

## Liberal Philosophy and Juristic Thought

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### ABSTRACT

The word "liberal" derives from the Latin word liber (free, not slave) and it is associated with the word "liberty" and the concept of freedom. Liberalism has been defined as "an idea committed to freedom; as a method and policy in government, as an organizing principle in society, a way of life for the individual and the community". The idea of liberalism is the idea of liberty. It aims at the liberation of man whether from an oppressive political authority or from an oppressive custom and tradition or restraint that interferes with freedom of worship or from limitations on voting rights. It emphasizes individual rights and equality of opportunity.

Keywords: Liberal Philosophy, freedom, policy and equality.

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### TRENDS OF LIBERALISM

Liberalism is a Philosophy that is intolerant of any concentration of authority that is detrimental to the values of liberty and libertarians have

arisen at different times and ages in history, and for this reason different versions and trends of liberalism had also manifested [1,2].

### POLITICAL LIBERALISM

The philosophy of liberalism can be found in all movements designed to emancipate man from the force the forces of political oppression in order to bring about a new political order based on the sovereignty of the people, Political liberalism defines individuals as the basis of law and regards society and its institutions as existing to further the ends of the individuals who must not be subservient to any absolute ruler [3,4,5]. English constitutional history has a lot of records on the triumph of political liberalism in bringing down the forces of authoritarianism and despotism. One of such event was the adoption of the Bill of Right by the British parliament in 1688 which was assented to by the king. The provisions of the Bill of Rights include:

- That the pretended power of suspending of laws or the execution of laws by regal authority without the consent of parliament is illegal.
- That levying money for or to the use of the crown by pretense of prerogative without grant of parliament for a longer a longer time or in a manner other than the same is or shall be granted is illegal.
- That raising or keeping a standing army within the kingdom in the time of peace without the sanction of the parliament is illegal.
- That it is the right of the subjects to petition the king and, all commitment and

prosecutions for such petitioning shall be illegal.

- That the elections of the members of the parliament ought to be free.
- That the freedom of speech and debates or proceedings in parliament ought not be impeached or questioned in any court or place out of parliament.
- That the excessive bail ought not to be required nor excessive fines imposed, nor cruel and unusual punishments inflicted.....

The result of this “revolution” was the drastic whittling down of monarchical power dominance in favour of popular authority. The campaign for political

liberalism suffused the writings of John Locke [6,7,8]. In his Social Contract, he conceives that free individuals could form the foundation of society. Man, Locke postulates, surrendered some of his natural rights on the condition that his fundamental natural rights which include the rights to “life, liberty and property” shall be protected by the state [9]. For Locke, these rights forms the basis of the principles of government and failure by the state to protect them warrants an overthrow of government and the setting up of a new one. Locke’s theory of social contract and other theories of right<sup>4</sup> served as a source of inspiration for the America and French revolutions. The American Declaration of Independence expressed this idea in the following words;

*We hold this truth to be self-evident that all men are Created equal; they are endowed by their creator with Certain inalienable rights that among these are life, Liberty and pursuit of happiness. That so secure these rights, government are instituted among men, deriving Their just power from the consent of the governed. That Whenever any form government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, Laying its foundation on such principles and organizing its powers in such forms, as to them shall seem most likely to affect their safety and happiness.*

In similar vein, the French Declaration of the Rights of [8] expressed as follows;

*Men are born and remain free and equal in right. Social distinction can be based only upon public utility. The aim of every political association is the Preservation of natural and imprescriptibly rights of Man. These rights are liberty, property, security and*

*Resistance to oppression.*

The aim political liberalism, therefore, has been and still is to curb on governmental activity and it has further evolved into practices like

parliamentary control over the executive, rule of law and independence of the judiciary [9].

ECONOMIC LIBERATION

Economic liberalism propagates little or no government regulation of the market, Economic liberals want free market and free trade, and seek limited government intervention in both the domestic economy and foreign trade. The early or classical economic liberalism was represented in the writings and theories of people like Adams Smith's *Wealth of Nations*, David Ricardo's *Principle of political Economy* [7]. Ricardo and his fellow classical liberal economist's believed that government and economics are mutually independent, Economic science is the theory of the exchange of goods in a freely

competitive market in which prices are fixed by the condition of the market itself, unobstructed by any forces other than the choices of the individuals involved. It was a system of economics based on *laissez-faire* [9]. Economic liberalism of today is in the form of liberalization which is about removing restrictions across national borders for free exchange of goods. There is freedom of production and external freedom of production and external freedom of exportation. It stands for free competition on both import and exports of goods [10].

CULTURAL LIBERALISM

This trend of liberalism is about right of individuals on issues of sexual freedom, freedom of conscience, religious freedom, and freedom from interference

from private life. Cultural liberalism is represented in the writing of John Stuart Mill's essay "On Liberty" .According to Mill;

*The sole end for which mankind are warranted, Individually or collectively, in interfering with the liberty Of action of any of their member of a civilized Community, against his will, is to prevent harm to others, His own good, either physical or moral, is not sufficient Warrant. He cannot rightfully be compelled to do or Forebear because it will be better for him to do so, Because it will make him happier, because, in the opinion of others to do so would be wiser or even right.....*

On *Liberty* is a book which defends liberty as very essential to ones individuality. According to Mill, every

individual in a matter that concerns him has absolute independence and rights over himself, his own body and mind,

he has sovereignty over himself. Mill, however, excluded children and young persons below the age the law might fix, and all those who are still under the care of others including people from backward states of society. Mill however, asserts that when a citizen's behavior is hurtful to others or his conduct affects prejudicially the interest of other could be a matter of concern to all. In the words of Guide de Ruggerio, it follows "as an obvious corollary to the grammar of liberalism that any attempt on the part of a constituted authority to exert artificial pressures or regulations on the individual in his inner and outer adjustments is an unjustifiable, interference, a stultification of his personality and initiative." In his principles of political economy, Mill however shifted from negative to positive liberalism. He did not only advocated a theory of special taxation on "socially created values", he advocated the state to enforce compulsory education to remove the incompetence of the citizens, limit the working hours and regulate condition of work, increase wages, levy tax on economic rent, protect public health, lunch insurance against illness, industrial accident and indigence in old age [7]. Mill's new position presupposes a paradigm shift in favour of state intervention in the liberty of the individual in the interest of the society.

#### MODERN LIBERALISM

Liberalism took a positive direction at the end of the 19<sup>th</sup> century. It is no

This research must also recognize the contribution of Jeremy Bentham, to the emergence of liberal thought. Bentham, though, a positivist law thinker, postulated that any law or policy must be judged in terms of what it does especially to specific individuals. For Bentham, value is identical with pleasure and it is only individuals that can experience it. In other words, the worth of law or policy depends on the effects on the lives of the people. Pleasure and pain, Bentham posits, are the determinant of human behavior. Pleasure and pain are determine what people ought to do, as well as what they shall do and determine also the standard of right and wrong [8]. The pleasure and pain are commensurable, a given amount of the one offsetting a like amount of the other. They can also be added and a sum of pleasure may be calculated. The liberal element in his philosophy lies in his assertion that "one man is worth just the same as another man" and that in calculating the greatest happiness each person is "to count for one and no one for more than one". Bentham in this assertion was borrowing the principle of equality from natural law. That a law or government has to be judged by its effect on human beings and particularly on assignable individual depicts sound liberal principle.

longer in the mould of laissez-faire in which Adam Smith J.S. Mill, Herbert

Spencer articulated it. Modern liberals now talk about social welfare state; a state in which every citizen shall possess liberty, property and security, and none shall be enslaved by poverty, ignorance or unemployment. So while liberalism in its classical form propagates ideas of individual liberties, Personal dignity, free expression, religious tolerance, private property, universal human rights, transparency of government, limitations on government power, popular sovereignty, equality of persons, free market economy, free trade, rule of law; the liberalism of the modern era wants the state not only to guarantee the flowering of the ideas

#### LIBERAL PHILOSOPHICAL FOUNDATION OF JURISTIC THOUGHT

Juristic thought is the reflections of jurists. It is contained in judgments, orders, pronouncements which jurists issue in the course of adjudication and dispensation of justice. The dignity of the human being and what is "reasonable" according to Finnis, accords with (rational) human nature, it postulates a judicial behavior that have regard and protects human rights and rule of just law and not just simply the rule by any law whither offensive or otherwise [10]. It postulates a judicial attitude that recognizes the tenets of modern liberalism and which jurist are expected to use in establishing a nexus between the abstract right in Chapter

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enumerated above but also tackle the five major problems of want, disease, ignorance, squalor, and idleness. In other words, a state that would provide various social services for its citizen like social security, free education, public health, supply of essential goods and service like food and transport at subsidized rates, unemployment and old age pensions. That is to say that liberalism in its modern parlance embodies the idea of social justice. This implies that in framing social policy, special relief, regards, assistance and protection should be given to all especially the weaker sections of the populace [4].

Four of the Constitution of the Federal Republic of Nigeria 1999 and that social rights embodied in Chapter Two; Fundamental Objectives and Directives Principle of State Policy without which the rights. Provided in Chapter four will not be properly consummated. It postulates a liberal philosophical foundation in which positive law and other sources of law like natural justice, equity, custom and the personal conception of justice of the jurist would when necessary be injected or utilized in the justice of the jurist would when necessary be injected or utilized in the judicial process to give real or substantial justice.

forces of political oppression in order to bring about a new political order based on the sovereignty of the people.

#### CONCLUSION

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