State and Justice System as Frameworks for Human Development

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The essence of law lies in the spirit, not its letter; for the letter is significant only as being the external manifestation of the intention that underlies it. – Salmond [1]

Abstract
Development frameworks comprise the laws and institutions that facilitate government's efforts towards meeting society's aspirations and government obligations. Application of laws and the effectiveness of institutions depend largely on the control and alignment of the development frameworks. This paper demonstrates that notwithstanding the presence of laws and institutions, development occurs through appropriate institutional frameworks at vertical tiers and horizontal levels of national, sub-regional and international spheres. The paper argues that effectiveness of development processes occurs at the ability of state and justice systems to align the frameworks towards development at the national level.

Introduction

The role of the state[2] in development process has not been sufficiently explored for effectiveness, in the context of modernity. The nature of state provides perspective on justifications for expectations concerning its social obligations. Article 1 of the Montevideo Convention on Rights and Duties of States provides

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[1] P.J. Fitzgerald, Salmond on Jurisprudence, 12th ed., London, Sweet and Maxwell, 1966 p. 132-3.

[2] For example, Nigeria has been referred as nascent democracy, economy in transition, developing, fragile, failed and messy. Messy states are states that are too big to fail but too messy to work: Pakistan, Colombia, Indonesia, many Arab and African states. See generally, Thomas L. Friedman, Peking Duct Tape, The New York Times, Feb. 16, 2003; cited in: Maxwell O. Chibundu, The Other in International Law: "Community" and International Order, 2003, Working Papers series, Maryland School of Law, USA.

the criteria of statehood. According the Convention, a state should have a permanent population[3], a defined territory, government and capacity to enter into relations with other states.[4] Similarly, the Arbitration Commission of the European Conference on Yugoslavia in Opinion No. 1 declared that the State is a community which consists of a territory[5] and a population subject to an organised political authority.[6] It further states that such a State is characterized by sovereignty[7] with capacity to enter legal relations.[8] Basically, the predominant practice in International law is that an entity which meets the international legal criteria of statehood is able to be a State.[9]

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[3] There must be some people to establish the existence of a State but there is not a specification of a minimum number of people and again there is not a requirement that all of the people be national of the state.

[4] Article 1, Montevideo Convention on the Rights and Duties of States, 1933, entered into force in 1934.

[5] The second qualification of a state is territory where the permanent population resides. However, there is not a necessity of having well-established boundaries as the international Court of Justice ruled in the *North Sea Continental Shelf* cases, (North Sea Continental Shelf, Judgment, ICJ Reports 1969, p. 3, para 46). The court stated that "... there is... no rule that the land frontiers of a state must be fully delimited and defined" An example is the uncertainty of the land frontiers of Israel when it was admitted as a State.

[6] A State requires a government that functions as a political body within the law of the land. But it is not a condition precedent for recognition as an independent State

[7] M.N. Shaw, *International Law*, (6th ed., Cambridge University Press, Cambridge 2008) p. 198

[8] This qualification is about independency, in other words independence is indicated by the criterion of capacity to enter into relations with other states
What are the rights and duties, the powers and immunities that attach to an entity because it is a State? Crawford (2006, p. 40-41) gives a list of five "exclusive and general legal characteristics" of States:

(1) States have plenary competence to perform acts in the international sphere make treaties and so on.
(2) States are exclusively competent with respect to their internal affairs - "exclusive" means plenary and not subject to control by other States.
(3) States are not subject to international process without their consent.
(4) States are regarded in international law as "equal", it is a formal, not a moral or political principle
(5) States entitled to benefit from the *Lotus* presumption, especially that any derogation from the previous principles must be clearly established.

[9] C. Warbrick, 'States and Recognition in International Law' in Malcolm. D. Evans (ed.), *International Law*, 2nd ed., OUP, 2006, chapter 7, 218

This paper examines some crucial components of state and justice. It specifically highlights the faultiness in states statutory role of strengthening the development frameworks, especially, the machinery of justice. An attempt is made to evaluate the theoretical underpinnings on purposes and origins of the state. The paper argues for reinforcement of selected frameworks, to secure quality of lives and human development in the state. The flip side which exhibits features of the failed state is viewed from two lenses. The first is the security of persons in a situation of disorder and anarchy in spite of the presence of state's forces for example, as shown in the experiences of states such as Syria, Libya, and Iraq. The insecurity is similar to the reality of some states in the northern part of Nigeria. The second is the enforcement and functioning of the international economic law system. Would people and countries freely engage in transnational transactions and make enforceable agreements under a prevailing insurgency and insecurity fomented by non-state actors? And would the hostility affecting economic lives and safety of persons in a society be averted by legitimate means; or nipped in the bud? This is a question of considerable significance not only to legal theorists but for economists alike.

The primary interest of inquiry then is how has the State used the machinery of law to achieve justice for all? Modern trend captures distractions of governance by insurgencies; with non-state actors competing for power with states. Under national and international laws, both states and persons, including non-state actors, are accountable for their actions. However, it requires a superior power at national or international levels, to punish violators of the law. Consequently, state's power has the inherent capacity to secure accountability through neutral processes and strong institutions. Insurgency, armed groups have been a permanent feature in the developing countries thus resulting in perennial underdevelopment. Additionally, states in the developing countries struggle through fast-paced modernity, with diminishing possibilities of transformation from international economic cooperation between the northern and southern hemisphere. The scope of societal expectations is explored through the dynamic relationship between the state and justice systems, as frameworks for development. The paper is split into seven sections from Sovereignty; Territorial Integrity; State and the Machinery of

Justice; Modernity, Traditionalism and Statehood; to the conclusion.

***Sovereignty*[10]**

Sovereignty has been associated with four main characteristics—First, a sovereign state is one that enjoys supreme political authority and monopoly over the legitimate use of force within its territory. Second, it is capable of regulating movements across its borders. Third, it can make its foreign policy choices freely. It is recognized by other governments as an independent entity entitled to freedom from external intervention. These components of sovereignty were never absolute, but together they offered a predictable foundation for world order. What is significant today is that each of these components internal authority, border control, policy autonomy, and non-intervention-is being challenged in unprecedented ways.[11]

Further, sovereignty plays a role in defining the status and rights of nation-states and their officials; thus, the recognition of "sovereign immunity" and the consequential immunity for officials of a nation-state, and other legitimate purposes.[12] Similarly, "sovereignty" implies a right against interference, intervention or incursion, by any foreign (or international) power. It can also play an antidemocratic role in enforcing extravagant concepts of special privilege to governments and officials. Therefore, one can easily

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[10] Sovereignty in the ordinary parlance means independence, Independent power, the right or power of independent rule. It signifies and symbolizes the right of a nation; or power of independent rule. It is the political independence of a given person such as King or Queen, or of an administrative authority, entity, or nation. Sovereignty is a state of independence without subjection to any other authority. Sovereignty is political independence, or authority. Sovereignty is a state or condition of independence. In modern times, sovereignty is usually or commonly of two types; they are parliamentary sovereignty and constitutional sovereignty that is the sovereignty of the people.

[11] Richard N. Haass, former ambassador and director of Policy Planning Staff, U.S. Department of State, Sovereignty: Existing Rights, Evolving Responsibilities, Remarks at the School of Foreign Service and the Mortara Center for International Studies, Georgetown University, at 2 (Jan. 14, 2003), transcript *available at<http://www.georgetown.edu/sfs/documents/haass_ sovereignty_200301 14.pdf>*. Ambassador Haass is currently president of the Council o Foreign Relations.

[12] *See* Arrest Warrant of 11 April 2000 (Oem. Rep. Congo v. Belg.), 41 ILM 536 (2002) (Int'l Ct. Justice, Feb. 14, 2002) (especially separate opinion of Judge *ad hoc* Bula-Bula, *id.* at 597 (in French)).

see the logical connection between the sovereignty concepts and the very foundations and sources of international law. If sovereignty implies that there is "no higher power" than the nation-state, then it is argued that no international law norm is valid unless the state has somehow "consented" to it. Of course, treaties (or "conventions") almost always imply, in a broader sense, the "legitimate" consent of the nation-states that accepted them.[13] However, important questions arise in connection with many treaty details, such as when a treaty-based international institution sees its practice and "jurisprudence" evolve over time and purports to obligate its members even though they opposed that evolution.[14] Likewise, treaty making by various "sovereign" entities can be seriously antidemocratic and otherwise flawed.[15]

Territorial Integrity

Territorial integrity is one of the ingredients exercisable by countries towards achieving international security and preserving stability in the world. It should be emphasized that, to maintain international peace and security is the primary purpose of the United Nations as stated among others in the Article 1 of the UN Charter.[16] The principle of territorial integrity is based on the notion of non-interference in the internal affairs of states. Put differently, it is one of the most fundamental and well-established principles of international law.[17] The principle of territorial integrity was enshrined in the Covenant of the League of

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[13] One classic exception may be the end-of-a-war treaty, at least in some circumstances. In addition, there are sticky problems in connection with state succession, including whether the colonial imposition of obligations carries over to a newly independent state.

[14] An example of an "evolutionary approach" can be seen in some of Professor Thomas Franck's writings, particularly, Thomas M. Franck, Recourse to Force: State Action against Threats and Armed Attacks 8 (2002) (noting the evolution of practice regarding the veto power under the UN Charter). *See also* United States-Import Prohibition of Certain Shrimp and Shrimp Products, Report of the Appellate Body, WTO Doc. WT /DS58/ AB/R, para. 130 (adopted Nov. 6, 1998).

[15] For example see, John H. Jackson, *Status of Treaties in Domestic Legal Systems: A Policy Analysis*, 86 AJIL 310 (1992).

[16] Charter of the United Nations (26 06 1945, San Francisco), 59 Stat. 1031, T.S. No.993, entered into force 24 10 1945.

[17] Thomas D. Musgrave, Self-determination and National Minorities (Oxford: Clarendon Press, 1997), p.181.

Nations[18]; and also, in the Charter of United Nations. Specifically, Article 2 of UN Charter provides that "all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state".[19] Threat or use of force infringes the territorial integrity of state but general diplomatic and political declarations do not violate the principle. However, this international legal rule applies only between states because "members" or membership under the UN Charter are only states.[20]

State and the Machinery of Justice

The state is administered through a fluidic connection between executive, legislature and the judiciary, comprising the organs of government. The progressive interplay between the organs of government provides frameworks for the effective administration of justice in a state; for purpose of development – an improvement in the quality of human lives. The elements of these organs are now examined through thematically and their sub sets where relevant.

The Executive

The tenure of the chief executive varies in different countries. In countries with hereditary chiefs, the tenure is life-long. But in case of elective executives the tenure varies from state to state.[21] The tenure of the chief executive should neither be too long nor too short. If it's long there is possibility of the executive becoming autocratic or tyrannical. In case of a short term executive, continuity in policy can be maintained. In the modern state a

[18] "The Members of the League undertake to respect and preserve as against external aggression the territorial integrity…of all Members of the League. See Article 10, Covenant of the League of Nations, 1919.

[19] See note 2: Charter of the United Nations, article 2, paragraph 4.

[20] "The original Members of the United Nations shall be the states" (see note 2: Charter of the United Nations, article 3); "Membership in the United Nations is open to all other peace-loving states"(see note 2: Charter of the United Nations, article 4).

[21] The tenure of the office of the president in India is five years and that of the U.S.A, Nigeria is four years. The Austrian president is elected is elected for six years, In Italy, France and Ireland the president is elected for seven years. The chairman of the Swiss Federal council is elected for one year.

variety of functions are performed by the executive, as stated below:

(1) Administrative Function

(a) Execution of laws and judicial decision: The executive is entrusted with the responsibility to execute laws made by the legislature, and implement the judgments of courts.

(b) Maintenance of law and order: Another important function of the executive is to maintain law and order. The police are mainly in charge of this task.

(c) Policy formulation: The executive has a crucial role in policy formulation. It prepares the blue-print of the policy, articulating the vision of the government. Policy may be sent to the legislature in the form of bill. The policy emerges after the bill is passed by the legislature, for the assent of head of state.

(2) Diplomatic Function: The executive are primarily responsible for the welfare and conduct of members of the diplomatic corps and foreign relations. The executive appoints diplomatic representatives to foreign states and receives representatives from them. Treaties and international conventions are negotiated and concluded by the executive, often subject to the approval of one or both houses of the legislature.

(3) Military Function: The chief executive, in many states, is also the supreme commander of the defense forces. The power of waging war and concluding peace with any foreign state is assigned to the executive. In times of emergency and grave national crisis the chief executive may declare martial law and suspend the rights of citizens.

Other functions of the executive are Financial and economic function,[22] Judicial function,[23] and so on.

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[22] In almost all countries, the budget or the Annual financial statement is prepared by the executive and presented to the legislature for approval. The executive also determines the economic policy of the country. This policy is designed to expedite economic development and make the country self-reliant.

The Legislature

The primary duty of the state legislature is creating and amending state laws as the need arise. According to John Stuart Mill, it is the duty of the legislature to watch and control the government (Executive); to throw light of publicity in its acts, to compel a full exposition and justification of all of them which anyone considers questionable. If effectively discharged, the legislature's critical function would produce an attitude of responsibility and restraint in the executive, which would oblige it to reckon with the possible reaction of the legislature in framing policies and taking decisions. For the legislature to play the role effectively its own hands must be clean and its house put in order. A corrupt and self-seeking legislature will not have the credibility and authority to carry out its role as the watch dog of the people. Where these fail the fourth estate of the realm takes over this important task of the legislature. The legislature in any democratic system of government is supposed to be the watch dog of the people against the authoritarian and indeed predatory tendencies of the executive, which is the most powerful arm of government, given its capacity to control and deploy state funds and coercive forces. The legislature is supposed to check these tendencies and to generally operate to protect the interest of the people. They are supposed to be the grass-roots arm of the government.

The Judiciary

The primary function of the judicial organ is adjudication. A court determines guilt and administers punishment to anyone who has breached the law.[24] In this way, a judge or group of judges settles disputes between parties, through the application of rules and procedures already laid down by the appropriate state agencies. All

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The executive prepares plans relating to production, distribution and exchange of goods and resources.

[23] The chief executive has the right to pardon or clemency. He may suspend, remit or commute the sentence of a person convicted of an offence. This power is exercised in exceptional cases. In most of the states the executive officials decide administrative cases like tax evasions, industrial disputes, damages claimed against government and encroachments. This is known as administrative adjudication

[24] Another function of the judiciary is the power of judicial review. This ensures that actions and activities of other arms of government and administration are in accordance with the law and the constitution.

judicial systems perform the function of adjudication. The political environment in which the court operates dictates the mode of its processes and application. Interpretation of laws constitutes a significant plank in the adjudication process. Legal interpretation goes hand-in-hand with adjudication. In a way, there is a correlation between the quality of adjudicatory process and capacity to properly interpret relevant legal instruments. This is because whenever a matter is brought before the court for adjudication, the essence of finding the 'true' meaning of the law is made apparent, and whenever this is done, a judicial precedent is set. Establishing a precedent (past decisions or judgments) affects quality of justice in the construction of future judgments. Invariably, past and present decisions comprise a pillar of case law in the legal framework. The judicial arm becomes engaged in law-making through the process of the interpretation and consequent setting of judicial precedent through the interpretation of statues.[25]

Interpretation of Statutes

Interpretation means "to give meaning to". Governmental power has been divided into three organs namely the legislature, the executive and the judiciary. Interpretation of statues to render justice is the primary function of the judiciary. It is the duty of the Court to interpret the law and give meaning to words of the Statute. The object of interpretation of statutes is to determine the intention of the legislature, conveyed expressly or impliedly in the language used. As stated by Salmond, 'by interpretation or construction is meant, the process by which the courts seek to ascertain the meaning of the legislature through the medium of authoritative forms in which it is expressed.'[26]

There are certain general principles of interpretation which have been applied by Courts from time to time. Over time, various

[25] The human society is dynamic, interrelated and ever growing and advancing in every ramification. The rule of the jungle where the fittest and the strongest is in charge cannot be tolerated if there is going to be anything like civilization. Yet human nature breeds oppression of the weak by the strong. The quest for justice and protection brought the law and the law itself is a sure safeguard and handmaiden for justice. Failure of the machinery of justice therefore is an invitation to anarchy when people lose faith in the system. The law of the jungle takes over.

[26] See generally, P.J. Fitzgerald, Salmond on Jurisprudence, 12th ed., London, Sweet and Maxwell, 1966 p. 132.

methods of statutory construction have fallen in and out of favour. Some of the better known rules of interpretation also referred to as the Primary Rules of Interpretation are discussed hereunder.

Literal Rule

In construing Statutes the cardinal rule is to construe its provisions literally and grammatically giving the words their ordinary and natural meaning. This rule is also known as the Plain meaning rule. The first step in the course of interpretation is to examine the language and the literal meaning of the statute. The words in an enactment have their own natural effect and the construction of an act depends on its wording. There should be no additions or substitution of words in the construction of statutes and in its interpretation.[27] The primary rule is to interpret words as they are. It should be taken into note that the rule can be applied only when the meanings of the words are clear i.e. words should be simple so that the language is plain and only one meaning can be derived out of the statute.[28]

[27] Opponents of the plain meaning rule claim that the rule rests on the erroneous assumption that words have a fixed meaning. In fact, words are imprecise, leading justices to impose their own prejudices to determine the meaning of a statute. However, since little else is offered as an alternative discretion-confining theory, plain meaning survives. This is the oldest of the rules of construction and is still used today, primarily because judges may not legislate. As there is always the danger that a particular interpretation may be the equivalent of making law, some judges prefer to adhere to the law's literal wording.

[28] The literal rule may be understood subject to the following conditions; statute may itself provide a special meaning for a term, which is usually to be found in the interpretation section. Technical words are given ordinary technical meaning if the statute has not specified any other. Words will not be inserted by implication. Words undergo shifts in meaning in course of time. It should always be remembered that words acquire significance from their context.

Proponents of the plain meaning rule claim that it prevents courts from taking sides in legislative or political issues. They also point out that ordinary people and lawyers do not have extensive access to secondary sources. In probate law the rule is also favoured because the testator is typically not around to indicate what interpretation of a will is appropriate. Therefore, it is argued, extrinsic evidence should not be allowed to vary the words used by the testator or their meaning. It can help to provide for consistency in interpretation.

Golden Rule

The Golden rule emphasizes fairness in interpretation of the law. It allows a judge to depart from a word's normal meaning in order to avoid an absurd result. It is a compromise between the plain meaning (or literal) rule and the mischief rule. Like the plain meaning rule, it gives the words of a statute their plain, ordinary meaning. However, when this may lead to an irrational result that is unlikely to be the legislature's intention, the judge can depart from this meaning. In the case of homographs, where a word can have more than one meaning, the judge can choose the preferred meaning; if the word only has one meaning, but applying this would lead to bad decision, the judge can apply a completely different meaning.

Mischief Rule

The mischief rule is a rule of statutory interpretation that attempts to determine the legislator's intention. Its main aim is to determine the "mischief and defect" that the statute in question has set out to remedy, and what ruling would effectively implement this remedy. When the material words are capable of bearing two or more constructions the most firmly established rule or construction of such words "of all statutes in general be they penal or beneficial, restrictive or enlarging of the common law is the rule of Heydon's case.[29] The rules laid down in this case are also known as Purposive Construction or Mischief Rule. The mischief rule is a certain rule that judges can apply in statutory interpretation in order to discover Parliament's intention. It essentially asks the question: By creating an Act of Parliament what was the "mischief" that the previous law did not cover?

Reasonable Construction

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[29] This was set out in Heydon's Case [1584] 3 CO REP Where it was stated that there were four points to be taken into consideration when interpreting a statute:

(1) What was the common law before the making of the act?
(2) What was the "mischief and defect" for which the common law did not provide?
(3) What remedy the parliament hath resolved and appointed to cure the disease of the commonwealth?
(4) What is the true reason of the remedy?

The application of this rule gives the judge more discretion than the literal and the golden rule as it allows him to effectively decide on Parliament's intent. It can be argued that this undermines Parliament's supremacy and is undemocratic as it takes lawmaking decisions away from the legislature.

Every statute has a purpose, an objective. If the literal meaning collides with the reason of enactment of the statute then the intention of the law should be taken up so that the actual meaning of the statute can be properly understood.[30] There are others which include Rule of Harmonious Construction[31], Rule of Beneficial Construction[32], Rule of *Ejusdem Generis*[33], *Noscitur a Sociis*[34],

[30] This rule mainly stresses upon the intention of the legislature to bring up the statue and the sensible and not the prima facie meaning of the statute. This helps us clear the errors caused due to faulty draftsmanship. However this rule also has its own limitations. The intent of the statute is in itself a surmise and the rule is usually avoided to complete the quest for interpretation unless the intent in itself can be interpreted properly.

[31] The rule follows a very simple premise that every statute has a purpose and intent as per law and should be read as a whole. The interpretation consistent of all the provisions of the statute should be adopted. In the case in which it shall be impossible to harmonize both the provisions the court's decision regarding the provision shall prevail. The rule of harmonious construction is the thumb rule to interpretation of any statute.

An interpretation which makes the enactment a consistent whole, should be the aim of the Courts and a construction which avoids inconsistency or repugnancy between the various sections or parts of the statute should be adopted. The important aspects of this principle are:

(1) The courts must avoid a head on clash of seemingly contradicting provisions and they must construe the contradictory provisions so as to harmonize them.
(2) The provision of one section cannot be used to defeat the provision contained in another unless the court, despite all its effort, is unable to find a way to reconcile their differences.
(3) When it is impossible to completely reconcile the differences in contradictory provisions, the courts must interpret them in such as way so that effect is given to both the provisions as much as possible.
(4) Courts must also keep in mind that interpretation that reduces one provision to a useless number or a dead lumbar is not harmonious construction.
(5) To harmonize is not to destroy any statutory provision or to render it loose.

[32] When the literal meaning of the statute defeats the objective of the legislature, the court may depart from the dictionary and instead give it a meaning which will advance the remedy and suppress the mischief. This supports the initial and modern approach that is to effectuate the object and purpose of the act. The main objective by extending the meaning of the statute is to ensure that its initial purpose (public safety, maintenance of law and order) is justified. This rule looks into the reasons as per why the statute was initially enacted and promotes

Expressio Unius est Exclusio Alterius[35], *Contemporanea Expositio*[36]

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the remedial effects by suppressing the mischief. Though the rule almost covers the main grounds of the statute but cannot be applied to Fiscal statutes.

When a word is ambiguous i.e. if it has multiple meanings, which meaning should be understood by that word? This is the predicament that is resolved by the principle of Beneficial Construction. When a statute is meant for the benefit of a particular class, and if a word in the statute is capable of two meanings, one which would preserve the benefits and one which would not, then the meaning that preserves the benefit must be adopted. Omissions will not be supplied by the court, only when multiple meanings are possible, can the court pick the beneficial one. Thus, where the court has to choose between a wider mean that carries out the objective of the legislature better and a narrow meaning, then it usually chooses the former. Similarly, when the language used by the legislature fails to achieve the objective of a statute, an extended meaning could be given to it to achieve that objective, if the language is fairly susceptible to the extended meaning.

Beneficial Construction is a tendency and not a rule. The reason is that this principle is based on human tendency to be fair, accommodating, and just. Instead of restricting the people from getting the benefit of the statute, Court tends to include as many classes as it can while remaining faithful to the wordings of the statute.

[33] Means "of the same kind and nature": This rule provides that where words of specific meaning are followed by general words, the general words will be construed as being limited to persons or things of the same general kind or class as those enumerated by the specific words. To invoke the application of ejusdem generis rule, there has to be a distinct genus or category. The specific words must apply not to the different objects of a widely differing character, but, to something, which can be called a class or kind of objects. Where this is lacking, the rule will not be applicable. For the invocation of the rule, there must be one distinct genus or category. The specific words must apply not to different objects of a widely varying character but to words, which convey things or object of one class or kind, where this generic unity is absent, the rule cannot apply.

[34] Literally means "It is known from its associates". The rule of language is used by the courts to help interpret legislation. Under the doctrine of "noscitur a sociis" the questionable meaning of a word or doubtful words can be derived from its association with other words within the context of the phrase. This means that words in a list within a statute have meanings that are related to each other.

[35] The Expression literally means "the express mention of one thing excludes all others". Where one or more things are specifically included in some list and others have been excluded it automatically means that all others have been excluded. However, sometimes a list in a statute is illustrative, not exclusionary. This is usually indicated by a word such as "includes" or "such as".
Thus a statute granting certain rights to "police, fire, and sanitation employees" would be interpreted to exclude other public employees not enumerated from the

Modernity, Traditionalism and Statehood

The present spate of human rights abuses, infringements, violations, injustices, and violence orchestrated by weak institutions, insurgencies and terrorism undermine sustainable development and control by government, unilaterally or multilaterally. At state levels, the activities of non-state actors remain a challenge for the government. At the international level, multilateral cooperation appears distracted by complex factors. For example, the formation of Islamic state of Iraq and Syria (ISIS) has evoked the question on whether the modernism concept of statehood has failed. Further, have the modern structure of three arms of government - executive, legislature and the judiciary – been successful in effective administration of justice within a State? In the context of the foregoing development questions and expectations under the social contract, two theories are examined.

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legislation. This is based on presumed legislative intent and where for some reason this intent cannot be reasonably inferred the court is free to draw a different conclusion.

The maxim has wide application and has been used by courts to interpret constitutions, treaties, wills, and contracts as well as statutes. Nevertheless, Expressio Unius Est Exclusio Alterius does have its limitations.

[36] Contemporanea expositio est optima et fortissinia in lege: meaning Contemporaneous exposition is the best and strongest in law. It is said that the best exposition of a statute or any other document is that which it has received from contemporary authority.

The maxim Contemporanea expositio as laid down by Lord Coke was applied to construing ancient statutes, but usually not applied to interpreting Acts or statutes which are comparatively modern. The meaning publicly given by contemporary or long professional usage is presumed to be true one, even where the language has etymologically or popularly a different meaning. It is obvious that the language of a statute must be understood in the sense in which it was understood when it was passed, and those who lived at or near that time when it was passed may reasonably be supposed to be better acquainted than their descendants with the circumstances to which it had relation, as well as with the sense then attached to legislative expressions.

Modernist Theory

The modernists, for example, *Ernest Gellner*[37] contend that economic forces are responsible for modernity; and modernity is responsible for nationalism and progress in contemporary societies. With industrialisation, a force of economics, the character of politics and political activity has changed. The root of this change is situated in the changes in subjectivity; and structural changes that gave rise to new factors of significance. With the rise of capital and industry there has been the emergence and rise of a middle and working class that have become new actors in the social arena, consequently altering the nature of the political arena. Industrialisation has meant that politics has progressed to become "non-elitist"[38]

It is argued that the modernist approach focuses on the concept of modern societies as the origin of nationalism. Modernists focus on the determinants of nation formation; those elements they believe underwent and were a part of the structural changes contributing to the nation-state. The framing set of assumptions in modernist theory comprise of some sets of an underlying structural change, nations as political units and social constructions, and nations as products of modernity.[39]

Traditionalism

In international economic law usage, it appears that 'traditional' is even more vague than 'modern'. Though, it is generally

[37] The foremost modernist is Ernest Gellner who hypothesized that the industrial age ushered in a need for new forms of identity to mend rifts in society brought about by major shifts in social mobility. According to Gellner, modern industrializing societies require cultural homogeneity to perpetuate economic success.

[38] Richard Kearney, Postnationalist Ireland: Politics, Culture, Philosophy, London, Routledge, 1997

[39] The modernist interpretation of nationalism and nation-building perceives that nationalism arises and flourishes in modern societies described as being associated with having: an industrial economy capable of self-sustainability of the society, a central supreme authority capable of maintaining authority and unity, and a centralized language or small group of centralized languages understood by a community of people. Modernist theorists note that this is only possible in modern societies, while traditional societies typically: lack a modern industrial self-sustainable economy, have divided authorities, have multiple languages resulting in many people being unable to communicate with each other.

understood in contrast to modernism. Whatever was deeply ingrained in society prior to modernization is traditional. Indirectly, the traditional is understood in terms of European history, since the traditional is defined in contrast to the modern, which in turn can only be understood with reference to European culture. To call a non-Western society traditional is therefore to claim that it is similar in important ways to Europe before the Reformation. In contrast to modernism, traditionalism could be used to designate any movement of resistance to modernization, or the view that pre-modern societies are superior to modernized societies.

Traditionalism is an ideology, in the general sense that it offers a system of ideas on the basis of which it recommends a social or political program. Of course, Traditionalism differs from many other ideologies in that while they concentrate on political action, Traditionalism is focused on metaphysics, and takes a political position only derivatively. Nevertheless, and more specifically, it is an ideology in the sense that it: (1) contains a more or less comprehensive theory about the world and the place of man in it; (2) sets out a general program of social and political direction; (3) it foresees itself as surviving through onslaughts against it; (4) it seeks not merely to persuade but to recruit loyal adherents, demanding what is sometimes called commitment; (5) it addresses a wide public but tends to confer some special role of leadership on intellectuals.[40] It is yet another "ism" that which has emerged out of the European experience of modernity. Traditionalists condemn ideology generally as a product of modernity. Traditionalism is self-defeating; in the sense that its condemnation of everything modern is so general that it implicitly condemns itself.

Insurgency and Statehood

It has become a common refrain that failed states are the fertile grounds for insurgencies that continue to threaten national security and invariably the global security as well. Although most people agree that there is no such thing as a failed state, it's hard to agree on exactly what the term means. There is overlap between failed states and insurgencies but the concepts are distinct. A failed state

[40] See Maurice Cranston's article "Ideology" in the Encyclopaedia Britannica (CD-ROM 2001 ed.).

is one in which the central government is unable to prevent its territory from being used as a launching pad for significant acts of violence abroad. An insurgency is an armed group powerful enough to engage a country's military, but not powerful enough to threaten the government's fundamental control. When an insurgency becomes that powerful, then it's a civil war. It has also been argued that one of the primary breeding ground for insurgencies to thrive is when a state has failed but whether the argument is valid or not still remains a debate in the academic circles.

The Failed State

There is ongoing debate on the meaning of "failed states." There appears to be three main schools of thought regarding failed states[41]: 1) weak and failing states are a tremendous threat, 2) weak and failing states are not imminent threats and 3) the term "failed state" is a politically charged term.[42] The ultimate problem for scholars remains "there is no definition of the term 'failed state".[43] The first concept of failed states sees them as a threat, according to Robert Gates, America's Secretary of Defense, "fractured or failing states are the main security challenge of our time."[44] Others note how failed states are characterized as those that, *"lose control over the means of violence, and cannot create peace or stability for their populations or control their territories. They cannot ensure economic growth or any reasonable distribution of social goods. They are often characterized by massive economic inequities, warlordism, and violent competition for resources."*[45] With a lack of governance, poor economic conditions, and violence, this can lead to many obstacles, *"weak and failing states pose a challenge to the international community. In today's world, with highly globalized economy, information systems and interlaced security, pressure on one fragile state can have serious repercussions not*

[41]Edward Newman, 2009, "Failed States and International Order: Constructing a Post-Westphalian World" in Contemporary Security, 30 (3).
[42]Ibid, p. 421
[43] Justin Logan and Christopher Preble, "Fixing Failed States: A Dissenting View", p. 380
[44] "Where Life is Cheap and Talk is Loose", *The Economist,* March 17, 2011 accessed March 25, 2012 *http://www.economist.com/node/18396240.*
[45] R.E. Brooks, "Failed States, or the State as Failure?", *University of Chicago Law Review,* 72(4), (2005) p. 1160-1161.

only for that state and its people, but also for its neighbours and other states halfway across the globe."[46]

In essence, this idea views failed states as powder kegs with the ability to spread violence, tension, and danger to nearby countries or to nations around the world. Failed states such as Afghanistan or Somalia have become breeding grounds for insurgencies and its allied groups to thrive.[47] The terms "failing state", "failed states", and "weak states" have been used by think tanks and government agencies to describe the current international environment. Others have noted that the "failed state concept is largely useless and should be abandoned except in so far as it refers to wholly collapsed states where no authority is recognizable either internally to a country's inhabitants or externally to the international community."[48] The third concept of failed states sees the term as a political construct, "the category 'failed state' is itself a construction that opens the door for such norms to be imported and provides justification to a variety of Western interventions."[49] Other scholars have noted that the idea of failed states and the popularity of focusing on it is a reflection of Western concerns over new security threats since 9/11.[50] The best and most often used example of a failed state, or what some term a collapsed state is the country of Somalia.[51]

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[46] The Fund for Peace, "Failed State Index 2011", 2011 Washington, D.C. p. 8.

[47] For example, the terrorist group Al-Shabaab located in Somalia has attacked African Union peacekeepers, the group is widely believed to have ties to Al-Qaeda.[47] An important component of failed states is, "The conception of the state is central to understanding 'state failure'. This is because the discourse on failed states largely rests on the idea of 'statehood."

[48]Charles T. Call, "The Fallacy of the Failed State", *Third World Quarterly*, Vol. 29 (8) 2008, p. 1492.

[49] Justin Logan and Christopher Preble, "Fixing Failed States: A Dissenting View", p. 383

[50]Edward Newman, "Failed States and International Order: Constructing a Post-Westphalian World" in Contemporary Security, 30 (3), (2009), p. 434

[51] According to the 2011 Failed States Index, "in the seven years of the Failed State Index, Somalia has had the ignominious distinction of occupying the worst spot for four years straight." Others have noted, "For the past two decades, Somalia has become the supreme example of failed state with warlords laying waste to Mogadishu and well-intentioned outsiders from bewildered Marines to hapless UN forces intervening at their peril."[51] Other examples of countries that are on the Top 10 of the 2011 Failed States Index include, Chad, Sudan, Congo,

Other examples of countries widely considered as "failing" have included Sierra Leone, Liberia, Zaire, Angola, and Burundi. In each of these countries, violence, poverty, and corruption are rampant as the state organs and machinery of justice has failed. However, there is cause for optimism, "none of these designations is terminal. Lebanon, Nigeria and Tajikistan recovered from collapse and are now weak. Afghanistan and Sierra Leone graduated from collapsed to fail. Zimbabwe is moving rapidly from being strong towards failure."[52] Several warning signs can indicate to a nation state of possible failure, "economic, political, and deaths in combat."[53] For example, massive economic and political upheaval, as well as large increase in combats deaths between insurgent groups, clans, tribes, rebel factions, and the central government.

According to a detailed Index, Somalia has emerged the most failed state while Norway emerged the best or most sustainable state. The index's ranks are based on twelve indicators of state vulnerability - four social, two economic and six political.

The indicators are not designed to forecast when states may experience violence or collapse. Instead, they are meant to measure a state's vulnerability to collapse or conflict.[54] There is no consensus on when a state can be described as failed. However, a state can be perceived as having failed at some of the basic conditions and responsibilities of a sovereign government, which include functional state organs of executive, legislature and

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Haiti, Zimbabwe, Afghanistan, Central African Republic, Iraq, and Cote d'Ivoire.

[52] R.I. Rotberg, "Failed States, Collapsed States, Weak States", World Peace Foundation (2005), Chapter 1, "Failed States, Collapsed Stations, Weak States: Causes and Indicators", p. 10.

[53] Ibid, p. 21.

[54] Out of the 15 most failed nations surveyed, ten were African nations. These include Somalia (1st), Zimbabwe (2nd), Sudan (3rd), Chad (4th), Dem. Rep. of Congo (5th), Central African Republic (8th), Guinea (9th), Ivory Coast (11th), Kenya (14th), and Nigeria (15th). The best five nations, which were described as having the most sustainable state include Norway (177), Finland (176), Sweden (175), Switzerland (174), and Ireland (173). Ghana emerged the best state in Africa, ranked 124 and classified as moderate state, while USA was 159th and UK 161 on the survey list.[54]

judiciary. The various perspectives of a failed state usually identify the following common features in states perceived to be failing:[55]

(a) Loss of control of its territory, or of the monopoly of the legitimate use of physical force;
(b) Erosion of legitimate authority to make collective decisions;
(c) Inability to provide public services;
(d) Inability to interact with other states as a full member of the international community

The question then is does state failure contribute to the rapid rise in insurgencies world over? Is the breakdown of the social contract theory a breeding ground for the growth of insurgencies? Is there any nexus between a state failure and insurgencies?

Indicators of State Vulnerability to Fragility

(a) Social Indicators: Demographic pressure, Massive movement of refugee and internally displaced peoples, Legacy of vengeance seeking group vengeance, Chronic and sustained human flight.

(b) Economic Indicators: Uneven economic development along group lines, Sharp and/or severe economic decline.

(c) Political Indicators: Widespread violation of human right; Progressive deterioration of public service, Rise of factionalized elites, Intervention of other states or external factors.

[55] Also common with failing states are weak and ineffective central government ineffective that has little practical control over much of its territory; non-provision of public services; widespread corruption and criminality; refugees and involuntary movement of populations; and sharp economic decline (UNFP 2010). Although the term 'failed state' has received myriads of criticisms by policy scholars for being arbitrary and sensationalist, the term becomes useful when describing states that can be described as .not successful' in the sense of its very questionable and dubious existence coupled with the inability to carry out its basic responsibilities.

Nexus between Failed State, Insurgencies and Terrorism

Though terrorism is fluidic, a recent United Nations (UN) document describes it as any 'act which is intended to cause death or serious bodily harm to civilians or noncombatants with the purpose of intimidating a population or compelling a government or an international organisation to do or abstain from doing any act'.[56] Terrorism is both emotionally and politically laden; particularly as it imports issues of national liberation and self-determination.[57] Terrorism takes many forms, including political, philosophical, ideological, racial, ethnic, religious and ecological issues. The taxonomy of terrorism, including precipitating motivations and considerations, is now a subject of intense study.[58] The primary concern presently is the threat of insurgency as it relate to the existence and failure of statehood. Insurgency is one objective of organised terrorism, just as terrorism is one of several strategies of insurgency. Both terrorism and insurgency may be used by states in their internal and foreign policy operations. Terrorism and terrorist tactics constitute part of the strategies and tactics of insurgency.[59] The operational tactics are essentially those of guerilla warfare. The object is to intimidate, frustrate and raise the feeling of uncertainty, imminent danger and the loss of hope, so as to cripple or limit all aspects of human activity and normal

[56] UN Secretary-General Ban Ki-Moon, Keynote Address, Closing Plenary of the International Summit on Democracy, Terrorism and Security, 'A Global Strategy for Fighting Terrorism' Madrid, Spain, 10 March 2005

[57] CFD Paniagua 'Negotiating terrorism: The negotiation dynamics of four UN counter-terrorism treaties, 1997-2005 PhD thesis, City University of New York, 2008.

[58] See the Declaration on Measures to Eliminate International Terrorism annexed to UN General Assembly Resolution 49/60, Measure to Eliminate International Terrorism UN Doc A/Res/69/60, 9 December 1994. See also R Bailey 'Earth liberation front terrorist gets 22 years in prison for anti-biotech arson' Reason Magazine *http://reason.com/blog/2009/02/06/earth-liberation-front-terrori* (accessed 31 January 2014).

[59]The magnitude of the disaster of September 11, 2001 brought to bear a general recognition that terrorism is a global problem that required urgent attention. The response was a war on terror against groups defined as murderous oppressive, violent and hateful and whose. Islamic radicalism is fingered as responsible for the attack and seen as threat to peace, security and prosperity of the global community. However, it has become a common refrain that failed states are the fertile grounds for terrorism which threatens national security and invariably the global security as well. Nigeria, is one such state where elements of failure has given rise to groups like Boko Haram that use terror and violence to make demands on the state.

livelihood. The question then is does the failure of a state breed or result to insurgencies and insurgent groups been formed?

It has been emphasized that the threats of terrorist attacks are not necessarily from indigenous extreme-left movements but from self-determination struggles and struggles against injustices which sometimes coincides with or are given moral justification through the use of religion. Terrorism is an act that is a criminal violation if committed within the jurisdiction of any state. The acts appear to be intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of a government by assassination or kidnapping, mass killing, and destruction of public properties. The act of terrorism transcend national boundaries in terms of the means of which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which the perpetuation operate or seek asylum.. In these present days, terrorists have been going about their deadly business aided by the evolution in technology leading the invention of new weapons of mass destruction increasing their destructive capability invariably increasing the threat of terrorism.

Terrorism is threatening the viability of a nation-state, bringing about economic crisis[60], instability, a threat to tourism, energy-sector, civil-aviation, maritime, transportation, civil transportation and the existence of Statehood as well. The problem of terrorism has refused to go away instead; it has kept people in perpetual fear, robbing people of freedom and security. Thus the world as a whole

[60] In the United States, Defense and Homeland Security spending are by far the largest cost of attack. The human cost, of course, is incalculable. The direct cost of the September 11 attack has been estimated at somewhat over $20 billion (Krugman 2004). Glen Hodgson, the Deputy Chief Economist for the Export Development Candada (EDC) explained the costs in 2004

The US alone now spends about US $500 billion annually—20 percent of the US federal budget—on departments directly engaged in combating or preventing terrorism, most notably Defense and Homeland Security. The Defense budget increased by one-third, or over $100 billion, from 2001 to 2003 in response to the heightened sense of the threat of terrorism – an increase equivalent to 0.7 per cent of US GDP. According to Hodgson (2004) expenditures on defense and security are essential for any nation, but of course they also come with an opportunity cost; those resources are not available for other purposes, from spending on health and education to reductions in taxes. A higher risk of terrorism, and the need to combat it, simply raises that opportunity cost (cited in Kazoun 2007).

is voicing concerns over the menace of terrorism, extremism and radicalism. No country goes unaffected by international terrorism, for these reasons the global community can no longer turn a blind eye on terrorism

The world now lives in fear. We are afraid of everything. We are afraid of flying, afraid of certain countries, afraid of bearded Asian men, afraid of shoes airline passengers wear; of letter and parcels, of white powder. The countries allegedly harbouring terrorists, their people, innocent or otherwise, are afraid too. They are afraid of war, of being killed and maimed by bombs being dropped on them, by missiles from hundreds of miles away by unseen forces. They are afraid because they have become collaterals to be killed because they get in the way of the destruction of their countries. Where people live in fear, there is no development and the existence of statehood is threatened. Terrorism and insurgencies continues to pose difficult challenges to state and human security in the international system. Today the world is confronted with ISIS[61] and ISIL apart from the Al-Qaida, Alshabab and Boko Haram who are known extremist and fundamental groups most of them contending the failure of statehood and their government as part of the rational to unleash terror. Apart from the fear of insecurity terrorism brings about, it also reflects in economic decline, unemployment, inability to pay

[61] What is now the Islamic State began as a group called *Jamaat al-Tahwid wa-i-Jihad* (JTWJ), founded in 1999 by Abu Musab al-Zarqawi. Initially it focused on attempting to effect regime change in Jordan, although Zarqawi first gained experience as a jihadi in Afghanistan. He met Osama Bin Laden in 1999 and the two always had a fractious relationship, partly based on personal differences and partly on class differences. Zarqawi was brash, abrasive and from a poor background, whereas Bin Laden was from a wealthy background and did not feel the need to always be on the front lines. The Islamic State is not only a terrorist group. It is a political and military organization that holds a radical interpretation of Islam as a political philosophy and seeks to impose that worldview by force on Muslims and non-Muslims alike. Expelled from al-Qaeda for being too extreme, the Islamic State claims to be the legitimate ruler of all Sunni Muslims worldwide. They have established what they regard as a state which includes large swaths of territory in Syria and Iraq, governed from Raqqa in Syria. It advances a number of theological opinions to support its claims. Its adherents hold that they are merely practicing Islam fully, pronouncing those who disagree with them *takfir* (heretics). This designation is used as religious justification for killing the Islamic State's opponents, typically slaughtering them wholesale. On June 29, 2014, the Islamic State declared the establishment of an Islamic caliphate with its leader being Abu Bakr al-Baghdadi, the caliph.

salaries of workers, debt burden; it brings about poverty and a general sense of frustration amongst the victims. Crime has had this effect in the inner cities as people. People are afraid to walk the streets at night. Life, liberty and the pursuit of happiness are inalienable rights according to the universal Declaration of human right to ensures domestic tranquility; such cannot co- exist with a state of terrorism.[62]

Conclusion

There are three main formal institutions of government—the legislature, the executive, and the judiciary. These are the state's machineries to secure justice and achieve development. The legislature carries out the law-making functions, while the executive and the judiciary enforce and adjudicate, respectively. The judiciary has inherent powers to act as a check on the use of powers by the other two arms of government: the legislature and the executive. It is only the judiciary that can void the actions of the two other arms, when they act contrary to the law and the constitution. Political and social liberties thrive when there is no abuse of power.

Economic growth and human development both occur in an atmosphere of synergetic and symbiotic relations of society and government. However, experience shows that every man invested with power will abuse it and will carry on as far as it will go. A tyrannical state is characterized by strife and injustice. Injustice breeds violence, insurgencies, terrorism, state failure and total collapse of state. To prevent the occurrence of abuses within a state, the judiciary must be prepared to ensure justice is served. Historical evidence suggests that the process of state formation is riddled with conflict, violence and uncertainty over institutional structures, as groups compete to establish positions of power and

[62] One cannot afford the destruction of cars, buildings, and airplanes which are frequent targets of terrorists. Other costs are more hidden, but are just as costly as direct demolition. During the last decade, it is estimated that U.S. corporations, which have been a prime target of overseas terrorism have paid between $125 and $200 million dollars in ransom. Other hidden costs are incurred when government organizations and private companies spend thousands of dollars to upgrade and maintain facilities that are resistant to terrorist attack. Each year billions of dollars are spent to train and equip government and private personnel to deter terrorism.

legitimacy. To the reasonable man, if the key organs that should control the administration of justice fail, then, anarchy will set in. The situation further defeats the purposes for which man rejected the state of nature and established the government under the social contract.