⁵⁰ Cap. P42 Laws of Federation of Nigeria, 2004.

to deprive law abiding citizens the opportunity of enjoying their fundamentally guaranteed rights to peaceful assembly, association and freedom of speech and expression.⁵¹

Human beings, as political animals are bound to resent and exhibit dissenting reactions to any perceived inhuman and controversial policies by the government. Such reactions may take the form of criticisms, strikes, picketing, recourse to litigations, outright indifference or protest through public assemblies, meetings and processions.⁵²

The holding of mass rallies as expression of opposition to government policies has become a recurrent phenomenon in Nigeria. The Conference of Nigerian Political Parties (CNPP) and Citizens Forum led by Professor Wole Soyinka staged mass rallies on the 3rd and 15th May 2004 respectively in protest against an alleged anti people policy by the Obasanjo administration and the unacceptable level of security of life and property in the land, but the rallies were disrupted by the Police with tear gas and arrest of some of the participants⁵³ on the ground that the organizers were not given Police permit under the Police Order Act, to organize the rally.

Similar actions in the past by the Nigerian Labour Congress (NLC) to protest alleged government insensitivity to the plight of the workers and masses of Nigeria through incessant hike in prices of petroleum products have also attracted government's violent clampdown. Recently, the solemn procession convened in Lagos by a group of concerned mothers to mourn the tragic loss of over sixty students of the Jesuit College in air crash at Abuja, to draw attention to the deplorable state of aviation sector was violently disrupted by the Police. In the same vein, similar meetings of a number of political leaders who were opposed to the tenure elongation of administration scheduled to hold in Sheraton Hotel Abuja was forcefully dispersed by the Police and the State Security Service.⁵⁴ It is humbly submitted that the requirement of Police permit under the Police Order Act undermines the rights to freedom of expression and peaceful assembly embodied in the Constitution of Nigeria 1999.

It must be underscored at this juncture that the Public Order Act is a colonial heritage. Hence, under the Imperial British Regime, the Public Order Ordinance was imposed on Nigeria to stem the tide of protests against colonization. Thus, upon the attainment of independence by Nigeria in 1960, the indigenous ruling class that took over power from the British overlords transformed the Public Order Ordinance into various laws in their regions.⁵⁵ Prior to the Supreme Court's decision in *Attorney-General of Ogun State v. Attorney-General of the Federation & ors*,⁵⁶ there was a raging controversy as to whether the Governor of a State or the Commissioner of Police has the power to decide, approve and authorize whether a public assembly, meeting or procession should hold or not. The court held in the case that the Governor of a State does not have the power, as such had ceased with the military era.⁵⁷

⁵¹ See Sections 40, and 39 CFRN 1999 (*Op cit*), n, 4 ante.

⁵² K. O. Amusa, "Mass Rally and Public Order Act: The Right of Association and Expression under Assault in Nigeria?" Being an unpublished seminar paper presented to the Faculty of Law, University of Lagos.

⁵³ See the *Guardian* of 5th May, 2004, p. 1, and the *Guardian* of 6th May, 2004, p. 1.

⁵⁴ See the *Punch* Newspaper of April 18, 2006, p. 1

⁵⁵ See *Public Order Law* Cap. 122 Laws of Northern Nigeria 1963 as amended by Law No. 1 of 1964, *Public Order Law* Cap. 107, Laws of Eastern Nigeria 1963, *Public Order Law* Cap 107, Laws of Western Nigeria 1959. See also *Public Order Law* Cap. 115, Laws of Lagos State 1973 and *Public Order Law* No. 16, Laws of Kano State 1978.

⁵⁶ (1983) 2 S C., p.13.

⁵⁷ See *The Constitution of the Federal Republic of Nigeria* (Adaptation of *Public Order Act* 1981). This Act modified Section 1 of the *Public Order Act* by substituting Commissioner of Police in place of Military Administrator.

In recent time, under our nascent democracy, the courts have attempted to interpret the constitutionality or otherwise of the Public Order Act, though, singing discordant tunes. In the unreported case of **ANPP v. Inspector General of Police**,⁵⁸ Honourable Justice Chikere, in a sheer display of judicial activism, granting the reliefs sought by the plaintiffs said thus:

The Police Order Act so far as it affects the rights of citizens to assemble freely and associate with each other, the sum of which is the right to hold rallies or processions or demonstrations is an aberration to a democratic society. It is inconsistent with the provisions of the constitution. The result is that it is void to the extent of its inconsistency with the provision of the constitution....

However, a discordant view came to fore in another decision of the Court of Appeal sitting in Ilorin in the case of **Dr. Chukwuma & ors v. Commissioner of Police**.⁵⁹ The appellants, who were members of the Igbo Community Association in Kwara State, were to hold a meeting of all Igbo Community Association in the northern states of Nigeria at a private hotel in Ilorin on the 15th November 2002. The respondent, upon the receipt of a letter alleging likelihood of break-down of law and order, sealed the premises. The lower court held that the sealing of the premises was not unlawful, pursuant to which the appellants appealed to the Court of Appeal. It was held that pursuant to section 1(1) of the Act, the appellants have failed to obtain the requisite permit and as such, the appeal was dismissed.

It is submitted with due respect that the pro-active judgment in the former case is preferred to the latter. It is cheering to note that the decision of Honourable Justice Chikere of the Federal High Court in Abuja was later upheld by the Appeal Court⁶⁰.

It must be pointed out that the discretionary power of the Police under the Police Order Act is too wide, subjective and prone to abuse. An unrestrained exercise of discretion is a recipe for dictatorship which is antithetical to the tenets of a democratic dispensation. Hence, an unfettered discretion in the exercise of power granted by law cannot exist where the rule of law reigns. Albert Venn Dicey argues that the rule of law partly entails:

The supremacy or predominance of regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness ... of wide discretionary authority on the part of the government.⁶¹

It is further submitted that apart from the wideness of Police power in granting permit for procession, rallies and public meetings, one wonders aloud whether the Police can indeed be fair and objective, when it is realized that Police itself is an object of political control by the government whose policies the people usually resent and repel.

It must be noted that freedom of expression as guaranteed by the constitution⁶² is an adjunct of democratic system of government which requires openness, free debate of ideas and interaction among

⁵⁸ Suit NO. FHC/ABJ/CS/54/2004, delivered on the 24th June, 2005. In this case, the plaintiffs had challenged the violent disruption of its solidarity rally held in Kano on September 22, 2003 on the ground that permit was not obtained.
⁵⁹ 7 (2005) 8 NWLR (Pt. 927), p. 278, C. A.

⁶⁰ See *Inspector General of Police v ANPP & Ors* (Unreported) Suit NO CA/A/193/05. The appeal filed against the epochal decision of the trial court was dismissed by the Court of Appeal which declared police permit "retrogressive" and "primitive" in a civilized society.

⁶¹ A. V. Dicey, *Laws of the Constitution*, London, 10th ed. p. 202

⁶² Section 39 CFRN, 1999, (*Op cit*) n. 4 ante.

diverse interests. The expression involves communication in whatever form it may be understood by those who receive the expression. Freedom of assembly, on the other hand, is a vehicle of advancing common cause, ideas, values or objectives by congregation of particular groups or generality of the people and the two rights form the basis of organizing mass rallies.

However, it is conceded that these rights are not absolute. They are derogable by any law that is reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality, health or for the purpose of protecting the rights of others.⁶³

There is no doubt that the will of any government is usually expressed through the legislation. Hence, when people argue that the due process of law must be followed, by obtaining permit, in the interest of the public, whose interest is the Public Order Act protecting? It is submitted that the Public Order Act must reflect the yearnings and aspirations of the people and only the judiciary, through their interpretative mechanism can ensure that for now. Hence, care must be taken not to provide a legal umbrage for government to perpetuate misgovernance.

5. Conclusion, Recommendations and Suggestions

Both the 1999 Constitution and the Amended Electoral Act 2011 can be considered as veritable attempts at using the law as means of social engineering. What deserve greater scrutiny are the innovations engendered by the current electoral process aimed at ensuring its success despite the antics of innumerable doubting Thomases and prophets of doom.

Winston Churchill once remarked that democracy was the worst form of government apart from all the others. Hence, Nigerians' choice of democratic dispensation should be applauded. Hitherto, our experience with the ballot box has not altogether been salutary because it has brought more ruin and disappointment than joy and fulfillment. However, in a democratizing world, we are faced with little or no choice than to continue with the current democratic experiment, hoping that we would ultimately get it right. Hence, the reforms imported into our democratic process should be significant to guarantee a soft landing.

The Police is part of the executive arm of government which is the arm that requires constant checking, since it is the most prone to despotism. When it turns despotic, the Police is a ready tool for the enforcement of the despotic will of the State.⁶⁴ The civil society, if it emerges on the basis of democracy, liberty, equity and good governance, must need to control the Police to prevent it from becoming an anti-democratic force that is a threat to the values of a civil society.

In this paper, attempts have been made to analyze the purport of an electoral system, the role of the Police in combating electoral malpractices and the role of the Police in promoting or thwarting democratization in Nigeria. However, the following recommendations and suggestions are proffered in enhancing the optimum performance by our security outfit:

- (i) There must be economic and political justice in the society to remove the immediate causes of tension between the State and the civil society; hence, the causes of crime must be removed. Hunger, wants and general poverty provide fertile soil to nurture electoral offences. Economic, political, cultural and general social inequity, also result in discontent, which causes crime. In

⁶³ See Section 45 (1) (a) and (b) CRFN 1999 (*Op cit*), n. 4 *ante*. See also Article 11 of the *African Charter on Human and Peoples' Rights*.

⁶⁴ See S. Nchi, (*Op cit*), n.30 *ante*.

accordance with the popular aphorism, "prevention is better than cure". Consequently, the cause of crime should be eliminated.

- (ii) The Police must be properly educated to accept the supremacy of the law and its due process. It is only in that circumstance that they can promote democratization and effectively combat election malpractices.
- (iii) The Police should also be well equipped to fight and prevent crime, especially, electoral offences. Equipment here does not only mean firearms but should include modern gadgets that will enhance their performance e.g. vehicles, computers, communication gadgets and so on.
- (iv) The Police should be well paid and promptly too. It is difficult to fight crime on an empty stomach and to be a honest policeman without money in one's pocket.⁶⁵
- (v) There must be the popular and democratic control of the Police. This can be done by either electing Police chiefs directly or subjecting their appointment to the confirmation of democratic assembly.
- (vi) Our courts, especially the apex court, having been christened the last hope of the masses, should wake up to their expectations. A proactive judiciary that imbibes the virtue of activism is only desirable. Our courts should be interested in the justice end of any legislation rather than the positivistic stance as adumbrated in the case of *A. G. Anambra State v. A. G. Federation and Ors*, (supra).
- (vii) The provisions of the Public Order Act should be relegated to the oblivion. It has been contended that it is a colonial heritage which has no relevance to contemporary democracy. It is a medium of selective enforcement aimed at emasculating the perceived opponents from enjoying freedom of association and expression. It is suggested that even if the Police is refusing to grant any permit applied for, it should state reasons for such refusal to curtail excessive and arbitrary discretion. One hastens to applaud the activism and temerity of Honourable Justice Chikere in the case of *A.N.P.P v. Inspector-General of Police* (Supra).
- (viii) As we attempt to make Nigerian state to be truly federal in nature, the Police force should be decentralized to reflect the new federal arrangement. Every tier of government should have its Police Force from the local government to the federal government. Such Police forces should deal with those issues within the constitutional competence of its tier of government. This, it is submitted, is the position in the United States of America. It must be underscored here that the decentralization will allow for effectiveness on the part of the Police. It will also enhance community monitoring of the Police officers as they carry out their duties.

One is not unmindful of the stiff opposition to the idea of Police forces for the states and one hastens to state that such fear is not misplaced since history has shown how regional government used to terrorize and even eliminate political opponents using the Police. However, the idea of community policing is strongly canvassed as it will effectively curb the incidence of electoral malpractices even at the grass root levels.

- (ix) It is also observed that the 2011 Amended Electoral Act does not contain specific electoral duties for the Nigeria Police Force apart from various the duties specified in the Police Act, the Constitution, the Criminal Procedure Act and the Guidelines for Elections prepared by INEC. It is submitted that these provisions are too nebulous and wide. It is recommended that the Electoral Act be reviewed and amended to rectify the anomalies.

⁶⁵ The recent 100% increment in Police salary by the federal government is laudable. It is hoped that this will drastically reduce corruption and ineptitude amongst the Nigeria police.

- (x) It is further suggested that the failure of law and regulatory bodies to effectively impose limits on financial contributions to political parties suggests that, a lot still need to be done to sanitize the political process. It seems that the day still lies in horizon when the political parties of the poor and the under-privileged formed and led by those of their own, will stake a claim for political leadership within the Nigerian firmament, because the de-monetization of the political process is a necessary sine qua non for the emancipation and the empowerment of the masses of our dear country.⁶⁶

⁶⁶ Nigerians should learn a lesson from the unsalutary effect of godfatherism in Nigerian political development. The case of Dr. Chris Ngige of Anambra State and the acclaimed godfather Andy Uba is a case at hand. Also, Ibadan's contemporary political history cannot be complete without recourse to the ignoble role played by the *enfant terrible*, Late Alhaji (Chief) Lamidi Adedibu.