The Philosophical and Constitutional Critique Of the Legislative "Take a Bow and Go" Phenomenon in Legislative Screening of Political Appointees

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Abstract— Politics is inherently dynamic and self-evolving worldwide, yet Nigeria's political landscape remains stagnant, often at odds with both ideal and practical governance. The 2023 elections, long anticipated, have come and gone, but their contentious nature will leave lasting scars on the nation's democratic process. As February 25, 2023, approached, tensions escalated amid fears of a tumultuous transition at both federal and state levels. Despite constitutional guarantees ensuring the transfer of power, public scrutiny intensified over the selection and confirmation of key government officials. A crucial aspect of governance in Nigeria is the legislative confirmation of nominees for ministerial and commissioner positions. However, this process has been undermined by the widespread adoption of the "Bow and Go" practice, where nominees are granted automatic approval without substantive scrutiny. This has sparked public outrage, with critics arguing that it compromises democratic accountability, weakens the principles of representation, and undermines the doctrine of separation of powers. This paper examines the legitimacy of the "Bow and Go" practice within Nigeria's constitutional and jurisprudential framework. It questions whether such a process upholds or erodes democratic principles and whether it reflects the will of the electorate. Relying on John Locke's Social Contract and Consent Theory, the study explores how governance should be rooted in accountability, representation, and separation of powers. It further assesses whether a strict application of these principles can restore legislative integrity and protect the interests of the people. Ultimately, this analysis seeks to determine whether the Nigerian legislative confirmation process enhances or hinders governance and how reforms can prevent the perpetuation of ineffective leadership..

Keywords: Legislators; legislatures; "Bow and Go,"; separation of power and collective will.

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INTRODUCTION

The stricter the dependence of the governors on the governed, the better will the government be." (Dinwiddy cited by Hampsher-Monk 1992: 328)

The business of the state is too big and variegated to warrant its performance by one person. It is like an elephant meat that cannot be devoured or eaten by one man. It requires the assistance of many others who would be willing to help bear the cross of state, give their ideas and perform some demanding tasks to make the government work. This explains why the chief executive at the centre or at the unit levels, for example in Nigeria, at the Federal level, the President who is the chief executive, and at the States level, the Governor is mandated by the Constitution to embark on the regular ritual of nominating some persons of proven integrity and competence for screening by the Legislature to occupy certain key offices, for the performance of certain roles for the government of the day. The purpose of all this regular routine is, in the words of Jeremy Bentham as captured by Hampsher-Monk, intended to "making individuals occupying government answerable to, and therefore their interests indistinguishable from, the governed (Hampsher-Monk 1992; Berebon, 2021).

It was in 1863, at the Gettysburg Address, at a time when the American civil war was tearing the Union (it later to metamorphosed into the United States of America) apart that Abraham Lincoln, in his avid appraisal on the American Declaration and the Constitution, the very documents which midwifed present day federalism in the United States of America and indeed popular governments the world over as championed by Thomas Jefferson defined "Democracy" as the "government of the people, by the people, for the people" (Harris 52). Abraham Lincoln's definition of democracy has become the fundamental, classical and the most singularly accepted definition of democracy the world over. One of the obvious facts that informed this definition by Abraham Lincoln was the assurance he got that his government and indeed the United States' Constitution was set up in defence of the rights of the people. In addition, Abraham Lincoln was urged on by the fact that the American political system supports a large proportion of the people having and developing active interest in their nation's political affairs as it concerns their welfare and participation.

The meaning of democracy got boosted in 1942 with Appodorai's beautiful articulation of democracy as a system of government under which the people exercise governing and administrative powers, either directly or through representatives, but which are required to be elected periodically by the people. Appodorai's definition introduced and made the will of the people supreme and central in a democratic government (Appadorai 137 – 143). For him, a democratic government is one in which everyone has a right to contribute his/her opinion to

the end result of how government is run, to all government process or policy making, which covers the economic, political, equality and fundamental basic rights and fraternal feeling among the constituents of the state (Berebon, 2022; Berebon, 2023a). Appadorai goes on to state that the elements of a democratic government are free franchise, general and continuous political participation by all and free discussion. In stating this succinctly, Helvetius was said to have held that it is akin to saying, "I detest your opinions, but I will contend to the death for your right to utter them." Appadoria thus argued that in a democratic dispensation, certain indices such as free association and party formation, periodical elections, tolerance, compromise, subordination of the differences of the members or citizens to the general will and guaranteeing of adequate opportunity to everyone to develop his/her personality were invaluable for democracy. (Nyeenenwa & Nyeenenwa 2022: 2). As quoted by Nyeenenwa & Nyeenenwa, 2022, leaders in a democratic government are required to demonstrate a high level of honesty, self-reliance, responsibility.

In driving towards our discourse herein, I recall that Harris, quoted by Nyeenenwa & Nyeenenwa (2022: 30), who in their restating John Locke, contended that "Revolution might come…when the actions of elected representatives were so grossly unjust as to destroy the very trust between citizens and their government, which is the product of the social contract." This is what bothers us in this study, especially, against the backdrop of the growing distrust of the generality of Nigerians to the conduct and the modus operandi of elected representatives in the discharge of their constitutional mandates. The provision of Section 69 of the 1999 Constitution provides that the electorates have the power to recall a voted Senator, member House of Representatives of member, States Houses of Assembly if they are found wanting. The import of this provision is to the effect that the people are enjoined to actively participate in the political arena so that they would effectively contribute their quota to governance, which blends and subscribes to John Locke's ideas on separation of power and representative government.

CONSTITUTIONAL REQUIREMENTS

"Constitutionally entrenched provisions should not be lightly trampled upon" Per Mary-Odili, JSC, @ 300, Para D, in MOHAMMED v. STATE (2015) 13 NWLR [Pt 1476] 276.

The business of the State – Federal, State – is too big, complicated, complex, expanse and variegated to warrant its effective performance by any one person. It is like an elephant meat that cannot be devoured or eaten by one man. It requires the assistance and support of many others, who are under constitutional obligation to help carry the cross of state governance. This explains why the chief executive at the Federal, the President and the chief executive at

the States level embark on a yearly ritual of nomination persons and names to the legislative houses for screening and confirmation hearings before they are qualified to occupy certain requisite positions and performance of certain roles for the government. This informs on why I unreservedly argue that the phenomenon of "BOW AND GO" legislative screening of nominees is a kind of a coup d'état against the constitutional provision on separation of power and balance of power and a brusque assault on the indefectible and germane prescriptions of John Locke. This is because as understood, "Bow and Go" engenders the usurpation of the powers of the electorates and the sanctioning and bizarre acceptance of square pegs in round holes, of old, worn out, rusted, decrepit, recycled and contemptible characters based purely on political patronage by the executive, a betrayal of trust by the legislative. I condemn any arrangement by which the executive and legislature procure a safe passage for political appointees, most of whom are not qualified, or who have grave questions to answer for their dismal failures, but which offends the provisions of the 1999 Constitution.

According to John Locke, the essence of laws, be it constitutional provisions and laws in general is that they are intended to specify and allocate roles and responsibilities to the arms of government, the executive, legislature and judiciary. This aspect and property of laws he observes to be the answer to the "state of nature" ((Berebon, 2023b; Berebon, 2023c). This is why he argues that the eradication or elimination of these legal institutions in a state would be the surest and quickest means of drawing the society closer and closer to lawlessness and the state of anarchy. Writing on this in his the *Second Treatise on Government,* John Locke said, This is to think that men are so foolish that they take care to avoid what mischiefs may be done them by Pole-Cats, or Foxes; but are content, nay think it safely to be devoured by lions." (Locke 1689: 93). John Locke, I are wont to explain that he means to say by the above statement that the greater harm is that caused by the separate acts of groups of individual persons, given the reins of power, to act in consonance with laid down laws, especially, supposedly guided and working in tandem with the grundnorm, the Constitutional and legal provisions, but who deviate and resort to personal gains and self-aggrandizement, and refused to be concerned with what harm would the later deviations and self-directed beneficial acts do to the liberties of the persons who populate the State.

This understanding that we should run away from pole cats and foxes only to be devoured by lions by Locke was one that he extracted from the fact that those who populate the Legislature, who sit in legislative houses to enact and make laws that bind and protect the basic rights of the citizens of a State and which eventually embody rules and precepts that prescribe how the power of the State ought to be applied in stated circumstances should not be disturbed, although it should be distributed (Berebon, 2024). Thus, the ground rules and rules of conduct or action as embodied in the written document of the State should not be waived or wavered at the whims and caprices of the legislature, executive or judiciary except through laid down procedures. This was the erudite opinion of the Supreme Court in the case of ***MOHAMMED v. STATE (2015) 13 NWLR [Pt 1476] 276, per PETER-ODILI, JSC @ 300, Para D,*** that ***"Constitutionally entrenched provisions should not be lightly trampled upon."*** When any of these waivers is done without reference to the Constitution, it turns out

to be toxic and a mischief exacted on the people by lions, as compared with the harm that would have been done to the people by foxes and Pole-Cats.

The idea been promoted here has a no small bearing on and with the doctrine of separation of power, which is aptly captured by Kant as quoted by Riley (2009: 242), who surmised, For Kant, for example, it was sufficient to apply the doctrine of the separation of powers: 'There are thus three distinct authorities *(potestas legislatoria, executoria, iudiciaria)* by which a state (civitas) has its autonomy, that is, by which it forms and preserves itself in accordance with laws of freedom.'" This principle provides that each and every arm of government should work within the ambit of its powers alone and that one arm should not interfere, usurp or trespass into the areas of competence of the other arm of government in order to avoid a greater mischief which John Locke, as an consummate jurisprudential thinker likens to loosening wild lions on a community, in view of the irreversible social and health havoc it would create (Umotong, 2020). The essence of separation of powers and checks and balance is further conveyed to us vide the provision of Sections 4 (1) and (6), 5 (1) and (2), and 6 (1) and (2) (3) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and vests the legislative powers of the Federation in the National Assembly consisted of a Senate and a House of Representatives; the legislative powers of a State of the Federation in the House of Assembly of the State; vests the executive powers of the Federation in the President and the executive powers of a State in the Governor; while it further provides that the "Judicial powers of the Federation shall be vested in the Courts to which this section relates, being courts established for the Federation"; and for States, that the "Judicial powers of the States shall be vested in the Courts to which this section relates, being Courts established, subject as provided by this Constitution for a State." According to Omejec (2015: 11), "Separation of powers, combined with judicial protection of individual rights, forms the 'matrix of constitutionalism' . . . . Both of them are inseparable and indispensable for the functioning of a constitutional system that meets the standards of contemporary international law. A system based on the separation of powers that lacks effective mechanisms for the protection of individual rights or a judiciary that is not independent from the other branches of government would ultimately not serve the rule of law." Individual rights, on which the persons in power derive their powers therefore must be incorporated into the matrix of government for it to make any meaning under the Constitution. This is why when a legislator orders a ministerial or commissioner nominee to merely take a bow and go, it violates the basis for which they were elected to represent the people. To scrutinise and assess the suitability of a nominee, and not to endorse the said nomination from the executive, and act a mere appendage to the executive.

At this point, it must be stated that although the Constitution, and no constitution at that expressly states that there exists what I term separation of powers between the three arms of the government, but it is obvious that since Montesquieu came out with his theory of separation of powers and checks and balances, it has held sway, not only because Montesquieu said or theorized so, but because it is invariably and ultimately, a basic

principle of democracy and good governance. It is within this framework that the Constitution of the Federal Republic of Nigeria, 1999 (as amended) stipulated that the President and the State Governors would forward a list of nominees to the Senate and States Houses of Assembly for confirmation. By confirmation, what the Constitution contemplated is that the Senate would, like it is done in other climes, particularly in the United States of America, authenticate, validate, verify, attest, corroborate, proof, and give approval to by giving assurance of the validity, give evidence or testimony to the truth or factualness of the qualification, capacity and capability of the nominees so forwarded to Senate, or to the various States' Houses of Assembly. Confirmation therefore requires verification, substantiation, backing-up, establishment and prove, which is why these nominees are obliged to forward to Senate and Houses of Assembly the requisite documents that will serve to guarantee their passage. According to Senator Enyinnaya Abaribe, as captured in the online news media, *News Wire Law And Events* (26th July, 2019), he observed that, "in global parliamentary practices, confirmation hearings are conducted for nominees to assess competence and qualifications. According to him, confirmation hearings are not for endorsement but assessment." Senator Abaribe wondered why Nigerian confirmation hearing was not directed at assessment, and bereft of words, he cautioned, "I think the Senate owes Nigerians a duty to engage these nominees on topical challenges that the country faces. There is insecurity, corruption, and poverty. We need to address this. The nominees must be able to tell us how they will address the economy so that Nigerians can follow them up. . .The Senate is not helping the Nigerian people to have the good governance that we all yearn for. I think we are in a very pathetic situation."

Further, we refer to Section 147 (2) of the 1999 Constitution, which prescribes that, "Any appointment to the office of Minister of the Government of the Federation shall, if the nomination of any person to such office is confirmed by the Senate, be made by the President." I also defer to a similar provision for States nominations specified by Section 192 (2) of the 1999 Constitution which states, "Any appointment to the office of Commissioner of the Government of the State shall, if the nomination of any person to such office is confirmed by the House of Assembly of the State, be made by the Governor of that State and in making such appointment, the Governor shall conform with the provisions of Section 14 (4) of this Constitution." By the above provisions, once the President or Governor makes his nominations to Senate of the House of Assembly of a State, the bucks lies with the legislature to ascertain on behalf of the thousands and millions of electorates who voted these legislators into office to scrutinize the nominees to ensure that they are fit and proper to perform the assignment to which they are been nominated. In this business of confirmation, it is instructive that the Constitution gives a clear demarcation between where the powers of the Executive ends, "nomination" and what powers would be exercised by the Legislature, "Confirmation."

The provisions of the 1999 Constitution gives unfettered powers to the Senators and States Houses of Assembly to carry out their function with the assurance that there wouldn't

be, there ought not to be and that there shouldn't in any way be any form of interference with their hallowed functions. This is steeped in the inherent sovereignty and independence of the Legislative arm as stated by Section 4 of the 1999 Nigerian Constitution, and it also fortifies or protects them against all forms of hijack and political coercion. This is why this article and indeed Nigerians fail to understand why, instead of proceeding to justify, affirm and rationalise the capacity, capability and qualification of the nominees to satisfactorily perform the duties of a Minister or Commissioner of a State, to which he/she has been nominated, the legislature, in a dance of shame, undignifiedly and frivolously throws caution to the wind by its calling for the nominees over which they have power to confirm or disconfirm, to ingloriously "take a bow and go."

Interestingly the Senate and the houses of Assembly had by their various Standing Orders Rules churned out the various guidelines and standards by which the confirmation hearings or as it is popularly called, "screening" would be conducted by the hallowed upper chamber and the carious States Houses of Assembly. This is reinforced and made formidable by the careful use of the clause, "if the nomination of any person to such office is confirmed by the Senate (or House of Assembly of the State)" in Section 147 (2) and Section 192 (2) of the 1999 Constitution, which is a clear indication that except and unless the Legislature finds any such nominee worthy of being made a Minister or Commissioner, such person would fail to qualify to be so made. This is also a further manifestation of the clout, powers and importance of confirmation hearings by the Senate and the Houses of Assembly of States in the choice of who becomes a Minister of Commissioner.

The basis for this argument is that power, both that being brandied or bandied by the executive, legislature or the judiciary resides and belongs to the people, and nobody has the freedom to use it to the detriment of the people without their express consent or authorization (Umotong, 2021). It is our take that merely passing ministerial and commissioner nominees without careful screening during confirmation hearings violate the sovereignty vested and granted the people by the 1999 Constitution. In accordance with Section 14 (2) (a) of the 19999 Constitution, "Sovereignty belongs to the people of Nigeria from whom all government through this Constitution derives all its powers and authority" and also, Section 14 (2) (c) of the 1999 Constitution stipulates thus, "The participation by the people in their government shall be ensured in accordance with the provisions of this Constitution." The election or selection of some persons as Senators and Members, States Houses of Assembly is purely in representative capacity. The elected representative does not own himself or herself and all the powers at his/her disposal still belongs to the people because by virtue of Sections 71, 77, 112 and 117 of the 1999 Constitution, the persons elected to the National Assembly and States Houses of Assembly are "directly elected" by the people. They therefore owe their legislative powers, including power to screen and confirm Ministerial and Commissioner nominees to the people. According to Riley, "the acts enacted by it, like the laws themselves, bear the imprint of public supremacy and impose obedience"

(Riley 2009: 239, 240). It is public supremacy in the acts of the legislature that imposes obedience.

This therefore follows that Section 4 (1) of the 1999 Constitution (as amended) is an extension of the overwhelming powers of the people in its provision that "the legislative powers of the Federal Republic of Nigeria shall be vested in the National Assembly" which for the Federation shall consist of a Senate and House of Representatives, and of Section 4 (6) of the 1999 Constitution (as amended) on its own stipulates thus, "The legislative powers of a State of the Federation shall be vested in the House of Assembly of a State." The fact that Section 4 (1) and (6) of the 1999 Constitution (as amended) makes the Legislature sovereign, so that no other powers would be assumed over and above the powers vested in the National Assembly, which for the Federation consist of a Senate and House of Representatives, and that of House of Assembly, for a State in the Nigerian Federation is its been vested with the power of the whole (Riley 2009: 239, 240). This is why the noxious and aberrant practice of "BOW AND GO" adopted by the legislative houses at the Federal and State levels is grossly deficient, and for that I submit that it is an insult to the doctrine of representative government which was properly theorized by John Locke. As espoused by the American democracy, the principle of representative democracy:

> Required of its constitution only a government that truly and directly reflects the will of the people. . . if the government could only be made close and answerable to the people, then there could be no tyranny. The development of the idea of checks and balances had come about, after all, only to check and balance the government from tyrannizing over the people. If, through the new device of representation, the people could exercise a close and direct control over their government, the intervention of further checks and balances were at best unnecessary, at worst sinister." (Hampsher-Monk 1992: pp. 228, 228)

The Constitutional requirements for representative democracy also require that Senators and Members of States Houses of Assembly in carrying out their mandate of confirmation hearings for ministerial and commissioner nominees are to work within the context of representative democracy, so as not to inflict harm of injury on the life, liberty, possessions, health and welfare of the people because all powers resides and inheres in the people. According to John Locke, the right not to be harmed derives from the inalienable right of every man to life, liberty and personal possessions. (Locke 1689; Umotong & Dennis, 2018). It thus belong to every citizen of a state to personally screen, that is examine, scrutinize, question and confirm every nominee for appointment as a Minister of the Federation or Commissioner for a State Government. This right, says John Locke, was transferred to the Senator of member, States Houses of Assembly to exercise, not as a right, but as a privilege. Representative democracy is a government which derives all its powers directly and indirectly from the great body of the people and which is administered by persons holding offices at the pleasure of the generality of the people of their various constituencies. (Hampsher-Monk 1992: 229). The right of representation, by its sovereign nature, is

obviously different from the right handed over to the State to enforce the law of nature, which entails punishment of transgressors, and done in exchange by the people of the State's agreement to respect and protect the natural rights to life, liberty and property of the people. (Locke 1689: 124 – 126).

A review of Sections 14, 147, 150, 192 and 193 of the 1999 Constitution (as amended) which provides for the powers of the President and Governors to nominate the names of persons for screening and confirmation as Ministers or Commissioners, spells out the conditions that either houses would look out for. It is left for the Senate of the Federal Republic of Nigeria and the States Houses of Assembly to gather, collate and analyse information and data about each nominee, and to use same to confront the individual nominee. It is sad that because of the harmful and baleful nature of the practice adopted by our legislative houses, of 'BOW & GO", there had been instances when Ministerial and Commissioner nominees were confirmed who didn't have the requisite educational qualification, or had a dual citizenship, or persons who had one court matter or the other, and particularly bordering on dishonesty, memberships of cults, or violation of the Code of Conduct Act. The provision for confirmation of Ministerial nominees is *prima materia* with that for Commissioners nominees. One outstanding provision under the Constitutional provisions is that all such nominees for screening and confirmation process by the Federal and State Legislature is that which specifies that it "Shall be in conformity with the provisions of Section 14 (3) of the 1999 Constitution."

The extant provisions of Section 14 (3) of the 1999 Constitution are to the effect that all confirmation of a Minister or a Commissioner are based on the principles of democracy and social justice, not the whims and caprices of the Senators or Members of States Houses of Assembly. This is the hallmark of John Lockes' Social Contract, and accords with the American system of democracy (Yahaya 2006), though the ideals and tenets which describe liberal democracy as compared to John Locke's philosophical thought has more to be desired comparatively (Asuquo, et al., 2022). One such gaping holes is demonstrable in the impunity of elected representatives, who habitually usurp the rights of the people who elected them and act contrary to and in excess of the powers conferred on them, only as representatives, and not lords over the people.

Further, Yahaya (2006) and World Bank (1989) have observed as a furtherance of John Locke's thought on this that when there is a failure to differentiate between public and private sphere in governance, arbitrariness in the application of rules and laws occur, what follows is a high "magnitude of attitudinal decay, corruption and lack of accountability in the public service in Nigeria", accompanied with a pervasive "lack of accountability, unethical behaviours and corrupt practices." This is showcased in excessively narrow base for non-transparency and decision making and selfish capture of public services and perpetrated by representatives follow suit. (Yahaya 2006). Rawls, (1993) and Kolodny, (2014, a, b) both contend that why should the legitimate procedures of a democratic decision making process be made equal with political authority. Such arbitrariness beyond their mandate by elected

representatives their legitimacy on the line as every such roles for which the people would dither ought to first be brought, referred to or the people deferred to before they are carried out. Even the powers donated to the States to enforce moral duties, Locke calls "Executive Power of the Law of nature", which are only 2nd order rights, donated to an "impartial" representative, to unify everyone's executive power of the law of nature and to exercise it collectively. The Senators and Members of State Houses of Assembly are representatives, elected by the majority, as delegates to promote and respect the moral equality of everyone, but not to wield the executive power of the Law of nature, but to follow and respect the Constitutional valves set in motion and put in place to ensure the respect for the consent of the people at all times, especially, at times when the will of the representative seems to waver and dither.

The reason why all representatives of the citizenry in the legislative houses, Federal and State, is that government according John Lockes' Social Contract theory is set up to protect the basic inalienable rights of the people to life, liberty and property, and to protect the common good of the people. Here, Section 14 (3) of the 1999 Constitution stipulates that sovereignty belongs to the people, that all organs and arms of government, including all its elected representatives only derive their powers from the people themselves, and are bound to only act based on their consent. The security and welfare of the people is here declared central to all the purposes of government, and that under this, it is the people's ultimate right to participate in their government. For this, Section 14 introduces Federal Character, the inclusion of all segments and peoples into the government. We have sadly seen governments in which over 90% of nominations came from one section of the country, and they were all confirmed by adopting the obnoxious concept of, "BOW AND GO." This also prompts the Lockean recognition of an all-inclusive, people oriented government, which ensures that all such nominations recognize the diversity of its people, which would promote a sense of belongingness and loyalty in the people, that actively disallows the predominance of persons from a few states, ethnic or sectional groupings in the Federal or State executive cabinet.

The duty of the Senate and Houses of Assembly of States therefore is to screen, by scrutinizing, questioning and quizzing any nominees submitted for confirmation without any exception, to show how such a person fulfills the statutory provisions in the 1999 Constitution, entirely devoid of sentiments, emotional sways and such non-lawful standards not enunciated in the 1999 Constitution, in promotion of the common good. It is the rights of every Nigerian who elected a Senator, or Member state House of Assembly to see that every nominee made by the President or State Governor is questioned by the legislature and so screened, first based on their having satisfied the constitutional provisions, then based on the findings of the EFCC, DSS, judgments of Courts of law, both local and international, which together works towards guaranteeing that the individual nominee's loyalty to the people and the nation is assured, that they would work for the common good and not for their selfish interests and that they would act in defence of the security and welfare of the people, and that the people's liberty, life and property would not be harmed by the Minister's or

Commissioners appointment. This has been largely lacking in cases where the said nominee is simply directed to take a "BOW AND GO", as this order defeats the essence and purpose of Section 14 (3) of the 1999 Constitution.

It is our position that this devious and treacherous reliance on "BOW AND GO" screening exercises lies at the base of the imminent incompetences, lack lustre performances, dismal performances and mediocre assemblage of confirmations, that has plagued our democracy from its inception.

PHILOSOPHICAL BASIS FOR REPRESENTATIVE DEMOCRACY

"For without this consent, the law could not have that which is absolutely necessary to its being a law, the consent of the security over whom nobody can have a power to make laws, but by their consent. (Locke 2012: Sect. 134).

This presents us with the obvious facts of how one man is elected to represent a constituency. His actions are deemed to flow from or derive from the action, desire and or intent of the people (Umotong, 2023). John Locke's treatises and philosophy espouses representative government and which he began with how individuals in a state of nature enter into a contract with the "State", whereby, individuals on their own willingly and by their own will, surrender to the State all their rights to punish transgressors of the natural law and to obey the government, while the government promises to respect and protect the rights of the people. John Locke (2012: Sect. 21) observes, To avoid this state of war . . . is one great reason of man's putting themselves into society and quitting the state of nature . . . for where there is an authority, a power on earth, from which relief can be had by appeal, there the state of nature is excluded." Locke continues to argue that no man, who by nature is free, equal, independent, etc., cannot be made subject to the political power of another without his own consent. This is at the bottom of the malady that plagues the resort by our Federal and State legislature to the "BOW AND GO" phenomenon in confirming nominees for executive appointments as Ministers and Commissioners.

The resultant community, say Nigeria or Lagos State, is a product of the agreement between persons to join and unite into a community for them to live peaceable, safe and comfortable lives amongst themselves. (Locke 2012: Sect 95). In this community, each member, John Locke points out, only surrenders or gives up only such quantum of power that is "necessary to the ends for which they unite into society." (Locke 2012: Sect 99). These free individuals, are only obliged to surrender the amount of powers necessary for the ends of society, and this definitely does not include delegating their representatives to overlook their common good, which any Minister or Commissioner, if well screened would deliver to the citizens than when just passed under the guise of "BOW AND GO." No citizen submitted

the power to permit someone who is not qualified to be passed and allowed to be confirmed as a Minister or Commissioner, even if such a person had previously held the same office, been a one-time Senator, or President of Senate. The times had changed, and the changes ought to reflect in the screening also for the betterment of the people. In the *News Wire Law And Events Newspaper* Editorials, (July 26th 2019), this newspaper sought to buttress the import of the people's consent when it stated that without embarking upon a thorough screening exercise as stipulated by the Nigerian Constitution, that "The citizens of the country should now be more afraid that when legislative scrutiny appears to be lax, what will suffer is the principle of checks and balances which would have improved the performance of government ultimately translating to the wellbeing of the people. The funny one is that your brother used to be a member of the National Assembly and you come from the area where the Senate President is, and because of that you 'take a bow and go!' What does that add up to the Nigerian State? It is a weird scenario we find ourselves."

The use of the "Bow and Go" screening has assumed dangerous dimensions if it is now been used obliquely to shield nominees that have questionable credentials. According to **Jannamike (**August 5, 2023), as was reported during the screening of Bello Mohammed Goronyo, a lawyer from Sokoto State, which has shed light on the perplexing phenomenon of individuals with questionable academic backgrounds ascending to prominent positions, but who are allowed to "take a bow and go." In that report by Jannamike (5th August, 2023), the said Goronyo found himself in the hot seat as his academic qualifications were put under the microscope, who though he claims to have obtained a law degree from Usmanu Danfodiyo University in Sokoto, he was called to the Nigerian Bar in 2001, didn't present his school certificate but despite the uncertainty about his academic record, "Nevertheless, he was asked to 'take a bow and go.'" Another case was that of the discrepancies in the CV of Professor Joseph Utsev, claiming he graduated as the top student from the University of Agriculture in Makurdi, specializing in Civil Engineering, also claimed to have obtained a Bachelor of Science (B.Sc.) in Water Engineering at the same university, graduating in 2009, but who was unable to clear the doubts that surround his alleged birth year and the dates of his primary education remained unresolved, but who was similarly asked to 'take a bow and go.' Still, more disgusting is the fact that our Senate confirmation hearings have deviated extensively from what is obtained in in global parliamentary practices, where confirmation hearings are conducted to assess competence and qualifications of the nominees. The Nigerian Senate has discarded its constitutional duty owed to Nigerians, which is the duty to engage these nominees presented to the Senate on topical challenges that the country faces, to the open glare of all and sundry. Their excellent performances, how they are able to tell Nigerians how they will address the myriad of the economic, insecurity, corruption, poverty, and sundry challenges so that Nigerians can follow them up, and not the whims and caprices of any individual is what would guarantee their passage and confirmation as ministerial nominees. It is so sad that during the 2023 Senate confirmation screening, it was obvious that most of the Ministerial nominees such as Ms. Hannatu Musawa, from Katsina State, and Senator Sani Danladi, a ministerial nominee from Taraba State, who had been previously

barred by the Supreme Court in 2019 and gazetted by the Taraba State Government barring him from contesting or holding a political office for 10 years due to forgery and perjury were given similar clearance by being asked to "Take a Bow and Go."

John Locke was not mistaken when in Chapter XI of his *Second Treatise of Government,* he refers to the Legislature as the first and fundamental natural law. A great instrument and means, and the first fundamental positive law of all commonwealths. The provisions of the 1999 Constitution also hold out the Legislature as the prime and primary source of all power. This is attested to by the fact that Section 4, which provides for the power of the "Legislature" comes before Section 5 which provides for the power of the "Executive" and Section 6 that specifies the power of the "Judiciary." This is so because, it is the legislature that enacts laws that regulate all other sections and affairs of a state. This directly explains why Locke argues that certain acts and responsibilities of the Senate and House of Assembly of States, Legislature, first of which is the screening and confirmation of Ministers and Commissioner nominees could only be performed after having been granted express consent by the people, for whose common good it would be directed. He adds that, "For without this consent, the law could not have that which is absolutely necessary to its being a law, the consent of the security over whom nobody can have a power to make laws, but by their consent. (Locke 2012: Sect. 134). Locke is firm on the fact that all human laws, of whatsoever kind are available only by consent.

I also observe that for Locke, the powers enjoyed by the Senate and Members of States Houses of Assembly are only as given by the people to the people, but "joint power of every member of the society given up to the legislator" (Locke 2012: Sect. 134). This is why these powers are limited to the public good, preservation of the society and for the welfare of the people. Any and all confirmation hearing to approve any nomination of the President or Governor as a Minister or Commissioner is presumed to be one done by all the people themselves when done according to laid down rules and directives. The approved procedure involves probing a nominees documents and credentials, questioning and screening a nominee's including hearing the nominee answer questions that border on his/her worth, ability, capability and qualification as the constitution so designs it. Any other process that seeks to sidestep what is stipulated, permits a nominee to have a field day on the hallowed chamber of either house and is injurious to democratic principles. This does not permit of any special consideration or treatment to any particular nominee because all the nominees were presented to the Senate or House of Assembly as equals and it would amount to discrimination to accord others a different treatment for whatsoever reasons that would be adduced. Assuming there is an argument that any particular nominee was a former President or Speaker of House of Representatives, Governor, etc., is it not the case that what one person scored in his own area of endeavour would have been made up by the other person one that sets him or her above the other persons. That is why in any of these cases, the Senate of members of State house of Assembly have to revert to their various constituencies to obtain consent and approval of the electorates, which okays the passage of the said person and

confirmation through the "BOW AND GO" schema, otherwise, all and any such confirmation is not only faulty, but surely a no-law.

It is also moral, reasonable and a philosophical tenet to argue that for someone who is about to be shouldered with the interest and fate of the entire country, in case of a Minister; or of a State in case of Commissioners ought to be examined, questioned as regards the scope, nature and justification for his/her confirmation by the Senate of House of Assembly of a State. That person needs to defend his/her experiences which qualify him/her, examine and evaluate the nominees views on national and tribal issues and the persons philosophy to life, issues of law, rule of law and the constitution, and with reference to the office she/he is about to occupy. The screening of ministerial and commissioner nominees have to be moulded around and within the confines of the powers granted the Senators or Member of houses of Assembly and no more. Aristotle was also concerned and interested in how power is exercised by elected representatives which is why Aristotle in his *NICOMACHEAN ETHICS* opined that "He who claims more than he has with no ulterior object is a contemptible sort of fellow otherwise he would not have delighted in falsehood), but seems futile rather than bad . . . but he who does it for money , or the things that lead to money, is an uglier character (It is not the capacity that makes the boaster, but the purpose) (Aristotle, trans. David Ross, 1980: 103).

The above views of Aristotle calls to mind the question, "Why do our legislators often choose to jettison the provisions of the 1999 Constitution by making some ministerial and Commissioner nominees to take a simple "BOW AND GO' to get confirmed? Is this usually done for selfish interests, for pecuniary gains, award of contracts, favours or for such other detestable benefits? Aristotle concludes that members of Houses of Assembly of States and Senators of the Federal Republic make themselves futile, contemptible bad, and these persons put on an "uglier character" because the purpose of their granting some nominees to by-passing protocol and side step the law to get them confirmed was tainted, not based on fairness of purpose directed at the common good. The instances where the national assembly has been fingered in acts of corruption are many and perchance, any such instances when the grant of a "BOW AND GO" is used, would it not have arisen from an outright case of being bought over, of maybe it had been done for money. For emphasis, I refer again to the opening passage in Aristotle's NICHOMACHEAN ETHICS, wherein he declared, Every art and every inquiry, and similarly, every action and every pursuit is thought to aim at some good, and for this reason the good has rightly been declared to be that which all human beings aim. (Aristotle 1980: 1). Drawing sundry conclusions from his extensive studies, Aristotle concludes for us here, "This is why we do not allow a man to rule, but rational principles, because a man behaves thus in his own interests and becomes a tyrant . . . since he is assumed to have no more than his share, if he is just (for he does not assign to himself more of what is good in itself unless such a share is proportional to his merits – so that it is

for others that he labours, and it is for this reason that men, as we stated previously, say that justice is another's good." (Aristotle 1980: 123).

Taken a step further, I do appreciate the relevance of Locke's consent theory as it reappears in Section 69 of the 1999 Constitution, where it prescribes that the electorates are empowered to recall members of the National and State Assemblies, if and when they perform below expectation, or are found wanting or fail in their constitutional roles. According to Clifford Ndujike (Vanguard, July 2016), Section 69 of the 1999 Constitution provides ten (10) clear but tortuous steps on how a Senator can be recalled from the Senate. The said recall provision in the Nigerian Constitution underscores the fact that the powers so entrusted to elected representatives, be they Senators, Members of House of Representatives or States House of Assembly are domiciled with the people and does not inhere in the elected representatives. This is replicated in John Locke's philosophy where he argues that "Men being, as has been said, by nature, all free, equal and independent, no one can be put out of his estate, and subjected to the political power of another without his consent." (Locke 1980: Sect. 95). Locke maintains that human freedom, being itself paramount, does not permit that another person would or should exercise political powers over another without justification. It did not permit that somebody else would give his own consent on behalf of another, because consent is bound to be given individually, except of course, if and only if that person did expressly delegated his power to give consent to another person. (Frank Dietrich 2014: 67). It is obvious that the "Take a bow and Go" phenomenon is being orchestrated to cover up the gaping lacunas in the nominees' ability, to supplant the Constitutional provision on separation of power, and checks and balance. It is our submission that this practice is a most misconstrued usurpage of the powers and privileges that belong to the people.

Philosophical interpretation and understanding of political power and democratic arrangements lean towards that in which the people have a bold say in who governs or administers them, either through election or through being screened by the Legislature. This informed why Umoru (Vanguard: 16th July, 2011) opined that, "Controversy again trailed the Senate generous use of its "bow and go" privilege accorded ministerial nominees presented to the Upper Legislative House by President Muhammadu Buhari for screening and confirmation as members of his incoming cabinet." It was a subtle reportage of an outburst of anger and exasperation as "Nigerians who watched the two-day screening of 24 of the 43 ministerial nominees accused the Senate of denying them the opportunity to assess the capacity and competence of the "appointees" for cabinet positions." In one such case of by-passing the constitutional provisions of confirmation hearings by the Senate, it was reported that the Senate President asked Comrade Abba Moro to "take a bow and go" not because he was a former Senator or former member of the House of Representatives, but merely because he anchored the campaigns of Senate President David Mark as the Director General of his Campaign Organisation he was allowed to pass Senate screening without being questioned about his ability and capability to serve the interest of Nigerians. The unanswered question is, does having campaigned for the Senate President become a good credential to have made a potential servant to Nigerians without his having been heard and assessed by the Senate?

Philosophically, the idea of "Take a Bow and Go" is a smudge on the tenets of separation of power, representation and legal and political constitutionalism. It is obvious that, "connecting legal and political constitutionalism ... is a model of separated powers that acknowledges the significance of both elements and identifies their proper place in a legitimate government structure. (Omejec 2015: 1, 2). This thus reinforces John Locke's and M.J.C. Vile's ideas on constitutionalism and the separation of powers, aptly captured by Waldron, who agrees that these twin doctrines "embod(y) what might be called a "negative" approach to the checking of the power of the agencies of government. The mere existence of several autonomous decision-taking bodies with specific functions is considered to be a sufficient brake upon the concentration of power. . . . They do not actively exercise checks upon each other, for to do so would be to 'interfere' in the functions of another branch." (Waldron 2013: 444). According to this argument, the biggest problem for all constitutions is how to "design governance institutions that would afford 'practical security' against the excessive concentrations of political power" in the hands of any person, group or class. This was because, vesting excessive power in the hands of any person, group or class is directly proportional to "the amount of damage to liberty or other interests that any fallible or corrupt official might be able to inflict" (Waldron 2013: 440). Hence, granting the legislators the power to unlawfully guarantee Ministerial and Governorship nominees safe passage through the confirmation processes does so much damage and harm to the benefits accruable to the electorates, whom they represent.

CONFIRMATION HEARINGS: THE ESSENCE OF SERVICE DELIVERY - PROBITY, ACCOUNTABILITY AND RESPONSIBILITY.

***News Wire Law And Events Newspaper* Editorials, (July 26th 2019) "The citizens of the country should now be more afraid that when legislative scrutiny appears to be lax, what will suffer is the principle of checks and balances which would have improved the performance of government ultimately translating to the wellbeing of the people."** ***News Wire Law And Events Newspaper* Editorials, (July 26th 2019).**

The whole essence of confirmation hearings was to select among the list of those forwarded to Senate and States Houses of Assembly, those persons who are qualified to be confirmed and made Ministers and Commissioners. This ought to apply even if the said person had been a former Minister, Senator, Governor, Member House of Representatives, Commissioner, Member or Speaker of a State House of Assembly or an established technocrat and industrialist. This is because, efficiency may fall or rise, the area of cover for the Minister to be or Commissioner would become the entire country, and the tasks at hand dictate what questions would be asked the nominees. But what I see is different. Hence, the ultimate victim had always been the people. It has become an avenue for partisanship, morbid patronage and corrupt enrichment by the legislators. According to Aare Afe

Babalola, (7th July, 2016) "The Senate is not expected to rubber stamp the nominations received from the President. In coming to a decision, it therefore must undertake an appraisal of the qualifications and suitability of the nominees which may, as decided by the senate take the form of oral examination. . . . As the upper chamber of the legislative arm of government the Senate is expect to be above board in the discharge of its functions. A situation in which the Senate appears to have thrown aside its own rules or contributed in any way to the violation of the law is not one that augurs well for the country."

The major fall out of the "take a bow and go" phenomenon of screening ministerial nominees is that without first seeking the consent of the people, the principle of checks and balances has been subjected to crass conscription to the dustbin of executive recklessness and bankruptcy. Take for instance, the protest of the legal icon, Aare Afe Babalola, who clearly observed and questioned the propriety of the screening nominees who pending allegations made against them and which had been referred to law enforcement agencies. According to him, the said screenings were a subtle way to erode the powers of statutory law enforcement agencies, that if other arms of government to perform their duty. For those who had subsisting petitions or uncompleted investigations pending against them, he wondered why the Senate refused to invite complainants or the investigating agencies to find out the level of their investigations against them. The legal icon surmised that by screening those with questions to answer, the Senate not only defeated and overruled the principle of separation of power, but rubbished the principle of representative democracy, jettisoned the principle of fair hearing in Section 36 of the Nigerian Constitution, and entered judicial verdicts, since "By clearing nominees who have criminal allegation pending before other statutory bodies, the Senate could be interpreted as having given a verdict on the pending allegations thereby compromising ongoing or future investigations before those panels." (Babalola, 7th July, 2016).

It is obvious that the said usurpation of the powers of the judiciary, executive and the representative's consent encased within the powers donated to the Senators and members of State Houses of Assembly to screen the Ministerial and Commissioner nominees on their behalf has led to a most debilitating outing by some of the Minister who have been given express clearance without the people been given the opportunity to observe how they would fare, perform and their credibility and credentials to hold and perform in such offices if given such opportunity. Alhaji Adamu Adamu, was one such nominees to Senate by President Buhari and falls among those Aare Afe Babalola said was cleared by a fiat of Senate without recourse to the principle of separation of powers, the people and without following the constitutional provisions and laid down rules set up by the Senate. Alhaji Adamu Adamu was assigned the Ministry of education, which he superintended over for the eight years of President Buhari, even when it was obvious as he later confessed, "I did not know anything about the education sector when I was appointed Minister" in 2015 (Tolu-Kolawole, Punch: 25th May, 2023).

This is something the Senate would have unraveled if they have done their jobs properly, especially before he was asked to take a bow in 2019 for a second tenure as Minister, but unfortunately and as expected when things are not done properly, he had a very poor and entirely dismal outing. It was to the shame of the Senate that Alhaji Adamu Adamu had to further admit, "I have failed" because he has "he has been unable to put an end to the out-of-school children challenge in the nation." (Agbola, The Whistler, 3rd November, 2022). But this was after serving as the longest serving Minister of the Federal Republic of Nigeria, from 1999 – 2022, and particularly serving under President Buhari for eight (8) years as Nigeria's Minister of Education, during which UNESCO released its data on out-of-school-children in Nigeria, with Bauchi State having a total of 1,239,759 out-of-school children and Katsina State, the home state of President Buhari, having 781,500 out-of-school children. It is also so sad that within the same period, Nigerian Universities were closed and our children out of their campuses for nine (9) months in 2022 and eight months in 2023. (Agbola, The Whistler: November 3rd, 2022).

The other terrible and untoward things this ignoble "Take A Bow And Go" Ministerial screenings kept doing to Nigeria was to populate the Nigerian Federal Executive Councils with persons of doubtful qualification. But for the fantastic investigation undertaken by Premium Times, Femi Adeosun, Nigeria's Finance Minister was confirmed by Senate while having forged her NYSC Certificate. This the Senate would have found out, or did indeed find out, but why did they keep silent? According to Ogundipe (Premium Times, September 15th, 2018), "the Federal Lawmakers also deployed the former minister's forged document as a blackmail tool to get her into illegally disbursing public funds to them." It is interesting also to note that in 2003, Mallam Nasir El Rufai complained that to be cleared as a Minister under President Obasanjo, that the Senate led by Senators Ibrahim Nasiru Mantu and Joanthan Zwingina demanded for a 54 Million Naira bribe from him to be cleared. (Jide Ajani, Vanguard, 17th October, 2003). Although they were said to be cleared by the Senate Ethics Committee, but the fact remains that something is really wrong with why persons entrusted with the duty to screen and approve only persons with proven integrity end up passing persons with obviously unscrupulous and corrupt records. However, it was to the credit of Premium Times that this was finally bursted and in September, 2018, she resigned, with the statement, "I have, today, become privy to the findings of the investigation into the allegation made in an online medium that the Certificate of Exemption from National Youth Service Corp (NYSC) that I had presented was not genuine. This has come as a shock to me and I believe that in line with this administration's focus on integrity, I must do the honourable thing and resign." Along this same line of thought, it should be recalled that during the 2023 Ministerial screening, according to reports from Jannamike **(**August 5, 2023), Bello Mohammed Goronyo , Professor Joseph Utsev, Ms. Hannatu Musawa and Senator Sani Danladi all had serious legal and constitutional matters that should have barred them from being cleared by the Senate, but whom Jannamike (August 5, 2023) says disappointingly, "Nevertheless, he was asked to 'take a bow and go."

It was also gleaned from the shabby confirmation hearing of member of the board of the NDDC that such screenings and concessions of bow and go are made based on a bargain of what they will get. Otherwise, what explains why even if the Senate knows that, "This is not screening. If na screening, nominees dey piss for floor," so why is it that "Nigerian lawmakers had the opportunity to grill these nominees and ask them what they would do differently from their predecessors and how they would end the corrupt practices at the agency. However, the Senators gave ridiculous reasons not to do so and instead asked the 14 nominees who appeared before them to 'bow and go.' Iroanusi, QueenEsther (November 3, 2019)? The answer lies in the pecuniary benefits they each stand to draw from the NDDC, and consequently, the Ministers that they screen. This was captured in the words of Godswill Akpabio, who was reported to have in, "Lamenting the level of corruption in the agency, established in 2000 to help develop the oil-producing Niger Delta, the current Niger Delta Minister, Godswill Akpabio said the NDDC was treated like an 'ATM' where officials just went to take public funds for themselves." The unanswered question remains, why would these Senators not continue to treat the NDDC as an "ATM?" when the see themselves wielding ATM cards which they have as Senators, to afford the nominees a smooth passage, or make them sweat and go away disgraced.

CONCLUSION

"Confirmation hearings are not for endorsement but assessment." Senator Enyinnaya Abaribe.

I have succinctly argued that the "Take a Bow and Go" phenomenon violates the Constitutional provision for separation of power, checks and balance and representative democracy as provided by Sections 4 (1) and (6), 5 (1) and (2), and 6 (1) and (2) (3) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). For any call to take a bow to be validated, then each of the Senators ought to first seek and obtain the express consent of the electorates from their respective constituencies, the absence of which makes it a charade, a mockery of democracy.

I have also demonstrated by our research that the very essence of Section 147 (2) of the 1999 Constitutional provision is that it mandates that the Senate of the Federal Republic of Nigeria, and that States Houses of Assembly would screen Ministerial nominees and Commissioner nominees respectively is to ensure that the government delivers services and the dividends of democracy based on probity, accountability and responsibility based on strict compliance with the principles of separation of powers and representative democracy. This is because, according to Senator Abaribe, "I think the Senate owes Nigerians a duty to engage these nominees on topical challenges that the country faces. There is insecurity, corruption, and poverty. There is an overwhelming need to address this. The nominees must be able to tell us how they will address the economy so that Nigerians can follow

them up. . .The Senate is not helping the Nigerian people to have the good governance that we all yearn for. I think we are in a very pathetic situation." *News Wire Law And Events Newspaper* Editorials, (July 26th 2019).

The fact underlying all such unconventional and unconstitutional confirmation hearing which enables the Senate and Houses of Assembly to merely assist nominees to evade the stipulations of the law by their unconventional "bow and go' screening of nominees. Accordingly, it is obvious that Nigerians, as the ordinary citizens of this country now have more reasons to be scared that the system isn't protecting them anymore, because the legislative scrutiny of nominees have become increasingly lax. The prime target is the ambushment of the "principle of checks and balances which would have improved the performance of government ultimately translating to the wellbeing of the people." *News Wire Law And Events Newspaper* Editorials, (July 26th 2019). It calls for the proper, constitutional and lawful confirmation to be carried out no minding whose name is submitted for screening. It would serve the interest of justice for the Senate and Houses of Assembly to screen every nominee to assess their competence and qualifications rather than to acts and place themselves as a rubber stamp to the nominations received from the President. The legislature should make it a duty to from now only come to a decision on any nominee after a thorough appraisal of the qualifications and suitability of the nominees for the posts for which they have been nominated. (Babalola, July 7, 2016). This is one sure way Nigeria can copy what applies in the United States Senate, where confirmation hearings are made pursuant to the provisions of Article II, section 2, clause 2 of the US Constitution. According to Senator Abaribe, "confirmation hearings are not for endorsement but assessment."

In this direction, one basic recommendation which I put forwards is to request that the executive at the Federal and State levels should endeavour to assign portfolios and offices to every person who is so nominated for ministerial and commissioner positions to make the screening process easy and purposive.

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