

The Limits of the Lockean Doctrine of Judicial Restraint and Democracy in Nigeria: Evidence from the Supreme Court of Nigeria

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Abstract: *This paper interrogates the limits of the Lockean doctrine of judicial restraint within Nigeria's contemporary constitutional democracy and governance, drawing evidence from Nigeria's Supreme Court jurisprudence. It seeks to analyse the Supreme Court's decisions to assess the extent to which judicial practice in Nigeria's democracy aligns with or deviates from the Lockean doctrine of judicial restraint. The paper is anchored in Lockean Fiduciary Theory and Hirschl's Juristocracy Theory, using a qualitative doctrinal methodology and secondary literature. Findings reveal that the Supreme Court oscillates between judicial restraint and judicial activism. The paper argues that the mixed jurisprudential records raise serious concerns for democratic accountability and expose the structural and contextual limits of Lockean judicial restraint in Nigeria's democratic landscape. It concludes that the sustainability of Lockean judicial restraint in the interest of constitutionalism and democracy in Nigeria requires, among others, depoliticization of the Supreme Court and radical judicial reforms.*

Keywords: Lockean judicial restraint, judicial activism, fiduciary theory, Juristocracy, constitutional democracy, Supreme Court jurisprudence

INTRODUCTION

Judicial restraint requires the judiciary or courts to avoid unnecessary interference and intervention in decisions made by elected political institutions. It is pivotal to liberal, constitutional, and political thought, especially in the context of the Lockean tradition. It conceives governmental power as delegated authority, which is held in trust for the people. Under this arrangement, the judiciary, and in particular courts, are expected to demonstrate respect for the principle of separation of powers, exercise interpretive modesty, and defer to democratic institutions such as the legislature and the executive, except where there are obvious and incontrovertible constitutional breaches of the laws. However, Nigeria's constitutional and democratic trajectory

reflects a seemingly complex and increasingly paradoxical picture. Since the inception of the Fourth Republic in 1999, the Supreme Court of Nigeria has assumed the place and role of a central actor in political governance and adjudication of disputes, particularly in matters of mega-politics that transcend mere legal interpretation of the constitution and legislation. Through deliberate and expansive constitutional interpretations, firm and assertive remedies, and issuance of sweeping or far-reaching consequential orders, the Court has often shaped political and policy outcomes in such a manner that tends to alter or constrain the Lockean doctrine of judicial restraint vis-à-vis concrete realities in Nigeria's democracy. Available empirical evidence from the Supreme Court's decisions suggest that scholarship on Nigeria's judiciary has been polarised and fluctuates between judicial restraint and judicial activism or assertive judicial interventions. To this end, the fundamental research questions that come to the fore in this paper are: To what extent has the Supreme Court complied with the Lockean doctrine of judicial restraint in Nigeria's constitutional and democratic governance and practice in the Fourth Republic? What are the limits of the application of the Lockean doctrine of judicial restraint by the Supreme Court in Nigeria's democracy? Consequently, this paper seeks to address the above questions by interrogating the limits of the Lockean doctrine of judicial restraint as applied by the Supreme Court of Nigeria.

Statement of the problem

In the determination of political, constitutional and other disputes and issues, the Supreme Court of Nigeria has always employed a restrictive or expansive approach (Solomon & Essien, 2019; Imoni-Ogbe, 2025). However, evidence-based and doctrinal scholarship on the judiciary in Nigeria seems to propose that the Supreme Court has progressively engaged in assertive constitutional interpretation and decision-making that goes beyond narrow or limited adjudication, generating concerns regarding erosion of separation of powers, manifest democratic deficit, and public policy substitution, among others (Agwu & Ezewudo, 2025; Sulayman, 2025). Existing studies of judicial behaviour in Nigeria indicate a pattern of judicial activism whereby courts intervene in legislative and executive domains, potentially upsetting the constitutional balance of authority and undermining democratic accountability (Agwu & Ezewudo, 2025). In the light of this, the Supreme Court's jurisprudence may depart from the principles of the Lockean doctrine of judicial restraint, especially with respect to four operationalised indicators. The four indicators include deference to political institutions, interpretive modesty, remedial minimalism, and institutional self-limitation. When the Supreme Court's decisions depart from these indicators, they are tantamount to judicial activism, run contrary to the Lockean doctrine of judicial restraint, and have far-reaching consequences for constitutional and democratic governance in Nigeria. This gap inevitably creates a need to critically examine the limits of the Lockean doctrine of judicial restraint in Nigeria's developing constitutional democracy.

Aim and Objectives

The principal aim of this paper is to examine the limits of the Lockean doctrine of judicial restraint and democracy in Nigeria, relying on evidence from the Supreme Court of Nigeria. The specific objectives of the paper include to:

- a) Examine the Lockean doctrine of judicial restraint vis-à-vis selected, recent and landmark decisions of the Supreme Court during the Fourth Republic; and
 - b) Identify and analyse how the Nigerian Supreme Court jurisprudence has strained or reinforced the Lockean doctrine of judicial restraint, its limits, and implications for constitutionalism, rule of law, and democracy in Nigeria.
- Methodological, Theoretical Foundations and Perspectives

METHODOLOGY

The paper adopts a qualitative research design and relies exclusively on secondary literature and data, namely, primary legal resources such as the 1999 Constitution of the Federal Republic of Nigeria (as amended); recent, selected and landmark decisions or judgments of the Supreme Court involving constitutional interpretation, electoral disputes, separation of powers, and federalism. Others include human rights, nominations of candidates for elections, and consequential and supervisory orders. Similar secondary sources of data include peer-reviewed journal articles, books and encyclopaedias, law reports, and commentaries, and online sources. Purposive sampling technique is used to select the Supreme Court's decisions, using criteria such as high-stakes constitutional or political questions, disputes, or issues (mega-politics), which directly affect governance outcomes, political institutions, including political parties, democratic processes and procedures, political leadership, and public policy. The decisions illustrate either judicial restraint or judicial activism or expansionism. In terms of methods of analysis, the paper employs qualitative content analysis and thematic doctrinal analysis of judicial decisions.

Theoretical Foundations and Framework

The paper is anchored in a dual or hybrid theoretical framework and foundation that effectively combines the Lockean Fiduciary Theory with Ran Hirschl's Juristocracy Theory (Hirschl, 2004).

The Lockean Fiduciary Theory

The Lockean Fiduciary Theory of judicial power is also known as the "delegated authority theory". It is derived from John Locke's Second Treatise of Government, which conceives political power as a trust (fiduciary) from the people to government institutions, including the judiciary. The fiduciary theory is normative, concerned with how courts ought to behave, and prescriptive, envisioning judicial authority as delegated trust subject to constitutionalism, democratic accountability, and institutional respect.

The core assumptions of the Lockean Fiduciary Theory include delegated authority, indicating that political power is entrusted to limited government; all institutions of government are constitutionally limited and none has absolute authority; existence of separation of powers to prevent abuse of fiduciary power and to ensure institutional accountability; courts should avoid policy substitution; and judicial power is interpretive and not constitutive. That is, courts should only interpret laws, refrain from creating political mandates, and defer where constitutional meaning is indeterminate or ambiguous.

Essentially, the Lockean doctrine of judicial restraint conceptualises the judiciary as a fiduciary agent or trustee, and courts as agents or fiduciaries of the people charged with the responsibility of interpreting and applying the law rather than creating new laws and public policies or governing through the laws. The legislative and executive institutions should be given autonomy to exercise their powers and perform their functions without undue interference by the judiciary. Thus, the Lockean Fiduciary Theory provides the normative benchmark or standard against which the conduct or behaviour of the Supreme Court of Nigeria is evaluated in this study (Fox-Decent, 2011; Locke, 1988).

Juristocracy Theory

The juristocracy theory is mainly linked to Ran Hirschl, an Israeli-Canadian professor of law and political science. Juristocracy is distilled from law and politics—*juris* (“law”) and *kratos* (“power to rule”)—meaning rule or governance by judges or courts through assertive decision-making and adjudication, especially in mega-political matters (Hirschl, 2004; 2008). In such mega-political matters, judicial power becomes not merely interpretive but constitutive, shaping governance structures, processes, intergovernmental relations, and political and policy outcomes. Judicialisation of politics, and by extension political disputes, is a major driver and enabler of juristocracy (Ferejohn, 2002; Suberu, 2015). In terms of relevance to this paper, the juristocracy theory provides an explanatory prism or lens for understanding and interrogating whether the Supreme Court adopts expansive interpretive approaches even where such approaches strain the Lockean ideals of judicial restraint, and why such restraint is difficult to sustain in practice in Nigeria's constitutional democracy and governance architecture.

Conceptual Review and Clarification

The following concepts are subjected to review and clarification within the context of this paper: The Lockean Doctrine of Judicial Restraint, Judicial Activism and Democracy.

Lockean Doctrine of Judicial Restraint

John Locke was an English political philosopher, physician, social contract theorist, and an ardent believer and advocate of constitutional government. Locke's political thought is contained in his most popular work, *The Second Treatise of Civil Government* (Two Treatises of Government). Judicial restraint, which is also known as judicial self-restraint, has to do with deliberate self-limitation or self-restraint from the exercise or use of judicial power. Its major characteristic is democratic deference to the legislative and executive (political) institutions. The deference operates within constitutional limits. It also refers to the judicial practice of exercising institutional self-restraint by the judiciary by respecting the constitutional authority, decision-making, and policy discretion of democratically accountable political institutions, even where they disagree with such decisions, intervening only where there is a clear violation of the provisions of the constitution. The judiciary avoids substituting judicial judgment for political judgment (Bakhsh et al., 2025; Junejo & Fatima, 2025; Saragih et al., 2025).

Other characteristics of judicial restraint include interpretive modesty or narrow, incremental, or limited rather than expansive constitutional interpretations; remedial minimalism or limited remedy, limiting remedies to what is strictly necessary to resolve disputes; avoidance of policy substitution; avoidance of megapolitics; institutional self-limitation, restriction to adjudicatory role rather than constitutive government; and respect for constitutional boundaries of separation of powers. These features are largely in line with John Locke's political philosophy of judicial restraint (Ahmad & Zubair, 2025; Sunstein, 1999; Tuckness, 2025). The Supreme Court in *Onuoha v. Okafor* (1983) held that the judiciary must resist the temptation to engage in political questions which the constitution has committed to other arms. Essentially, and in practice, judicial restraint is guided by the principles of "judicial minimalism" or "incrementalism." Judges who embrace judicial restraint express respect for democratic principles, ideals, and institutions by allowing such institutions to resolve certain political issues or disputes, and recognise judicial fallibility as an acknowledgement of institutional humility (Locke, 1988; Sunstein, 1999).

Lockean judicial restraint emphasises that courts must restrain themselves by intervening only to protect rights and laws enacted through the consent of the people by the legislature. Locke argues that where there is no law, there is no freedom, and the judiciary must protect individuals' rights to life, liberty, and property. He further contends that the judiciary is subordinate to the legislature (the legislature is the supreme authority) and must protect the rights of the people or citizens. Courts are not functional sovereigns but fiduciary agents or trustees of the people's authority, exercising power in trust on behalf of the constitution and the people, the consent of the people being the source of all governmental authority. Locke does not recognise the judiciary as a distinct and independent branch of the commonwealth or government (as Montesquieu later does). He recognises the federative power as the third arm of government, which is in charge of foreign policy, war, peace, alliances, and treaties. The judiciary exercises delegated authority derived from the legislature. Ultimate judgment lies with the people, who have the right of revolution against the government where trust is breached (Locke, 1988; Tuckness, 2012).

Judicial power is delegated to the courts through the constitution. Such power must be exercised in the interest of and for the ultimate benefit of the people, with duties of loyalty, care, accountability, trust, impartiality, and good faith. Locke's doctrine of judicial restraint was significantly influenced by his conception of government as a trust and hinged on the social contract between the people and the government (Fox-Decent, 2011; Hirschl, 2004; Locke, 1988). Additionally, Locke argues that sovereignty ultimately belongs to and resides in the people, exercised through their representatives and not in the judiciary. No institution of government should claim supremacy beyond the constitution and the law. Separation of powers is essential to prevent abuse, and judicial power preserves constitutional equilibrium or homeostasis by respecting institutional boundaries. Courts must protect democratic processes, procedures, and choices and not replace them judicially. Generally, exercising judicial restraint is common and easier in strong and developed constitutional democracies and political systems, unlike in weak and fragile constitutional democracies such as Nigeria. The Lockean doctrine of judicial restraint

is aspirational, theoretical, prescriptive, philosophical, and a normative ideal (Locke, 1988; Sunstein, 1999; Tushnet, 2008).

Judicial Activism

The opposite and alternative concept of judicial restraint is judicial activism, a condition in which the courts assert expansive interpretation of the constitution and laws, oftentimes resulting in judicial overreach and reshaping governance and public policy outcomes. The concept was popularised by Arthur M. Schlesinger Jr. (*Abia v. A.G. Federation*, 2002; *Sky Bank v. Iwu*, 2017; Scalia, 1997; Tushnet, 2008). Schlesinger argues that the judiciary is divided into champions of judicial activism and champions of judicial self-restraint. The courts are willing to override legislative and executive decisions and judgments, inappropriately create and impose judicial solutions to address political problems, and invalidate legislation and elections (Kmiec, 2004). Judicial activism suggests the exercise of judicial supremacy over other political institutions, enabling the courts to assume final authority over fundamental political questions. Courts go beyond interpreting the law, engage in law-making under the guise of judicial interpretation and adjudication, and fail to adhere to the original meaning of the constitution. In fact, this perhaps led Niki Tobi, JSC (as he then was), to strongly warn that the court is not a super legislature and must resist the temptation of judicial legislation (*Attorney-General, Abia State v. Attorney-General, Federation*, 2002).

Democracy

Democracy originated from the ancient Greek city-states. Undoubtedly, democracy is one of the fundamental and indispensable central organising concepts in political science. It cuts across all major subfields, including political theory, governance and politics. It enjoys near-universal normative appeal and endorsement, with many states claiming democratic legitimacy, even when they are not. As noted by Sartori (1987), democracy is an extraordinary power of legitimation. Although it is accepted as a legitimate form of government by many, democracy has been defined in diverse ways by political scientists to reflect their disciplinary biases and ideological persuasions; thus, it lacks global conceptual uniformity and practical universality. In Africa, including Nigeria, it is very much accepted in principle but contested in form and substance, both by the political elite and the people. The United Nations, African Union, European Union, and Economic Community of West African States, as well as the United Nations Development Programme (UNDP), fully endorse democratic principles. The UNDP defines democracy as a system of governance that upholds the rule of law, ensures inclusive citizen participation in decision-making, protects human rights, and promotes transparency and accountability of leadership (UNDP, 2024). In like manner, Article 3(g) of the African Union Constitutive Act (2000) states that the promotion of democratic principles is an objective of the African Union. This reflects what Robert Dahl refers to as the “globalisation of democratic legitimacy” (Dahl, 1989; Ihonvbere, 2023).

In a democracy, citizens collectively and freely decide by whom and to some extent, how they will be governed, including which laws should be enacted by the legislature and which public policies

should be formulated and implemented by the executive to promote the general welfare and well-being of the people (Przeworski, 2024; Brovarska, 2024). In some cases, public policies and opinions may sway the judiciary one way or the other. Democracy is fundamentally rule by the people, implying active citizen participation in decision-making, and political power is vested in the people (Grugel, 2002; Kalagbor et al., 2024; Kalagbor & Harry, 2023; Shapiro, 2003). This notion aligns with John Locke's political philosophy of popular sovereignty and government by the consent of the governed (popular consent). Macpherson (1972) also argues that democracy is, in its original form, "rule by the people or government in accordance with the will of the bulk of the people" (p.1). Sometimes, democracy is equated with "polyarchy" ("rule by many"). The concept was first used by Robert Dahl and Charles Lindblom. Its critics, however, have argued that "polyarchy" is a narrower concept than democracy (Lipset, 2015).

Nwabueze (2009) differentiates between a constitutional democracy and a democratic constitution, emphasising that whereas a constitutional democracy must be practised in line with the provisions of the constitution, a democratic constitution must derive its powers and contents from the consent or approval of the people. Core characteristics of liberal democracy include popular participation in politics, popular sovereignty, majority rule, minority rights, popular consent, and political equality. Others are constitutionalism and the rule of law, a multiparty system, and independence of the judicial arm of government (Anyia, 2019; Kalagbor, 2001; Nwabueze, 2009). Ake (1996) strongly argues that democracy in Africa must be rooted in social conditions and material realities of the people, stressing that the democracy that Africa needs must possess four characteristics, namely: decision-making power and electoral choice, political, social, and economic rights; collective and individual rights, and "democracy of incorporation" or inclusivity (p. 132).

Establishment, Jurisdiction and Functions of the Supreme Court of Nigeria

Sections 230 to 235 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provide for the establishment, composition and jurisdiction of the Supreme Court of Nigeria. It is the apex and final court of the land and is headed by the Chief Justice of Nigeria. The Supreme Court of Nigeria is said to be infallible, a "super court," and its justices are regarded as "super men" or "wise men." The dread of infallibility has been justified by the constitution on the altar of finality. The society can never be stable if there is no finality in litigation. There must be an end to litigation (*Adigun v. Attorney-General of Oyo State No. 2*, 1997).

In terms of functions, the roles of the Supreme Court of Nigeria can be classified into judicial and non-judicial roles. The judicial roles include judicial review, interpretation of the constitution, and adjudication of disputes, including the resolution of inter-governmental and electoral disputes, strengthening democracy, and enhancing the rule of law; advocacy through notable judicial pronouncements; protection and enforcement of human rights; development of Nigerian jurisprudence, especially through the creation of binding precedents; and harmonisation of conflicting decisions of lower courts. Others include being a guardian of Nigerian constitutional federalism, supervision of lower courts, judicial lawmaking through authoritative interpretation (quasi-legislative function), and an institutional and system-stabilising role, particularly arbitration

in high-stakes political disputes or mega-politics, and legitimisation or delegitimisation of governmental actions through judicial decisions. The Supreme Court's non-judicial or quasi-judicial roles include judicial administration, institutional leadership within the judiciary, and provision of advisories through authoritative obiter dicta (judicial statements, remarks, opinions, or observations made by the way or in passing which are not part of the decisions and are not legally binding). Nwabueze (1977) describes these as "judicial statesmanship" rather than adjudication. They constitute de facto advisory pronouncements that guide government conducts or actions, legislative drafting, and administrative practice.

Judicial Restraint, Nigerian Democracy, and Supreme Court of Nigeria's Jurisprudence

Notwithstanding its provisions under Chapter 2, regarded as a non-justiciable section, Section 14(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides that "the Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice." Consequently, the judiciary generally, and the Supreme Court of Nigeria in particular, is seen not only as a guardian of democracy or democratic gatekeeper, protector, and enforcer of the provisions of the constitution through interpretation of the constitution and legislation and promotion of the rule of law, but also as a contributor to democratic governance and consolidation in the country.

Over the years, the Supreme Court of Nigeria has often vacillated between judicial restraint and judicial activism or assertiveness. There are a plethora of judicial authorities in support of both sides, with the Supreme Court's jurisprudence tilting more in favour of judicial activism within the Nigerian democratic space, particularly in the Fourth Republic, and as it affects mega-political matters. In light of this trend, the following landmark Supreme Court mega-political cases will be examined to determine the extent to which they deviate from or reinforce the Lockean doctrine of judicial restraint in Nigerian constitutional and democratic governance.

Selected Cases on Judicial Restraint

1. Onuoha v. Okafor (1983) 2 SC NLR 244

Although Onuoha's case was delivered in 1983 during the Second Republic, it constitutes one of the authoritative decisions on judicial restraint by the Supreme Court. The Supreme Court refused to interfere in political party internal democracy, particularly in the selection of a candidate of a political party, on the doctrinal basis that internal party affairs are deemed non-justiciable. It is now settled that political parties are supreme over their own affairs, and the courts will not inquire into issues of membership or leadership of political parties, as these are internal affairs, except where the parties violate their own constitutions.

2. Attorney-General of Lagos State v. Attorney-General of the Federation (2003) 12 NWLR (Pt. 883) 1 SC.

The Supreme Court held that the President or the Federal Government had no constitutional power to withhold local government allocations to Lagos State and that the government must release withheld funds to the 20 recognised local governments of Lagos State because the President acted

ultra vires. It also struck down Lagos State laws that purported to create local governments in the guise of development centres, in violation of the provisions of the constitution and without approval by the National Assembly. By this decision, the court restrained itself from validating the creation of new local governments in violation of the constitution.

3. *Esuwoye v. Bosere* (2017) 3 NWLR (Pt. 1552) 256 (SC)

The Supreme Court, as a rule of general application, held that strict adherence to judicial precedents (*stare decisis*) is a form of judicial restraint, and that its decisions are binding on all courts. Any defiance may attract sanctions because judicial restraint includes respect for binding precedents. In this context, judicial restraint means standing by previous decisions except where there are compelling reasons to overturn them, in which case only the Supreme Court can do so in the interest of justice and fairness. The court also reaffirmed that jurisdiction is the lifeblood of adjudication. Procedural discipline and self-limitation constitute judicial restraint.

4. *Dapialong & 5 Ors. v. Dariye* (2007) 8 NWLR (Pt. 1036) 332.

In a unanimous decision, the Supreme Court held that the removal or impeachment of Governor Dariye of Plateau State by 8 out of 24 members of the Plateau State House of Assembly fell far below the two-thirds requirement under section 188 of the 1999 Constitution. The 14 seats of affected members declared vacant by the Independent National Electoral Commission should have been filled by a by-election before any impeachment could validly commence and conclude. Similarly, in *Inokoju v. Adeleke* (2007), the Supreme Court unanimously held and emphasised that mandatory due process must be followed in accordance with the 1999 Constitution. It set aside the nullified impeachment of Governor Adeleke of Oyo State and restored him as the legally, constitutionally, and democratically elected Governor of Oyo State.

Furthermore, in the recent case of *Attorney-General of Adamawa State & Ors. v. Attorney-General of the Federation, National Assembly & Ors.* (2025), the Supreme Court, in a split decision of 6 to 1, held, amongst others, that section 305 of the 1999 Constitution (as amended) empowers the President of Nigeria to declare a state of emergency in the country or any part thereof, including taking extraordinary measures to restore normalcy, peace, order and security. The matter was struck out on jurisdictional grounds because there was no direct dispute between the eleven PDP-controlled states (appellants) and the respondents. The Attorney-General of Rivers State, the affected state, was not a party to the suit and there was no evidence that the respondents sought or obtained the consent and authority of Rivers State to institute the action.

Selected Cases on Judicial Activism

1. *Amaechi v. INEC* (2007) 18 NWLR (Pt. 1065) 42 (SC)

In *Amaechi's* case, the Supreme Court held that “votes are cast for political parties, not candidates. The decision to substitute Celestine Omehia for Rotimi Chibuike Amaechi by the 3rd respondent (PDP) during the gubernatorial election represents a display of very grave political rascality and an irresponsible and wanton disrespect for the rule of law” (pp. 317-318). The court declared Amaechi, who did not appear on the ballot and did not contest the governorship election of Rivers

State, as the lawful winner. It removed the incumbent governor, Omehia, who had won the election and been sworn in as governor, and ordered that Amaechi should be sworn in as governor. The court did not nullify the election or order a fresh election. According to the Supreme Court, it had no cause to do so, nor had the jurisdiction to do so, the matter being a pre-election matter. The decision was an exceptional judicial outcome and a departure from judicial restraint. The Supreme Court stated that the decision should be treated as non-referable or not as a precedent. This means that the decision lacks precedential value and is not intended to guide or bind future cases with similar facts and circumstances. It resolved the dispute between the parties and is excluded from future doctrinal reliance. Under judicial restraint, the court would have avoided substituting its judgment for the political or electoral choice of the electorate. This constitutes a strong and radical form of judicial activism and an expansion of judicial power beyond constitutional provisions. The court transformed from fiduciary oversight to fiduciary substitution.

For foremost African constitutional scholar, political theorist, and Senior Advocate of Nigeria, SAN, who is often described as the conscience of Nigerian constitutionalism, Nwabueze (2009), the Supreme Court's decision constitutes "a case of perverse legalism running riot. It borders not on judicial activism, which is laudable, but on judicial recklessness, which is more pernicious and therefore more condemnable than executive recklessness ...an illegitimate and perverse exercise of judicial power" (pp. 154-156).

2. All Progressives Congress v. Maraja (2020) 6 NWLR, 383

The Supreme Court declared the People's Democratic Party (PDP) candidates for the House of Assembly and National Assembly elections as winners, despite the earlier declaration of the All Progressives Congress (APC) candidates as winners by the Independent National Electoral Commission (INEC) in Zamfara State. The reasoning was that the APC failed to hold lawful party primaries by complying with the party's constitution, guidelines, the Electoral Act, and the 1999 Constitution (as amended). The votes cast by the people during the elections were described by the Supreme Court as "wasted" votes. The APC lost 24 seats in the Zamfara State House of Assembly, three senatorial seats, and seven House of Representatives seats, as well as the positions of governor and deputy governor—a total of 36 elected positions.

It is submitted that the decision in Maraja can be analysed from the perspectives of judicial restraint and judicial activism. With respect to judicial restraint, it limits judicial intervention in intra-party democracy to legality review by correcting legal breaches and exercising oversight without judicial substitution of party or voter choice. In contrast to the decision in Amaechi's case, the court basically interpreted and enforced party guidelines, rules, the Electoral Act, and the constitution. From the Lockean fiduciary perspective, therefore, the Supreme Court essentially exercised restrained adjudication, where courts act as guardians of legality and democracy instead of arbiters of political outcomes. Political parties are bound by their constitutions, guidelines, the Electoral Act, and the 1999 Constitution. On the other hand, in the context of judicial activism, it can be contended that by declaring the candidates of the PDP as winners of the various elections, the

Supreme Court indirectly made political choices for the electorate, displaying a preference for mega-politics and playing the role of a political actor using judicial power.

3. Peoples Democratic Party (PDP) v. Degi-Eremenyio & 3 Ors. (2021) 9 NWLR (Pt. 1789) 274

Twenty-four hours before the swearing-in of the Governor and Deputy Governor of Bayelsa State, the Supreme Court stopped the inauguration ceremony and ordered the swearing-in of the candidates of the Peoples Democratic Party (PDP), Duoye Diri and his deputy Lawrence Ewhrudjakpo. The panel of the Supreme Court led by Hon. Justice Mary Odili (JSC) upheld the decision of the Federal High Court that disqualified Deri Eremenyio (Deputy Governor-elect) of the APC for alleged certificate forgery. The court stated that the governorship ticket of the governorship candidate and deputy governorship candidate was a joint ticket that could not be separated. The disqualification of the deputy governorship candidate rendered the APC governorship candidacy and ticket unlawful and useless ab initio.

In interpreting the constitution, the Supreme Court grounded its decision firmly in constitutional provisions on the qualification of candidates for nomination for election into the office of the deputy governor but went beyond it to judicially make an electoral choice for the people by declaring the PDP candidates' winners without ordering a fresh election. This is clearly a qualified or doctrinally justified departure from judicial restraint, implying that judicial restraint lies in obedience to the law.

4. All Progressives Congress (APC) v. Rivers State Independent Electoral Commission & 4 Ors. (2025) 7 NWLR (Pt. 1990) 425-590

In *All Progressives Congress (APC) v. Rivers State Independent Electoral Commission & 4 Ors.* (2025), the Supreme Court held that the local government election held in Rivers State and conducted by the Rivers State Independent Electoral Commission (RSIEC) on 5th October, 2024, was conducted in clear violation of the provisions of the Electoral Act, 2022, on two principal grounds. First, the Commission failed to comply with Section 150 of the Electoral Act, particularly for failure to give not less than 90 days' notice to relevant parties. Second, it failed to comply with the continuous revision of the Voters Register less than 90 days before the election. The court interpreted and invoked the provision of Section 150 (3), which stipulates that "any election to a Local Government Area that is conducted by the State Commission in violation of subsection (1) shall be invalid."

5. Rivers State House of Assembly & Anor v. The Government of Rivers State & 9 Ors. (2025) 7 NWLR (Pt. 1990) 591–684

Similarly, in *Rivers State House of Assembly & Anor v. The Government of Rivers State & 9 Ors.* (2025), the Supreme Court consolidated all appeals involving the parties. The Court, among other things, observed that the Head of the executive arm in Rivers State, Sir Siminalayi Fubara, "collapsed the legislature (House of Assembly) to enable him to govern without the legislature, as a despot." The resultant effect was that there was effectively no government in Rivers State during

this period (p. 660). The conduct of the Governor was tantamount to “executive lawlessness” and “to say the least most reprehensible to the extreme and contemptuous of the Order of the trial court.” He “treated court’s order with disdain and levity and resorted to self-help in the discharge of his functions in an unprecedented manner” (p. 653). “He equally demolished the House of Assembly complex and violated Section 96 of the Constitution of the Federal Republic of Nigeria (as amended) by the use of four out of the thirty-one members of the Rivers State House of Assembly to pass the 2024 budget (Appropriation Bill) into law. “This is a joke taken too far. The situation in Rivers State is that of dictatorship and has nothing to do with democratic governance” (p. 657).

Consequently, the Court held, inter alia, that the Speaker of the Rivers State House of Assembly, Rt. Hon. Martin Amaewhule is the bona fide Speaker of the Rivers State House of Assembly and the twenty-six members are members of the Rivers State House of Assembly having not defected in the eyes of the law. It ordered them to resume unhindered sittings as Speaker and members, respectively, of the Rivers State House of Assembly. The Supreme Court also held that the Central Bank of Nigeria and the Accountant-General of the Federation should forthwith stop releasing funds to the Government of Rivers State until an Appropriation Law is passed by the Rivers State House of Assembly, as prescribed by the 1999 Constitution.

The two cases above substantially depart from the Lockean doctrine of judicial restraint and align with assertive judicial activism. The Supreme Court intervened in the political disputes as a constitutional interpreter, a guardian of democracy, a democratic gatekeeper, and an enforcer of democratic order during political crises in order to restore constitutional stability, legislative order, governmental continuity, and fiscal discipline and compliance. Since democracy is anchored on the rule of law and not the rule of might, electoral processes must comply with constitutional provisions and other legislation. Defective elections undermine democracy. The Supreme Court intervening as a political actor and ultimate arbiter of democratic legitimacy, and nullifying an entire local government election in compliance with section 150(3) of the Electoral Act suggests a posture that shifts beyond mere constitutional interpretation and corrective adjudication into substantive governance. This, in the Lockean parlance, constitutes a breach of fiduciary authority and undermines the principles of separation of powers. The invalidation of the election can be understood as a form of corrective constitutional activism and illustrates the practical limits of Lockean judicial restraint in Nigeria’s democracy, compelling the Supreme Court to assume a politically stabilising role in the face of systemic electoral dysfunction and illegality.

6. Attorney-General of the Federation v. Attorney-General of Abia State & 35 Ors. (2024) 17 NWLR (Part 1966) 1-272.

The Supreme Court granted full autonomy, especially with respect to fiscal autonomy to local governments as autonomous constitutional entities and the third arm of government in Nigeria’s federal structure. It held that the Federal Government should pay Local Government allocations from the Federation Account directly to Local Government Councils and no longer through the States.

Unlike in previous decisions, the Supreme Court, in the interpretation of sections 162 and 163 of the 1999 Constitution (as amended), adopted purposive, broad and liberal approaches, culminating in expansive and assertive adjudication. By adopting a posture of decisive constitutional enforcement, the decision of the Supreme Court can best be described as constitutionally grounded judicial activism. The financial autonomy granted to the local governments was reaffirmed recently as a constitutional imperative by the Supreme Court in *Attorney-General of Osun State v. Attorney-General of the Federation* (2025).

The Limits of the Lockean Doctrine of Judicial Restraint in Nigerian Democracy

The Lockean doctrine of judicial restraint encounters significant practical, structural and contextual limits as demonstrated by the jurisprudence of the Supreme Court, namely:

1. Institutional Weaknesses and Persistent Failure

Locke's theory assumes that functional political institutions are capable of effectively discharging their fiduciary obligations and responsibilities and self-correction. Unfortunately, persistent institutional weaknesses and failure, ineffective electoral management and administration and lack of internal democracy in party governance have always compelled the Supreme Court to make politically assertive decisions. In *Amaechi v. INEC* (2007) and *PDP v. Degi-Eremenyio* (2021), the Supreme Court intervened to resolve electoral illegality and effectively determined executive leaderships in Rivers and Bayelsa states, respectively, without regard to the Lockean doctrine of judicial restraint.

2. Fragmentation of Political Power and Prevalence of Mega-Political Disputes.

Fragmentation of political power, prevalence of mega-political disputes and the disposition of political actors to judicialised political disputes constitute a major limit to judicial restraint. In six election cycles in 24 years in Nigeria (1999-2023), it has been reported that a total of 5,897 election petitions were filed in various courts in Nigeria. Given the volume of these cases, it was unlikely that decisions in a substantial number would have been in conformity with the Lockean judicial restraint. Also, several cases before the Supreme Court often border on mega-politics – high-stakes political disputes or fundamental questions such as political leadership succession, power sharing, resource allocation, including fiscal federalism and local government autonomy, state of emergency, defections and impeachments. Judicial decisions arising therefrom are capable of causing political crises or stability in the political system. The Supreme Court had adjudicated many mega-political disputes.

3. Weak Culture of Constitutional Compliance

Political actors generally exhibit impunity and a weak culture of compliance with the law, the constitution, judgments and orders of courts of competent jurisdiction. This persistent disregard for law and constitutionalism limit the feasibility of judicial restraint and encourage courts, particularly the Supreme Court, to adopt an expansive interpretive approach to the constitution and legislation. This, oftentimes, results in assertive decisions and judicial law-making. For example, in *Attorney-General of the Federation v. Attorney-General of Abia State & 35 Ors* (2024), the Supreme Court held, among others, that since paying the local governments through the states has

not worked, the justice of the case demands that the local government council allocations from the Federation Account should henceforth be paid directly to local government councils. Many state governments were consistently involved in the unconstitutionally conduct of withholding, mismanaging or diverting local government councils' fund paid into the State Joint Local Government Account from the Federation Account.

4. Politicisation of the Judiciary

Politicisation of the judiciary is a common political phenomenon all over the world, including in Nigeria, although the degree varies. Politicisation of the judiciary effectively transforms the courts into political tools, partisan arbiters and instruments of political control and manipulation of constitutional and democratic governance processes. The judiciary in Nigeria, including the Supreme Court can be directly or indirectly influenced by the executive, the legislature, incumbency factors, domestic or external considerations. When any or a combination of these factors are at play, they will definitely limit compliance with judicial restraint and erode judicial integrity and independence (Ferejohn, 2002; Kalagbor, 2011). Whereas independent courts constitute one of the cornerstones of any democracy, the Supreme Court of Nigeria and the Court of Appeal appear not to represent the factual situation in Nigeria. The Supreme Court in particular cannot claim to be completely insulated from political pressures and influences, notwithstanding that it is not overtly partisan. Its decision in the Amaechi case is sufficiently suggestive that the Supreme Court was swayed, as contended by Nwabueze. The treatment or response of the then PDP-controlled Federal Government under President Olusegun Obasanjo to its decision in *Ararume v. Ugwu* (2007) with respect to the nomination of the PDP governorship candidate in Imo State, no doubt, also had a profound influence on the Supreme Court's decision (Nwabueze, 2009). It sought to protect its integrity, prestige, independence, and judicial authority and finality.

CONCLUSION

The importance of the Lockean doctrine of judicial restraint in the promotion of constitutional and democratic governance and consolidation in Nigeria cannot be negated. The Nigerian judiciary has played and is likely to continue to play active and decisive roles in its application within the Nigerian democratic space. An examination of the Supreme Court of Nigeria's jurisprudence reveals that the Supreme Court has not only intervened in many mega-political matters, but its decisions also oscillate between judicial restraint and judicial activism, thereby imposing limits on the Lockean judicial restraint and posing certain implications for constitutionalism, including separation of powers, rule of law and democracy in Nigeria. The Nigerian experience demonstrates that the Lockean doctrine of judicial restraint is normatively and attractively compelling as a democratic ideal but empirically or practically, structurally and contextually constrained by institutional weaknesses, lack of legitimacy and persistent failure, fragmentation of political power, and lack of internal democracy, among others.

Recommendations

Sustainable judicial restraint depends not only on judicial self-discipline but on the effective functioning of Nigeria's political and democratic institutions. In the light of the findings of this study, the following recommendations are hereby made:

1. Strengthening Political and Democratic Institutions through Reforms

There is need to strengthen the capacities of political institutions through genuine reforms in order to reduce to the barest minimum the necessity for assertive and expansive judicial interventions by the Supreme Court. Sustainable judicial restraint requires credible, transparent, free and fair elections; enhanced internal democracy, and strong political party governance; effective legislative oversight, promotion of election security and executive enforcement capacity. Strengthening judicial integrity and independence, human capacity development, promoting high ethical standards and discipline, especially in the Supreme Court should be given priority by the National Judicial Council and the National Judicial Institute.

2. Dejudicialisation of Political Disputes and Issues

Political actors should reduce judicialization of political disputes and issues by promoting political understanding and consensus politics. Political skills and tools such as dialogue, negotiation, bargaining, compromise, sacrifice and consensus should be explored and optimised. Political actors should see politics as a positive-sum rather than zero-sum "game" and explore credible alternative and internal dispute resolution mechanisms. This also calls for depoliticisation of the Nigerian judiciary.

3. Exercise of Institutional Caution in Mega-Political Disputes

In high stake political disputes and controversies, the Supreme Court should adopt institutionally cautious approaches in its adjudication. Assertive and expansive interpretations and decisions sometimes create more political problems or externalities than they seek to address. For instance, its decision on VAT is still a major concern in revenue sharing projections by the Federal and State governments and in the politics of fiscal federalism in Nigeria. In fact, the decision on VAT has the potential to intensify federal-state power struggles and politics of resource control. Also, although the decisions in Amaechi's and Degi-Eremienyo's cases respectively solved the problems of nomination of candidates for election and punishment for forged certificate, but created democratic deficit or legitimacy crises. Similarly, the decision in Rivers State House of Assembly v. Government of Rivers State (2025) deepened executive-legislative rift and conflicts and has adversely affected democratic governance and sustainable development of the people in the state. It has also created more political tension, heightened ethnic politics and further polarised political actions at various levels of political participation.

5. Promotion of Culture of Constitutional and Judicial Compliance

Given the high level of political impunity and persistent non-compliance with party constitutions and guidelines, the 1999 Constitution, the Electoral Act, other legislation and court judgement and orders among political actors, there is need for enhanced civic education, discipline, leadership and capacity training and development of political actors. Political actors need to be educated and reminded of the consequences of non-compliance with the judgements and orders of courts, party

constitutions and guidelines, the 1999 Constitutions and other legislation. Appropriate and punitive sanctions should be imposed on defaulters.

REFERENCES

- Adigun v. Attorney-General of Oyo State, 2 NWLR (Pt. 556) (SC 1997)
- Agu, O. C., & Ezewudo, V. C. (2025). Judicial activism in Nigeria: A catalyst for legal development or an overreach of power? *University of Ilorin Journal of Private and Property Law*, 2(1), 213–223.
- Ahmad, D., & Zubair, T. (2025). Judicial activism and judicial restraint: A critical study of their role in shaping constitutional governance. *International Journal of Law, Management and Humanities*, 8(4), 2605–2621.
- Ake, C. (1996). *Democracy and development in Africa*. Spectrum Books Limited.
- All Progressives Congress v. Maraja, 6 NWLR (Pt. 1721) 382 (SC 2020).
- All Progressives Congress v. Independent National Electoral Commission, 7 NWLR (Pt. 1990) 425 (SC 2025)
- Amaechi v. INEC, 8 NWLR (Pt. 1065) 42 (SC 2007).
- Anya, A.O. (2019). *Re-imaging Nigeria: The imperatives of democracy, values, peace and national development in the new Nigeria*. Rivers State Government.
- Attorney-General, Lagos State v. Attorney-General of the Federation, 12 NWLR (Pt. 883) (SC 2003)
- Attorney-General of Abia State v. Attorney-General of the Federation, 6 NWLR (Pt. 763) 264 (SC 2002).
- Attorney-General of the Federation v. Attorney-General of Abia State, 17 NWLR (Pt. 1966) (SC 2024)
- Attorney-General of Adamawa State v. Attorney-General of the Federation, National Assembly & Ors. SC/CV/329/2005
- Brovarska, I. (2024). Democracy concept in the scholarly model of the world: A linguo-cognitive aspect. *Linguistic Bulletin*, 36. DOI: <https://doi.org/10.31651/2226-4388-2024-36-139-150>
- Bakhsh, F., Abbasi, S., Abbasi, W. A., & Hashmi, M. A. (2025). Judicial activism versus judicial constraint in developing democracies: A comparative study. *Social Science Review Archives*, 3(3), 2319–2329.
- Dahl, R. (1989). *Democracy and its crisis*. Yale University Press.
- Dapialong v. Dariye, 8 NWLR (Pt. 1036) 332 (SC 2007)
- Esuwoye v. Bosere, 3 NWLR (Pt. 1552) 256 (SC 2017)
- Federal Government of Nigeria. (1999). *Constitution of the Federal Republic of Nigeria (as amended)*. Federal Government Printers.
- Ferejohn, J. (2002). Judicializing politics, politicizing law. *Law and Contemporary Problems*, 65(3), 41–68.
- Fox-Decent, E. (2011). *Sovereignty's promise: The state as fiduciary*. Oxford University Press.
- Grugel, J. (2002). *Democratization: A critical introduction*. Palgrave.

- Hirschl, R. (2004). *Towards juristocracy: The origin and consequences of the new constitutionalism*. Harvard University Press.
- Hirschl, R. (2008). *Judicialisation of politics*. In *The Oxford Handbook of Political Science*. Oxford University Press.
- Ihonvbere, J. (2023). *Democracy, transformational leadership and sustainable development. The Rivers experience*. Rivers State Government.
- Imoni-Ogbe, O. The role of judicial activism in Nigeria: Insights and lessons from South Africa and India. *Indian Journal of Integrated Research in Law* 5(5), 857-874.
- Inokoju v. Adeleke, 2 FWLR (Pt. 336) (SC 2007)
- Junejo, A. W., & Fatima, S. (2025). Judicial activism or restraint: The role of the Supreme Court in expanding or limiting women's constitutional rights. *Advanced Social Science Archive Journal*, 4(2), 181–1819.
- Kalagbor, S. B. (2001). *An introduction to contemporary political science*. Sonite Publishers Limited.
- Kalagbor, S. B., Sam-Kalagbor, H., & Okere, V. C. (2024). The challenge and dynamics of peacebuilding and security interventions in Rivers State, Nigeria. *Social Sciences Journal of Policy Review and Development Studies*, 6(1), 224–265.
- Kalagbor, S. B., & Harry, D. M. (2023). Ethnic diversity and democratic governance in Nigeria: A consociational perspective. *African Journal of Social Sciences and Humanities Research*, 6(3), 71–82.
- Kmiec, K. D. (2004). The origin and current meanings of judicial activism. *Californian Law Review*, 92(5), 1441–1446.
- Laslett, P. (1988). *Introduction to Locke: Two treatises of government*. Cambridge University Press.
- Lipset, S. M. (2015). *Encyclopedia of democracy*. Routledge.
- Locke, J. (1988). *Two treatises of government* (original work published 1689). Cambridge University Press.
- Macpherson, C. B. (1972). *The real world of democracy*. Oxford University Press.
- Nwabueze, B. O. (1977). *The judicialism in Commonwealth Africa: the role of the courts in government*. St. Martin Press
- Nwabueze, B. (2009). *Judicialism and good governance in Africa*. Nigerian Institute oAdvancedLegal Studies.
- Onuoha v. Okafor, 2 SCNLR, 244 (SC 1983)
- Peoples Democratic Party v. Degi-Eremenyo, 9 NWLR (Pt. 1789) (SC, 2021).
- Przeworski, A. (2024). Who decides what is democratic? *Journal of Democracy*, 35(3), 5–16. DOI: <https://doi.org/10.1353/jod.2024.a930423>
- Rivers State House of Assembly v. The Rivers State Government (Pt. 1990) 591 (SC 1990)
- Saragih, G. M., Nasution, M., & Sihombing, E. N. A. (2025). Judicial review by the constitutional court: Judicial activism vs. judicial restraint in the perspective of judicial freedom. *Journal Konstitusi*, 22(1), 039–065. <https://doi.org/10.31078/jk2213>
- Sartori, G. (1987). *A theory of democracy revisited*. Chatham House.
- Scalia, A. (1997). *A matter of interpretation*. Princeton University Press.

- Shapiro, I. (2003). *The state of democratic theory*. Princeton University Press.
- Sky Bank v. Iwu, 16 NWLR (Pt. 1590) 24 (SC 2017)
- Solomon, E. & Essien, E. (2019). The Nigerian supreme court and the political question doctrine. *The Denning Law Journal* 31, 123-145. DOI: <https://doi.org/10.5750/dlj.v31i1.1711>
- Suberu, A. (2015). Courts and politics in Nigeria. *Journal of Politics*, 26(2), 110–123.
- Sulayman, Y. (2025). Judicial legislation: The supreme court of Nigeria’s model for strategic decision-making? *Journal of African Law* 69(2), 233-251. DOI: <https://doi.org/10.1017/S0021855324000330>
- Sunstein, C. R. (1999). *One case at a time*. Harvard University Press.
- Tuckness, A. (2012). Locke and the legislative point of view. *History of Political Thought*, 33(2), 275–299.
- Tuckness, A. (2025). John Locke’s political philosophy. In *Stanford Encyclopedia of Philosophy*.
- Tushnet, M. (2008). *Taking the constitution away from the courts*. Princeton University Press.
- Ugwu v. Ararume (2007) 12 NWLR (Pt. 1048) 367 (SC)
- UNDP. (2024) Navigating a world where democracy falters: Empowering agency through a freedom-centric governance. <http://www.undp.org/africa/blog/navigating-world-where-democracy-falters-empowering-agency-through-freedom-centric-governance>