

The Bar, the Bench and the future of democracy in Nigeria

By Wole Olanipekun

BEING a trail-blazer, the Abuja branch of the Nigerian Bar Association (NBA) has chosen this vintage opportunity for us all to ruminate over this very important topic of "The Bar, the Bench and the future of democracy in Nigeria," a topic that agitates the mind of every sane and conscious Nigerian at the moment.

The only restraint one has is that a dinner lecture is expected to be as light as possible. If it is given before the dinner, it should serve as an appetiser and if delivered immediately after dinner, it should aim at easily and readily digesting the meal. In short, a dinner lecture should not be unnecessarily prolix, long-winded, verbose or unwieldy. It is also not a substitute for an inaugural lecture or a keynote address. In effect, it should be as brief as possible, without losing its focus or migrating from the end which it is sought to achieve. Bearing this in mind, I would strive to abridge the components and the essential ingredients of this topic and within the next few minutes, I will be done with the hope that a better opportunity would avail me, in no distant future, to do elaborate justice to this all-important and never fading topic.

The Bar and the Bench

The Bar and the Bench share the same parentage or, if you like, pedigree. Lawyers and judges alike sucked from the same breast, attended the same school, sat for common examinations and, in the case of Nigerian, called to the same Bar and enrolled as Barristers and Solicitors of the same Supreme Court. I have often wondered what profession a retired judge would claim to belong, other than the legal profession. Put in the popular parlance, a retired judge, as aptly demonstrated by the Supreme Court in *Atake vs. Attorney-General of the Federation* (1982) 11 SC 153, is a legal practitioner. The roles, functions, jurisdiction and duties of both the Bar and Bench are complementary to each other. Without the Bar, the Bench cannot function; if at all it can exist. In the same vein, without the Bench, the Bar will be like a sounding brass and a tinkling cymbal.

To my mind, both the Bar and Bench should operate like the Biblical Trinity, co-existing in peace, perfection, humility, endurance, learning and impartation of knowledge in order to achieve their mutual goal, which is the attainment of justice.

I am always fascinated by the memorable and ever existing classic of Lord Dtkins in *Liversidge vs. Anderson* (1942) AC 288 when His Lordship postulated thus:

"In this country, amid the clash of arms, the laws are not silent. They may be changed but they speak the same language in war as in peace. It has always been one of the pillars of freedom, one of the principles of liberty...that judges are no respecter of persons and stand between the subject and any attempted encroachment of his liberty by the executive, alert to see that any coercive action is justified in law."

His Lordship, that erudite Justice of the Court of Appeal who later became the toast of the Supreme Court, Ayoola JCA (as he then was), quoted this classic with approval in *Williams vs Akintunde* (1995) 3 NWLR (Pt. 381) 101 at 113.

In Nigeria today, except we want to deceive ourselves, we do not only have the clash of arms, we also experience conflict of interests. We are passing through a phase where might is greater than the law or, put succinctly, might is eclipsing the law and its sacred rules, despite the fact we are under a democratic government. More than ever before, it behoves lawyers and judges alike not only to espouse the rule of law, but also to stand and defend its ancient, lofty and enduring components.

Everybody choruses the rule of law, without appreciating what it connotes and its very essence to the existence of the Bar and the Bench, as well as democracy.

In a paper I delivered recently at the Obafemi Awolowo University, Ile-Ife on February 27, 2006, I said of the rule of law as follows:

"In our contemporary world, the Rule of Law has virtually become the most popular phraseology, constantly oozing out from the rulers and the ruled, whether within a democratic set up or dispensation, monarchical enclave, military or dictatorial junta. In the modern world, this phrase is as popular as democracy, fundamental human rights or the natural rights of man. The phrase itself is anchored on the word "law", meaning that man should be ruled or any country should be governed not by the rule of man or the rule of might or that of whims and caprices of leaders, but by the rule of law. Despite His omnipotence, omnipresence and omniscience, God chose to give to the Israelites through His Servant, Moses the 10 commandments. To Dr. Tunji Braithwaite, these 10 commandments constitute the Living Oracle and quoting Bodin with approval, the learned author said:

"All the princes of the earth are subject to them, and cannot contravene them without reason and rebellion against God. His yoke is upon them, and they must bow their heads in fear and reverence before God. The absolute power of princes and sovereign Lords does not extend to the laws of God and nature. He who best understood the meaning of absolute power, and made Kings and Emperors submit to His will, defend his sovereignty as a power to override positive law.

"Despite the unfathomableness of God's wisdom and awesomeness of His powers, He still chose to govern man through the rule of law embodied to the then commandments and all other laws made for man and promulgated by successive governments in different parts of the world have been tailored in line with the 10 commandments. The whole essence of this is that the rule of law itself was an expression first created by God, directing man not to be governed by power or might, but by laid down laws.

More than 25 centuries ago, Aristotle espoused the beauty and importance of this ancient and all-time important rule in his writings, emphasising that the rule of law was preferable to the rule of man.

This postulation which will ever remain germane and unalterable was further developed by Pollock and Henri de Bracton in their notions of 'the free and lawful men, and of the King being 'under God and the law'. On these two notions was the common law founded and, put in another way both constitute its fulcrum.

"The greatest exponent of the rule of law was Prof. A.V. Dicey, to whom the doctrine simply means that no man is punishable or can be made to suffer in body or goods, except for a breach of law established in the ordinary legal manner and before the ordinary courts of the land. In effect, means the supremacy or pre-eminence of regular law in contradistinction to the influence of raw or arbitrary power or the absence or arbitrariness, or prerogative and wise discretionary power on the part of the government."

To Niki Tobi, JCA (as he then was) in *Onagoruwa vs IGP* (1991) 5 NWLR (Pt. 193) 593 at 650 the foundation of every democracy is rooted in the rule of law. Hear the postulation of this academically and practically inclined Jurists in that case.

"Nigeria is a democracy and by the grace of the Almighty God, it will remain a democracy for all times.

The foundation of any democracy is anchored on the Rule of Law both in its conservative and contemporary meeting. Putting it naively, we are paid mainly and essentially to uphold the Rule of Law in the entire polity.

And so, once we fail to uphold Rule of Law, anarchy, despotism and totalitarianism will pervade the entire society. The society equilibrium will be broken. Law and order will break down. Everybody will be his own keeper and God for us all.

We, as judges, cannot afford to see society decay to such an irreparable level. We must rise up fully to our duties by vindicating the tenets of the Rule of Law in our practiced democracy."

In the words of Nike Tobi, lawyers and judges are paid mainly to uphold the rule of law. This is the very essence of our calling; this is what we have subscribed to; it is the very end result of the oath we have taken.

For us to rise up and fully and attain this mandate to vindicate the tenets of the rule of law in our democracy, the Bar must be virile, learned, vocal, strong, courageous, fearless, reflective, resourceful, alert, sound and God-fearing, while Bench must also be impartial, intelligent, fearless, honest, truthful, dutiful, courageous, independent and like Caesars wife, be above board in all circumstances.

In my acceptance speech as the President of the Nigerian Bar Association on August 30, 2002, at Ibadan, I stated, concerning our profession, as follows:

"From within and without, the clarion call is that the legal profession should champion the Nigerian renaissance; it should be harbinger of hope for our people and the repository of trust and confidence of the citizenry. The legal profession should insist that our democracy must be rooted in the rule of law and ensure the equality of every

citizen, be he the President, Governor or Local Government Chairman before the law.

"Our profession constitutes the most important vessel in the sustenance of our present democratic experiment, nay in the enthrone of democratic cultures in our land. If Nigeria is to stand tall in the comity of nations or if she is to express a

respected opinion within the civilised countries of the world, our democracy must be anchored on the rule of law. In this wise, the legal profession must live by examples, purify itself, get rid of the bad eggs within it and use its vintage and vantage position to instill order and restore discipline in our national life. The Judiciary must be fearless, fair, and impartial while the Bar must be courageous, truly learned and well behaved.

"Jurisprudentially, a lawyer is a social engineer, who by his training stands for and defends the oppressed against the oppressor, the weak against the strong, the lowly against the mighty the poor against the rich, the governed against the governor, etc. The role might also be played in a reverse order, depending on who briefs who.

Stretched further, we are expected in the present day Nigeria to wage unrelenting war against arbitrariness, high-handedness, wickedness of man to man, injustice, misgovernance or misrule, corruption and all social or national vices which have become the order of the day in this clime."

That speech was delivered in August 2002, when the situation in Nigeria was far milder than what we have today. Our present-day Nigeria reminds one of the satiric statement of Shakespeare in Macbeth when the universally renowned bard opined thus:

"Where we are, there's dagger in men's smiles."

Our Nigeria of today is far inching, into a dictatorial state where those who are in government detest and hate the voice of dissent. Any person who expresses contrary opinion to the ones being parroted by government (however untrue the position of government may be) is seen as an enemy or at best, a pariah or leper who should be cast away. A lot of daggers are embedded in the smiles of our leaders and politicians and the only institution that can make them sheath these daggers and swords is the legal profession. This is more so in our very peculiar circumstance where the otherwise agile and irrepressible labour movement under the umbrella of the Nigerian Labour Congress has now gone on sabbatical, with the involvement of its ebullient President, Mr. Adams Oshiomhole, in politics as a gubernatorial aspirant in Edo State.

For the Bar to fulfil and achieve its independence, thus disconnecting it, either directly or remotely from the apron strings of the Executive Arm of Government, it must first respect its constitution and hold it sacred. Whatever might be the deficiencies noticeable in the present constitution of the NBA, one fact remains undisputed, that is, that the eggheads of our profession who drafted the Constitution wanted a total break from the past when, in some instances, the Bar leadership was subservient to the Executive Arm of Government, dancing to its tunes and prostrating to its whims and caprices. That was the days of the military.

Eventually, the ugly situation reached an anti-climax during our ill-fated conference in Port-Harcourt in 1993. Consciously and cautiously, we now have entrenched in our Constitution, Article 11 (iv)(f) which provides thus:

"No serving president or other national officer shall canvass or solicit for appointment in government or if offered must decline, otherwise, he / she shall be deemed guilty of professional misconduct and shall not attend or speak at any meeting of the

Association for such conduct provided that the provisions of this sub article shall not apply to members of the association

who are serving as representatives of the

Association on the Executive Bodies/

Commissions established under the Constitution of the Federal Republic of Nigeria as well as members serving as non-Executive Directors / Board Members of Statutory Corporations and

Government-owned companies."

I do believe that this Constitutional provision is self-explanatory and not subject to any ambiguity. As a result of our experiences with President Bola Ajibola and Clement Akpamgbo, each of whom transformed from the position of a President of the NBA to Attorney-General of the Federation respectively, it was resolved at the NBA Ikeja Branch Law Week held in February, 1997, under the able chairmanship of Dosu Ogunniyi, Esq. That the said clause be inserted into our constitution in order to stabilise the NBA. I was co-sponsor of the motion which was seconded by Justice Omotunde Ilori. Prince Bola Ajibola, a former President of the NBA and also former Attorney-General of the Federation, who was also in attendance, rose to applaud the motion.

Without mincing words, I hold tenaciously to the view that the highest honour the Nigerian lawyers can bestow on any one of their members is to elect him as the President of all Nigerian lawyers, including all justices of our courts and all Attorney-General in Nigeria. I have never, for a moment, seen the President of the Nigerian Bar Association as inferior to the Attorney-General of the Federation.

In order to give full effect to the aforequoted provision of our Constitution, all elected officers of the NBA of the NBA must henceforth subscribe to an oath to be administered by a Justice of the Supreme Court in the presence of all the conferees immediately after election to the effect that each of them would promptly, without any equivocation, with this mandatory provision of our (NBA) Constitution. There is no surer way to decapitate the Nigeria Bar Association and render it prostrate to the executive than appointing its President to any political office during the currency of his tenure.

After several years under militarism, Nigeria now operates a democratic government based on a written constitution. In other words, our democracy is not an open-ended one, but one which is based on constitutional supremacy, as distinct from that of parliamentary supremacy.

Clearly, our Constitution recognises three Arms of government, to wit: the Executive, the Legislature and the Judiciary. Contrary to militarism, which is a regime of locusts and caterpillars, democracy is expected to usher in the best of everything for our people. However, we are far from attaining this democratic ideal. Thomas Jefferson, a former President of the USA stated that:

"Democracy is cumbersome, slow and inefficient, but is due in time. The voice of the people will be heard and their latent wisdom will prevail."

The same Jefferson said of good government in 1809 thus:

"The care of human life and happiness, and not their destruction is the first and only legitimate object of good government."

According to Plato, in *The Republic*:

"Democracy is a charming form of government, full of variety and disorder, and dispensing a kind of equality to equals and unequals alike."

Juxtaposing the above fascinating definitions of democracy (which generally is believed to be the government of the people, by the people and for the people), one can say that the inner recess of democracy can only be penetrated through the instrumentality of the rule of law and by extension, through the Bar and Bench.

Before I end this short address, let us remind ourselves that we are ever fascinated by what is regarded as the seven wonders of the world, that is, the Great Pyramids of Egypt; the Hanging Gardens of Babylon, (Iraq); the Mausoleum at Halicarnasus; the Statue of Zeus of Olympia (Greece); the Temple of Artemis of Ephesus; the Colossus of Rhodes; and the Lighthouse of Alexandria (Egypt). If our democracy is to endure and be fascinating, it should immediately generate these seven wonders, that is, a virile and independent Bar; a courageous, impartial, forthright and independent Bench; respect for the rule of law, orders and judgements of our Courts, obedience to the provisions, letters, tenor and spirit of the Constitution; an independent Police Force which is not caged, hindered or impaired by any executive; a truly and clearly independent electoral umpire; and a well-informed free, educated and unrestricted citizenry, propelled by an equally free and independent Press. To attain this as well, the ball shifts or relocates to the Court of the Bar and the Bench, both of which constitute a sine qua non to an enduring democracy.

Should the Bar and Bench fall in this enterprise, the people might have recourse to another Shakespearean satiric comment on lawyers as put in *Henry VI* when he thundered that:

Fortunately for us again, the Bar and Bench are convincing every doubting Thomas that they both constitute the bulwark of our nascent democracy, as exemplified in several of the judgements of our courts, particularly the Appellate Courts and more particularly, the recent decision of the Supreme Court in Suit No. SC 272/2006 between Hon. Muyiwa Inakoju & 17 Ors and Hon. Abraham Adeolu Adeleke (Speaker) & 3 Ors, delivered on December 7, 2006.

This decision has restored the confidence of Nigerians in not only the Judiciary, but also explained the quest of our people for a democracy which is anchored and guided by the rule of law. Even at that, both the Bar and Bench should not rest on their oars as each of them would face more daunting challenges in the days and months ahead. Their ability to stoically overcome and overwhelm the impending challenges will definitely determine how far our democracy can go. This is more so if we remind ourselves of the fact that our leaders and politicians will always call for rains in

torrential form, without caring how to manage the accompanying thunderstorm and whirlwinds. It is only the Bar and Bench that are left to manage these two latter hazards.

- Chief Olanipekun (SAN), former President NBA delivered the paper at the yearly /welfare bar dinner of NBA Abuja branch