RONALD DWORKIN'S LEGAL THEORY AND THE NIGERIAN LEGAL SYSTEM

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Abstracts
The devastating effects of the 2023 election in Nigeria has continued to cast a dark shadow on the country in general and on the country's judiciary/legal system in particular. We saw for the first time in the history of political elections in Nigeria how the perpetrators and the prime beneficiary of the savagery that passed for presidential election colluded and told those who were brazenly swindled to go to court. When they went to the Supreme Court, the judges sold their integrity, brought shame to the judiciary, destroyed democracy, put revolting question marks on the legal profession and plunged Nigeria into an unprecedented political turmoil. All of this raises important question about law in general and about Nigeria legal system in particular. All of this too is an off-shut of a legal interpretation and practice devoid of meaningful moral contents. Dworkin's legal theory rejects legal positivism on the principal ground that a separation between law and morals is impossible. It is his view that law can possess no integrity once devoid of morality. This paper employs the hermeneutic and critical methods to offer a comparative study of Ronald Dworkin's jurisprudence and Nigerian legal system. It finds that Nigerian legal system can only confer itself with dignity when the system learns to treat law and morals with no disparity.
Keywords: Nigerian legal system, positivism, interpretivism, civil society, judiciary, election.

Introduction
When people of two opposite ideas are in the same room, disputes are unavoidable. Every human being is a unique person because each person is fundamentally different; and it is in this difference that the beauty of humanity lies. Yet, these differences are the root of every dispute. The conjectures by some great philosophers about the state of nature are to portray this fundamental difference and its consequences if left uncontrolled. It is the quest to put it in check by means of law that ultimately led to the emergence of civil societies.[1]

Meanwhile, if parties are left alone without any restrictions, they might end up hurting each other – a situation described as anarchy by origin of state theorists. Thus, effective dispute resolution requires the existence of law and a third party with greater authority. In modern democratic society, the judiciary has played the role of this third party.
We begin this paper by looking at what law is and what it is not. Dworkin's theory of law is basically a response to the positivist legal tradition. Therefore, it is pertinent that this study should first offer a short exposition of the positivists' stand. All else that follows is an analysis of Dworkin's effort in responding to legal positivism.

Legal Positivism and Dworkin's Conceptualization of Law as Integrity
Legal positivism argues that any and all laws are nothing more and nothing less than simply the expression of the will of whatever authority that created them. Thus, no laws can be regarded as expressions of higher morality or higher principles to which people can appeal when they disagree with the laws. It is a view that law is a social construct. The creation of laws is simply an exercise in brute force and an expression of power, not an attempt to realize any loftier moral or social goals. Therefore, from a positivist perspective, it can be said that "legal rules or laws are valid not because they are rooted in moral or natural law, but because they are enacted by legitimate authority and are accepted by the society as such."[2]

Oliver Wendell Holmes writes that the "prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law."[3] Holmes makes a description of what positive law is in the realm of the courts. In making this statement, Holmes suggests that the meaning of any written law is determined by the individual judges interpreting them, and until a judge has weighed in on a legal issue, the law is ultimately little more than an exercise in trying to guess the way a judge will rule in a case. According to positivism, therefore, law is a matter of what has been posited. The main point or essence of its separation thesis is that, the law and morality are conceptually distinct.

Law as integrity asks judges to continue interpreting the same material that it claims to have successfully interpreted itself. It offers itself as continuous with the initial part of the more detailed interpretations it recommends. When Hercules, the ideal judge, is asked to decide a case under a statute, "he will ask himself which reading of the act…shows the political history including and surrounding that statute in the better light."[4] Again, law as integrity requires a judge to test his interpretation of any part of the great network of political structures and decisions of his community by asking whether it could form part of a coherent theory justifying the network as a whole.

Dworkin proposes that we view law as Hercules, his ideal judge, does: "The actual, present law, for Hercules, consists in the principles that provide the best justification available for the doctrines and devices of law as a whole."[5] Law as integrity, thus, makes the content of law depend on more refined and concrete interpretations of the same legal practice it has begun to interpret; and the interpreter interprets in good faith that legal practice according to the dictates of moral values.

Law as an Argumentative and Interpretive Concept

The internal perspective on law is the very fact that law is argumentative and evaluative from the point of view of being value laden. For Dworkin, the law is a normative practice, therefore, the interpretation of the practice is bound to be normative-evaluative as well. In the case of law, the interpreter, Dworkin insists, must make his own judgments about the values which are really inherent in the law, judgments that are not essentially different from those of the participants themselves. For, according to him, without relying on such judgments the interpretation of legal practice cannot be carried out.

One of Ronald Dworkin's most distinctive claims in legal philosophy is that law is an interpretative concept.[6] Dworkin argues for the thesis that law is such a concept by appealing to the intelligibility of a certain kind of disagreement. Dworkin's disagreement-based argument can be glossed as follows:

> You and I disagree, say, about whether an animal we encounter in Piccadilly is a lion, and it turns out that I identify lions by their size and shape and you only by what you believe to be their distinctive behaviour [for example, roaring rather than talking] ... You and I assume that "lion" names a distinct biological kind and that the beast we met is a lion if it has a lion's biological essence, whatever that is, whether or not it meets the criteria either of us normally uses to identify lions. If you understand DNA, and if tests showed that the creature we saw had the DNA of a lion, you would likely change your opinion to recognize talking lions. Criterial concepts do not work that way.[7]

Provided we would in the end accept a common essence-revealing decision procedure such as a DNA test, we count as sharing a concept such as lion despite our distinct criteria for identifying instances.

Generally, there are three stages of interpretation according to Dworkin. First, the pre-interpretative stage where the rules and standards taken to provide the tentative content of the practice are identified. Second, the interpretive stage where the interpreter settles on some general justification for the main elements of the practice identified at the pre-interpretive stage. Finally, the post-interpretive stage, where the interpreter considers the actual elements of the practice under consideration and must decide whether they cohere with and serve to actualize this best interpretation.

How Does a Judge Decide a Case: The Idea of a Right Answer

According to Dworkin, the judiciary plays an important role in all legal systems. But the question is: How does a judge decides a case? If a case is brought to the court, the judge cannot refuse to adjudicate it on the basis that there is no precedent or because he cannot cite any authority on the point of law. It is in this connection that Dworkin observes that there is a right answer to each case. Dworkin is of the view that within legal practice and a proper understanding of the nature of law, rights are more fundamental than rules.[33] This is the opposite claim to most legal positivists. This is to say that if there is any right which comes into conflict with any policy, right must prevail.

For legal positivism, the law is the law posited. So what is the position in a case where a rule has not been posited? Thus, there is a gap in the law. We can simply say that because there is no mention, discretions are permitted. Austinian positivism is clear – when the rules ran out the judge operates as a deputy legislator filling in the gaps.[8] He is interested in the absolute clarity of law.

Dworkin is not satisfied with this model. This is because, for him, discretion is not free-standing but part of a process. Discretion, like the hole in the doughnut, does not exist except as an area left open by a surrounding belt of restriction. Discretion is not outside the law but internal to the law. If judicial decision making was unfettered discretion, we would have to say that it is no special role for judges beyond being a political and administrative official. If judges were unfettered law makers, they would have to be democratically elected. If judges simply exercised discretion and make new rules they would be changing the rules of the game. Each time they do so they also commit a fraud on the litigants.[9]

According to Dworkin, therefore, the law is to be treated as a seamless web in which there always is a right answer. Judicial decisions are characteristically generated by principles and they enforce existing political rights, so that litigants are entitled to the judge's best judgment about what their rights are. For Dworkin, different judges may come to different conclusions but he insists that judges may not rely on their own political views but only on their beliefs in the soundness of those convictions.

The opinion that judges "filled in the gaps" left by rules by using their discretion has long been received. HLA Hart has written that, "The rule-making authority must exercise discretion…"[10] Hart sees rules as 'open-textured'. Austin sees no problem in this. It is the view of Dworkin, however, that judicial discretion does not exist. Dworkin rejects the view regarding judicial discretion. The judges often are heard to say: "We find the law to be this, and they say they discover the law. They do not profess the law to be their own discretion."[11]

For Dworkin, judges are always constrained by the law. In every adjudication of the so-called "hard-cases' there are controlling standards which a judge is obligated to follow. To employ

discretion as such is to act as deputy legislators and to distort the original law. And this is unacceptable on the bases of separation of power, retrospectivity and the rule of law.
Hart says that judges exercise strong discretion in hard cases. But for Dworkin, that seems to equate: Rules + Discretion = New Rules.

Dworkin's interpretive theory rejects legal positivism on the principal ground that a separation between law and morals is impossible. He argues that law consists not merely of rules, as legal positivists generally claim, but also of what he calls "non-rule standards." These non-rules are moral/political standards of the society. When a court has to decide a hard case, that is, a case to which no statutes or precedent applies, he will draw on these moral or political standards in order to reach a decision.

Therefore, adjudication is and should be interpretive. According to him, judges must decide hard cases through an interpretation of the political structure of their community as a whole, from the most profound constitutional rules to other less significant details. There is a practice in every society promptly defined by legal materials. Hence, a successful interpretation is one that justifies the practices of the judge's society. It must fit with those practices in the sense that it coherers with existing legal materials defining the practices.

Also, since an interpretation provides a moral justification for those practices, it must present them in the best possible moral light.[12] Thus, the principles to which a judge must appeal will include his own conception of what is the best interpretation of the network of political institutions and decisions of his community. The judge must ask whether or not his judgment could form part of a consistent theory justifying these complete network.

There is always one "right answer" to every legal problem. It is up to the judge to find it. According to Dworkin, this answer is right in the sense that it coheres best with the institutional and constitutional history of the law. Hence, legal argument and analysis is interpretative in nature.

Morally Indefensible Laws and the Authoritative Precedent Judgment
At the foundation of Dworkin's *Justice for Hedgehogs* is a commitment to moral objectivity – the doctrine that there are right answers to moral questions.[13] This certainly complements Dworkin's legal theory, which holds that right answers to legal questions depend on right answers to moral questions. Without the concept of moral objectivity, Dworkin could not reasonably maintain, as he, that law provides determinate answers to legal questions.

We have no arguments with moral objectivity. Our concern is its implication for Dworkin's theory of law and legal interpretation, which holds that right answers to legal questions flow from moral principles that provide the best interpretation of past legally authoritative decision. We may call this theory naturalism, as suggested by Dworkin himself.[14] *On the one hand, Dworkin holds that sound legal judgments have moral forces. On the other hand, we know that legal systems sometimes support grave injustices.* Hence, David Lyons, a Professor of Law and Philosophy, insists that we have more reason to endorse the moral fallibility of law than to accept any theory of law.[15]

Dworkin discusses briefly some cases involving morally indefensible laws. Let us consider some common law. To find the right answer to the legal question posed by a new common law case, naturalism requires identifying moral principles that justify the precedents as much as possible, and then apply those principles to the facts of the new case. Precedents that are not

justifiable by the principles which provide the best interpretation of past practice are to be set aside as mistake.[16]

Therefore, naturalism would seem to imply that sustainable common law precedents are morally justifiable. This explains why the legal judgments that are supported by these precedents can be though to have moral force. Meanwhile, moral objectivity requires that we draw a distinction between sound and unsound moral principles. Dworkin offers some examples that indicate clearly that the best naturalistic interpretation of past practice can employ unsound moral principle and unsound justificatory arguments. As such, the legal judgments that area supported by such reasoning cannot be assumed to have moral force. Let us consider this hypothetical scenario:

> Suppose…that the courts have consistently held, since the issue was first raised, that lawyers may not be sued in negligence. Our judge believes that this rule is wrong and unjust, and that it is inconsistent in principle with the general rule allowing actions in negligence against other professional people…Suppose he can nevertheless find some putative principle to which others subscribe though he does not, which would justify the distinction the law has drawn. Like the principle, for example, that because lawyers owe obligation to the courts or to abstract justice, it would be unfair to impose on them any legal obligation of due care to their clients. He must ask whether the best interpretation of the past includes that principle in spite of the fact that he himself would reject it.[17]

Eventually, neither answer to this question would seem wholly attractive to the judge. This is because, if he holds that the law does include this putative principle, then this argument would present the law, including the past decisions about suits against lawyers, as coherent. But he would then expose what he would believe to be a flaw in the substantive law. That is, he would be supposing that the law includes a principle he believes to be wrong, and therefore has no place in a just and wise system.

If, however, he decides that the law does not include the putative principle, then he can properly regard this entire line of cases about action against lawyers as mistakes, and therefore, ignore or overrule them. But then he exposes another flaw, namely that past judges have acted in an unprincipled way, and a demerit in his own decision, that it treats the lawyer who loses this present case differently from how judges have treated other lawyers in the past. Thus, he needs to determine in the end, which of these flaws is the greater; which in the last analysis is in the better light and which is in the worse light.[18]

From the ongoing, it is a well-established principle of law that professionals are accountable to their clients for negligence. But in Dworkin's example, judicial practice exempts lawyers from that obligation. Some defend the exemption by citing some special obligation that is incumbent on lawyers. However, Dworkin suggests that such reasoning is unsound.

Dworkin notes that a naturalist judge might reject such an unsound justificatory argument and regard the precedent establishing an exemption as a mistake. Also, he might decide that sustaining those precedents and maintaining the exemption is required in the interest of past practices. This latter option is of interest. It exemplifies Dworkin's point that naturalism takes due account of the actual history of a jurisdiction so that past practices make a difference. But the obvious truth here is that the best interpretation of the precedent may sustain legal doctrines that themselves lack moral merit. In the lawyer's case we considered, for instance, the moral argument for an exemption (provided by a precedent practice) is unsound.

New cases are sometimes new and should be treated as such. The application of principles that have the best interpretation of the past practice is fine, yet the idea may have problematic application to institutional arrangements. As Lyon rightly observes, a common characteristic of systems that are dedicated to racial, ethnic, religious, or class subordination is procedural unfairness against those who are targeted for discrimination or exclusion. In the face strong moral convictions, going on as before lacks the heart of institutional consistency.

A Synopsis of Nigerian Legal System

Nigeria has a mixed legal system comprising of English common law, Sharia, and Customary law.[19] The 1999 Constitution, however, is the supreme law of Nigeria, prevailing over all other sources. Laws that are inconsistent with the Constitution are, therefore, void as to the extent of the inconsistency. Legislation is widely seen as being the second source of Nigerian law, primarily at the federal level through the National Assembly, but also through state legislation. Alongside English common law, judicial precedents, predominantly from the Supreme Court, also form a key part of the legal system.

Nevertheless, certain rulings and legislations are not universally and rigidly applied. Customary law is often applied for members of ethnic groups, concerning personal and family matters, while the northern states of Nigeria have introduced a Sharia legal system. The main feature of this is the introduction of religious based criminal offenses as well as punishments sanctioned by the Qur'an. The Supreme Court has yet to rule on the constitutionality of these punishments. The independence of the judiciary is guaranteed by Chapter 12(17.2e) of the Nigerian Constitution. The Nigerian court system consists of the Supreme Court, Court of Appeal, High Courts, and Customary/Sharia courts of appeal and district courts, both state and customary. Appointment to the highest court must be confirmed by the National Assembly. Based on this fact of appointment and confirmation probably, the executive and the legislature often interfere with the judiciary, and the system is widely perceived to be inefficient.

Judges have also appeared to be highly susceptible to bribery.[20] Nigeria's legal system criminalizes a wide range of corruption offences, but is loosely enforced, while the Independent Corrupt Practices Commission (ICPC) has been ineffective and has a severe lack of political support. This is because anti-corruption measures are weakly encouraged and enforced.

The corrupt practices in Nigeria legal system is easily noticed if you walk into the courtrooms, including the Supreme Court of Nigeria. Sure, in every contest, more particularly in a court, a party will definitely win and the other lose according to the wisdom of the judge(s). However, that is not the end of the road to the parties as they can still explore the opportunity provided by the constitution for them to appeal to the higher or supreme court and be hopeful in line with the constitution (see, for e.g., Section 285(7) of the 1999 Constitution of Nigeria as amended). The unfortunate aspect of it is that in the Supreme Court currently, the appellant(s) cannot ventilate or bring new issues at all. Yet, as Oliver Wendell Holmes of the American realist school of jurisprudence says, "law is the prophesy of what court says it is." If you like argue from now till tomorrow, law in Nigeria is what court/the judge says it is.

Applying Dworkin on the Supreme Court Ruling on Nigeria's 2023 Presidential Election

Dworkin's theory of adjudication is that in all cases judges weigh and apply competing rights. Even in hard cases, one party has a right to win. This theory of adjudication is tied to his general perception of what law is. For Dworkin, law is a strict combination of moral and political life of a society in a more coherent manner. And, making coherent sense of the existing legal materials is something we are morally required to do.

In the 2023 presidential election of Nigeria, three main candidates were contesting for the right to be declared winner of the election, despite the fact that one had already been announced as the winner of the election by the electoral board, INEC. Aggrieved by the observable irregularities, and for having failed to keep its own electoral rule, some candidates questioned the credibility of the outcome of the election conducted by the INEC after it has announced a certain candidate as winner. The petitioners believed that the action is in defiance with what is precedent and constitutional in the land, as such, they felt that they have been treated unjustly by being deprived of what they perceived to be their rights.

Dworkin's jurisprudence warns against this sort of development. He provides an instance of judges acting unjust simply because they feel the need to justify the precedent practices. In his scenario, a judge is faced with a dilemma of following the just line of action known to him and maintaining an unjust precedent practice. He is convinced that the precedent principle is unjust, but he finds a putative argument capable of justifying the unjust principle; and with this argument, he passes a judgment in favour of the precedent and but against his own beliefs.[54]
One can liken this Dworkinian scenario to the Supreme Court's judgment regarding the 2023 election petitions. Now, there is an unjust precedent, namely that it has never happened in history, for the candidate declared winner of a presidential election in Nigeria to lose in the court. The judge might have obviously believed this to be wrong, but he applied some putative principles generally believed by the people, namely that whatever system INEC choses for conducting the election will not be questioned despite its recognized electoral laws, among other principles. With these putative principles, he set aside justice, and upheld the precedent practice that one declared winner of a presidential election in Nigeria does not lose the position in the court come what may. What a culture of injustice and a slap on the nation's democracy. One will be inclined to agree with Peter Obi, the presidential candidate of the Labour party in the 2023 election's critique of the Supreme Court judgment as contained in the *Premiun Times*. He says:

> …the Supreme Court exhibited a disturbing aversion to public opinion just as it abandoned its responsibility as a court of law and policy. It is therefore with great dismay that I observe that the court's decision contradicts the overwhelming evidence of election rigging, false claims of a technical glitch, substantial non-compliance with rules set by INEC itself as well as matters of perjury, identity theft, and forgery that have been brought to light in the course of the election matter. These were hefty allegations that should not be treated with levity. More appalling, the Supreme Court judgment wilfully condoned breaches of the Constitution relative to established qualifications and parameters for candidates in presidential elections. With the counter-intuitive judgments, the Supreme Court has transferred a heavy moral burden from the courtrooms to our national conscience. Our young democracy is ultimately the main victim and casualty of the courtroom drama.[21]

The judgment, according to him, amounts to a total breach of the confidence the Nigerian people have on the judiciary. To that extent, it is a show of unreasonable force against the very Nigerian people from whom the power of the Constitution derives. As the positivists would tell us, the law is nothing but what the judge says it is. Accordingly, this Supreme Court ruling may represent the state of the law in 2023 but, definitely, it may not represent the present demand for substantive justice. The judgment mixed principles and precepts, contrary to Dworkin's teaching.

Asemudara, the founder of Mission Against Injustice in Nigeria (MAIN), says he would not call the judgment good or bad because, according to him, the judges looked at it from the

evidence before the court and their knowledge of the law. He observes that what went on the media space was different from what transpired in the courtroom. Meanwhile, after admission of evidence in the preliminary sections, the Court refused to ventilate or admit new evidences other than those admitted by the Election Tribunal in its ruling.

A corrupt judiciary is a threat to continued existence of any civil society. We have long been aware of how weak national institutions have negatively affected our democracy. The year 2023 has been quite remarkable and revealing. INEC has displayed incompetence in the conduct of its statutory duty. The judiciary has largely acted in defiance of constitutional tenets, "precedents" and, established ground rules. In the last analysis, political expediency preceded judicial responsibility, and a mechanical application of technicalities has superseded the pursuit of justice and fairness.

Recommendations and Conclusion

This research has carefully examined Dworkin's conceptualization of law with a view to ascertaining its implications on the increasing quest for socio-political order in Nigeria. Dworkin holds that the best interpretation of legal practice is a conception of law that he calls law as integrity.

According to Ronald Dworkin, a commitment to integrity makes for a true community. This is one lesson for Nigeria and Nigeria judges from Dworkinian concept of law. The concept of integrity is derived from the Latin *integritas* (wholeness). It implies the consistency between beliefs, decisions and actions, and continued adherence to established values and principles within a society. This concept of wholeness emphasizes honesty and authenticity, requiring that one act at all times in accordance with one's worldview.

The Nigeria law represents Nigerian worldview in this sense, and it is the onus of the legal professionals to act as custodians to it. However, as this paper has shown, the integrity of Nigeria as a political community has often been questioned by the levity with which matters of national importance is often treated in our courtrooms by the presiding judges. We cited the conflict necessitated by the 2023 presidential and national assembly election. The aggrieved went to court as they were compelled to and those they met in court as presiding judges ended up turning justice into wormwood, the judiciary into the enemy of the common man, and the legal profession into an object of mockery and a threshold of consternation.

The bed rock of any democratic society is an independent and credible judiciary whose mandate is to give the people their constitutional rights through a fair and constructive interpretation of the constitution in adjudication of cases. The Nigerian legal practitioners should therefore learn from Dworkinian approaches to judicial problems beginning from the idea of rights, to interpretation and arrival at judgment. As a matter of fact, the whole idea of Constitution of Nigeria needs to revisited and reviewed in order to emancipate the common man from hopeless situation she has found herself in Nigeria political land space. Policy makers and those drafting laws should do so in line with Dworkin's idea of "integrity," which is only possible within the ambient of morality. Rules and values should be reasons for action in a legal practice.

Finally, the idea of separation of power is only a myth in the Nigerian Constitution. Too often have the citizens found that the judiciary does serve the executive as a slave. This paper recommends that the Chief Justice of Nigeria, and perhaps, other judges of the Supreme court should be elected into office rather than appointment by the executive arm and so called approval by the Legislative. This will enable them serve the people who elected them into

office with justice and fairness rather than doing everything to please one man who appointed him into office out of his benevolence. In this way, Nigeria as a political community and her legal system will acquire greater integrity, and the lost faith of Nigerians in the judiciary will be restored. Where this is not possible, Nigeria will gradually plunge itself into the hypothetical state of nature where life is highly unpleasant and not worthy of living.

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