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CORE NATIONAL VALUES AS DETERMINANT OF NATIONAL SECURITY AND PANACEA FOR THE CRIME OF KIDNAPPING AND ABDUCTION IN NIGERIA

By

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*I*ntroduction

*I*n this chapter, we posit that the only rationale for the existence of the State is the protection of life and property within its territorial sovereignty, section 14(1) (b) of the Constitution of the Federal Republic of Nigeria, pertaining to the Fundamental Objectives and Directive Principles of State Policy provides, ‘the security and welfare of the people shall be the primary purpose of government, thus the first indicia of Statehood is the State’s capacity to maintain law and order. *Prima facie*, a State will be deemed as having failed to the extent that it has failed to guarantee the safety of life and property of its citizenry. It is thus, a negation of the very essence of a State for there to exist pervasive insecurity of life and property within its domain.¹

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1. The Constitution of the Federal Republic of Nigeria, 1999; A. Johnson: *The Evolution of Human Societies: From Foraging Group to Agrarian State*, Stanford, Stanford University Press, 29,32 (2000); C. Schmitt: *The Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of a Political Symbol*, Chicago, University of Chicago Press, 91 (2008); J.S. Midgal: *State in Society: Studying How States and Societies Transform and Constitute One Another*, Cambridge, Cambridge University Press, 41,97, 231 (2001); M. Wissenburg: *Political Pluralism and the State: Explorations in Political Theory Beyond the Nation-State*, New York, Routledge, 102 (2008).

We argue that Kidnapping and Abduction, indeed other crimes that constitute threats to national security and corporate existence of Nigeria can only be curbed within an integrated and holistic national security policy framework which must be predicated on the protection and preservation of core national values, goals and interests of Nigeria. These values include: democracy, the rule of law, good governance, human liberty: freedom from the erosion of the political, economic, and social values which are essential to the quality of life in Nigeria; preservation of Nigeria's political identity, framework and institutions; fostering an international political and economic order which complements the vital interests of Nigeria and its allies; human rights, particularly the protection of socio-economic rights.²

Thus, national values, goals and interests must include the promotion of prosperity and employment; protection of Nigeria's security within a stable global framework and projection of Nigeria's core values and culture.³

In view of the foregoing, a blinkered perspective of national security in terms of safety and perpetuation of the State and those who constitute it from time to time is no more tenable.⁴

Accordingly, we adumbrate that the security of a nation is as guaranteed as the resolve of any member of its citizenry experiencing one form and degree of privation and destitution to self restrain and conform to legitimate and culturally prescribed norms of goal attainment and of meeting basic needs of humdrum survival. Whilst we are not unmindful of the need to qualify this argument with the

2. Colucci: *Crusading Realism: The Bush Doctrine and American Core Values After 9/11*, Washington D.C., University Press of America, *passim*, (2008),

3. W. O. Walker: *National Security and Core Values in American History*, Cambridge, Cambridge University Press, 13, 45, 75-131, 167-293 (2009).

4. *Ibid.*

caveat that the phenomenon of crime, Kidnapping and Abduction inclusive is not amenable to a single causation and that the variegated theories of crime causation have varied explanatory value, which could be deployed to unravel the malaise of crime, nay, Kidnapping and Abduction. Consequently, the study shall adopt an eclectic schema which analyse, connect and synthesize the different legal, social, economic, cultural and historical strands in order to provide a plausible explication of the cause, spread, prevalence and devastating impact of the crime of Kidnapping and Abduction in Nigeria.⁵

Thus, national security must not be defined narrowly by usual response to build up security by allocating more financial resources to arms procurement and general enhancement of the operational capacity of the State and its security agencies and institutions of law to curb crime and threats to 'national security.' Such ill conceived measures, however, in hindsight always fail to guarantee security.⁶

We therefore, argue that national security can only be guaranteed where the State's capacity to deliver on the social compact is progressively and sustainably enhanced. The compact encapsulate the protection of life and property among others.⁷

The study posits that the extant Nigeria national security framework which is characterized by extensive central prescription from the Federal government undermine 'national security.' For one, the rigid, centralized, axial and

5. D.J. Curran and C.M. Renzetti: *Theories of Crime*, New York, Prentice-Hall, *passim* (2008).

6. N.J. Patten and B.C. Nugent: *National Security: Institutional Approaches, Policy Models and Global Impacts (Defense, Security and Strategy)*, New York, Nova Science, *passim* (2010).

7. K. E. Brodsgaard and S. Young: *State Capacity in East Asia: China, Taiwan, Vietnam and Japan*, Oxford, Oxford University Press, *passim* (2001).

vertical national security structure was created by the military during the over 35 years of military rule in an era when the line between 'national security' and 'personal security' of the junta were blurred and indeed, became non-existent as the tendency to self-perpetuate increased. Thus, national security was narrowly construed by successive military despots within the imperative and exigencies of personal safety, survival and perpetuation in office of the head of the junta. Financial resources allocated to security are deployed to achieve that purpose to the detriment of the larger 'national security' needs and challenges of the nation.⁸

Deriving from the foregoing is the consideration that, such a vertical security structure is inappropriate for a federal State, in a democratic dispensation. In fact, it is a negation of democracy and true federalism as core national values which a national security policy framework should aim to protect and preserve.⁹

Whilst the federal constitution vests powers in the State Governor as the Chief Security Officer of his State, he however can not assume command of all the defence and national security agencies in his jurisdiction as their chain of command emanates rigidly and vertically from the central federal government, who also centrally recruit, train, commission and deploy their men and officers. The present structure disparages the capacity of State Governors and other local authorities to formulate broad local security policy based on the micro risk analyses of the State's real, present and clear danger and security challenges.¹⁰

As a result of over-centralization, it becomes rather very difficult to respond proactively to threats to national security which occurrence as a matter of course will first be local;

8. J. E. Baker: *In the Common Defense: National Security Law for Perilous Times*, Cambridge, Cambridge University Press, 8, 13, 99,240 (2007).

9. *Ibid.*

10. *Ibid.*

whereas the variegated intelligence agencies are not local, in view of which intelligence information on say, the onset of the crime of Kidnapping and Abduction is not available and where there is a modicum of such information, it is not shared by the security agencies whose functions within the national security structure overlap and ought to be complementary.¹¹

The National Security Structure and Crime

Section 11(1) of the Constitution of the Federal Republic of Nigeria 1999, provides:

The National Assembly may make laws for the Federation or any part thereof with respect to the maintenance and securing of public safety and public order and providing, maintaining and securing of such supplies and services as may be designated by the National Assembly as essential supplies and services.¹²

It is pursuant to the fulfilment of that constitutional mandate of the State that the Constitution provides in section 217(1) for the establishment and composition of the armed forces of the Federation; while section 214(1) provides for the establishment of Nigeria Police Force.¹³

Concomitantly, section 1(3) of the Armed Forces Act provides for the establishment and functions of the Armed Forces of Nigeria thus:

11. *Ibid.*

12. The Constitution of the Federal Republic of Nigeria, 1999.

13. *Ibid.*

The Armed Forces shall be charged with the defence of the Federal Republic of Nigeria by land, sea and air and with such other duties as the National Assembly may, from time to time, prescribe or direct by an Act.¹⁴

Subsection (4) further provides:

Notwithstanding the generality of the provisions of subsection (3) of this section:

- (a) the Navy shall, in particular, be further charged with:
 - (i) enforcing and assisting in co-ordinating the enforcement of all customs laws, including anti-bunkering, fishery and immigration laws of Nigeria at sea;
 - (ii) enforcing and assisting in coordinating the enforcement of national and international maritime laws ascribed or acceded to by Nigeria.
 - (iii) Making of charts and coordinating of all national hydrographic surveys; and
 - (iv) Promoting, co-ordinating and enforcing safety regulations in the territorial waters and the Exclusive Economic Zone of Nigeria
- (v) The Airforce shall, in particular, be further charged with:
 - (i) enforcing and assisting in co-ordinating the enforcement of international law, conventions, practices and customs ascribed or acceded to by Nigeria relating to aerial or space activities in the Nigerian airspace;
 - (ii) co-ordinating and enforcing of national and international air laws acceded or ascribed to by Nigeria; and

14. Armed Forces Act, Cap 20 Laws of the Federation of Nigeria 2004.

- (iii) delineating, demarcating and co-ordinating of all aerial surveys and security zones of the Nigerian airspace.¹⁵

Complementing the functions of the armed forces are the variegated National Security Agencies. Section 1 of the National Security Agencies Act, Provides for the establishment of National Security Agencies *inter alia*:

There shall, for the effective conduct of national security, be established the following National Security Agencies, that is to say:

- (a) the Defence Intelligence Agency;
- (b) the National Intelligence Agency; and
- (c) the State Security Service.¹⁶

Section 2 provides for the general duties of the National Security Agencies thus:

- (1) The Defence Intelligence Agency shall be charged with responsibility for-
 - (a) the prevention and detection of crime of a military nature against the security of Nigeria;
 - (b) the protection and preservation of all military classified matters concerning the security of Nigeria, both within and outside Nigeria;
 - (c) such other responsibilities affecting defence intelligence of a military nature, both within and outside Nigeria, as the President or the Chief of Defence Staff, as the case may be, may deem necessary.

15. *Ibid.*

16. National Security Agencies Act Cap 174 Laws of Nigeria 2004.

- (2) The National Intelligence Agency shall be charged with responsibility for-
 - (a) the general maintenance of the security of Nigeria outside Nigeria concerning matters that are not related to military issues; and
 - (b) such other responsibilities affecting national intelligence outside Nigeria as the National Defence Council or the President, as the case may be, may deem necessary.
- (3) The State Security Service shall be charged with responsibility for-
 - (a) the prevention and detection within Nigeria of any crime against the internal security of Nigeria;
 - (b) the protection and preservation of all non-military classified matters concerning the internal security of Nigeria; and
 - (c) such other responsibilities affecting internal security within Nigeria as the National Assembly or the President, as the case may be, may deem necessary.¹⁷

In furtherance of the Nigerian State's responsibility for the protection of life and property, section 4 of the Police Act provides for the general duties of the police *inter alia*:

The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act.¹⁸

While section 25 of Nigeria Police Regulations provides for the establishment of a Police Mobile Force thus:

17. *Ibid.*

18. Police Act, Cap 359 Laws of the Federation of Nigeria, 2004.

A police mobile force shall be established and maintained to act as a police striking force in the event of riots or other serious disturbances occurring within the federation.¹⁹

In the event of a total break down of law and order in any part of the Federation of Nigeria, section 305 of the Constitution of the Federal Republic of Nigeria provides:

- (1) Subject to the provisions of this Constitution, the President may by instrument published in the Official Gazette of the Government of the Federation issue a Proclamation of a state of emergency in the Federation or any part thereof.
- (2) The President shall immediately after the publication, transmit copies of the Official Gazette of the Government of the Federation containing the proclamation including the details of the emergency to the President of the Senate and the Speaker of the House of Representatives, each of whom shall forthwith convene or arrange for a meeting of the House of which he is President or Speaker, as the case may be, to consider the situation and decide whether or not to pass a resolution approving the Proclamation.
- (3) The President shall have power to issue a Proclamation of a state of emergency only when:
 - (a) the Federation is at war;
 - (b) the Federation is in imminent danger of invasion or involvement in a state of war

19. *Ibid.*

- (c) there is actual breakdown of public order and public safety in the Federation or any part thereof to such extent as to require extraordinary measures to restore peace and security;
- (d) there is a clear and present danger of an actual breakdown of public order and public safety in the Federation or any part thereof requiring extraordinary measures to avert such danger;
- (e) there is an occurrence or imminent danger, or the occurrence of any disaster or natural calamity, affecting the community or a section of the community in the Federation;
- (f) there is any other public danger which clearly constitutes a threat to the existence of the Federation;
- (g) the President receives a request to do so in accordance with the provisions of subsection (4) of this section.²⁰

The foregoing represents the panoply of both constitutional and statutory enablement aimed at facilitating the fulfilment of the State's mandate to guarantee the safety of life and property. The jury is however still out, particularly in the security community, that, the law does in fact constrain the capacities of the variegated security agencies to respond effectively to stem threats to national security of both national and international character. This view is particularly rife under the present democratic dispensation and the concomitant rule of law and the constitutional guarantee of fundamental human rights to life; dignity of human person; right to personal liberty; right to fair hearing; peaceful

20. The Constitution of the Federal Republic of Nigeria 1999.

assembly; right to freedom of thought, conscience and religion; right to freedom of movement and so forth.²¹

Perhaps the concern of this community of opinion is not without merit when ranged against the fact and realism of the last two decades of the chequered history of Nigeria. As a nation it has experienced considerable turbulence; turmoil; civil strife; high rate of crime, particularly the organized crimes of drug trafficking, human trafficking, kidnapping, human sacrifice and ritual killing and armed robbery; international terrorism; sectarian violence; political violence; communal strife; natural disasters; insurgency; militancy and pervasive normlessness; economic crimes such as advanced fee frauds; cyber crimes; money laundering and systemic official corruption in the private and public sectors; cross border crime and so forth.²²

The attendant national security exigency thrown up by the foregoing has more than ever engendered unprecedented security challenges in the chequered history of the nation, in terms of the competence and preparedness of the variegated security agencies to respond promptly, efficiently and effectively to every breach of national security; logistic support and adequate funding; but above every other consideration, the legal context within which security agencies operate in response to breaches of national security.²³

The legal dimension of the security environment is crucial, particularly within the context of democratic dispensation and the rule of law. For one, consider the pre-amnesty security situation in the oil rich Niger Delta region

21. M.K.B. Darmer, R.M. Baird and S.E. Rosenbaum: *Civil Liberties v. National Security In A Post 9/11 World*, New York, Prometheus Books, 11, 23,53,135,189,251,303 (2004).

22. *Ibid.*

23. *Ibid.*

and the resultant military action of the government of the Federation of Nigeria which engendered fundamental legal questions in the context of both municipal law and international law, particularly the international law of armed conflict. Critical questions were posed regarding the status of militants; were they combatants within the purview of the Geneva Conventions? Were they asserting self determination of ethnic nationalities of the Niger Delta? Were they criminals? Did their militant activities constitute treason?²⁴

The national and international human rights communities were also critical of alleged bombing and shooting of civilians during the joint military operations. While the killing of the leader of the religious sect, Boko Haram in the joint military and police operation to contain the murderous violence unleashed by the sect also engendered condemnation of the international community and the human rights community in Nigeria.²⁵

With the involvement of Umar Farouk Abdulmutallab in a botched terrorist attack aboard a Detroit bound plane in the United States of America, Nigeria faces a real, present and clear danger of terrorism, not only as a target of terrorist attacks (there was an attempted terrorist attack at the premises of the private Super Screen Television, December, 2009, in which the courier lost his arms when the bomb detonated before he could exit the building), but also of the unenviable status of a veritable nest for the export of terrorists.²⁶

Thus, there is a pressing need for the urgent assessment of the state of law and security in Nigeria pursuant to striking a balance between the exigency of national security, constitutionality, democracy and the rule of law constraints

24. *Ibid.*

25. *Ibid.*

26. J.R. White: *Terrorism and Homeland Security: An Introduction*, Belmont, Ca., Wadsworth Publishing, 2-97, 117, 215, 391 (2008).

and parameters within which security agencies operate, and the general national security policy direction to decisively contain both external and internal threats to national security.²⁷

Be that as it may, the focus and preoccupation in this chapter is the examination of the nature, causation and mechanism for combating the menace of the crime of Kidnapping and Abduction in Nigeria and to address the foregoing questions and issues, and to proffer balanced and futuristic solutions which will redress holistically, the national security challenges bedevilling the Nigerian nation. Does the law, facilitate or hinder effective national security? What are the rules of engagement within the purview of both national and international law? The chapter addresses the intersection of law and security policy with respect to Kidnapping and Abduction.²⁸

Kidnapping and Abduction: The Nature of a Felony

The crime of kidnapping has been recorded in the annals of criminal law for about three thousand years, the ancient Hebrew law of kidnapping provides in Exodus chapter 21 verse 16 thus:

Any one who kidnaps another and either
sells him or still has him when he is caught
must be put to death.²⁹

The ‘plagium’ was the earliest ancient English kidnapping law under which kidnapping was punishable by death. Etymologically, the current usage of the word can be

27. *Ibid.*

28. S.O'Brien and J.L. French: *Criminal Investigations: Child Abduction and Kidnapping*, New York, Chelsea House Publications, *passim* (2008).

29. The Holy Bible, King James Authorized Version.

traced to the 17th century when persons were abducted and then taken away by ship to the North American colonies to work as slaves in plantations.

According to William Blackstone, kidnapping is:

Forcible abduction or stealing away of a man, woman, or child, from their own country, and sending them into anotherThis is unquestionably a very heinous crime, as it robs the king of his subjects, banishes a man from his country, and may in its consequences be productive of the most cruel and disagreeable hardships; and therefore the common law of England has punished it with fine, imprisonment, and pillory.³⁰

The law of kidnapping has evolved from the foregoing characterization to recognize the element of detaining some one against his will without necessarily transporting him. In the terminology of the common law in many jurisdictions according to the *Black's Law Dictionary*, the crime of kidnapping is labelled abduction when the victim is a woman. In contemporary usage, kidnapping or abduction of a child is often called child stealing, particularly when done without the motive to collect ransom but rather with the intention of keeping the child permanently, usually where the parents are divorced or legally separated, whereupon the parent who does not have legal custody will commit the act, also characterized as 'childnapping.'³¹

30. William Blackstone *Commentaries on the Law of England*, London, Forgotten Books, 955, 956 (2010).

31. B. A. Garner (Ed.) *Black's Law Dictionary*, Seventh Edition, St. Paul, Minn., West Group, 874 (1999).

In criminal law, kidnapping is the taking away (asportation) of a person against the person's will, usually to hold the person in false imprisonment (confinement without legal authority) for ransom or in furtherance of another crime. A majority of jurisdictions in the Anglo-American common law tradition retain the 'asportation' element of kidnapping, that is, the victim must be confined in a bounded area against his will and move. Any amount of movement will do, even if it is merely literally 'down the street.' Generally, kidnapping laws in most jurisdictions punish the taking or unlawfully restraining of minors and adults. A charge of kidnapping and abduction may be sustained at times where the crime does not involve the carrying away of the victim, provided that the victim is restrained beyond a tolerable level as to disparage his liberty. In the case *Darrow v. Wyoming*,³² conviction was made in that regard, even where the victim was so confined and restrained in his home. In the US, certain federal courts regarding individual States as distinct jurisdictions which are irreducible to one another for the purpose of kidnapping, adopted the common law definition of kidnapping by incorporating asportation of an individual across State boundaries and international boundaries as element of the offense.³³ The (Federal) Lindbergh Act of the United States of America also follows the English common law by providing:

Whoever unlawfully seizes, confines, inveigles,
decoys, kidnaps, abducts, or carries away and
holds for ransom or reward or otherwise any
person...when the person is wilfully transported

32. *Darrow v. Wyoming*, 824 P.2d 1269 (Wyoming, 1922).

33. *Collier v. Vaccaro*, 51F.2d 17, 19 (4th Cir. 1931), where the court held that the gist of the kidnapping offense is the forcible carrying out of the State; *Gooch v. United States*, 82 F. 2d 534, 537 (10th Cir.).

in interstate or foreign commerce, shall be guilty of kidnapping.³⁴

Kidnapping was defined in the case *State v. Harrison* as:
False imprisonment aggravated by conveying the imprisoned person to some other place.³⁵

It was defined in *State v. Inland* as:

The unlawful taking and carrying away of a human being against his will by force or fraud or threats or intimidation; or to seize and detain him for the purpose of so carrying him away.³⁶

The North Carolina Kidnapping Act defines kidnapping as:

The unlawful confinement, restraint, or removal from one place to another of any person sixteen years of age or over without the person's consent for the purpose of obtaining a ransom, holding the victim hostage, facilitating the commission of a felony or flight after the commission of the felony or for doing serious bodily harm to or terrorizing the victim.³⁷

As a criminal offense, kidnapping was contemporaneously pressed to service by the Movement for the Emancipation of the Niger Delta (MEND) in 2006, in its militant, activities in the Niger Delta region of Nigeria against the Nigerian State, which it perceives as having

34. 18 U.S.C. 1201 (a) (2000)

35. 145 N.C. 408, 417, 59 S.E. 867.

36. 278 N.C. 42, 50, 178 S.E. 2d 577, 582 (1971).

37. N.C.G.S. Ss 14-39 1975.

impoverished the motley ethnic nationalities which constitute the Niger Delta region. While the crime is abating to a tolerable level in the South-South where it first assumed its present notoriety, after the general amnesty granted to militants, it has spread to other parts of the country like a malignant growth. In 2009, the Secretary to the Kaduna State Government, Mr. Waje Yayock was kidnapped in Kaduna; in the same year, Alhaji Bala Bello was also kidnapped in Zaria, Kaduna State, of Nigeria but released later after payment of ransom; a Canadian woman, Ms. Julianne Mulligan Ann, who was on a Rotary International Exchange to Nigeria, was abducted and kept in Gonin-Gora, a suburb of Kaduna until she was rescued by security agents.³⁸

In 2006 four foreign oil workers were kidnapped at various locations of the Niger Delta. The hostages were released after payment of ransom in negotiations between the kidnapers; State officials and employers of the kidnap victims. On 5th July 2007, the British Foreign Office called for the release of the abducted daughter of a British oil worker. She was abducted at gun point from a car in traffic in Port Harcourt, Nigeria.³⁹

In January, 2010 a first class Oba, the Attah of Aiyede Ekiti in Oye Local Government Area, Oba Adeleye Orisagbemi, and Acting Provost of the State College of Education, Dr. Gabriel Olowoyo were kidnapped by a gang in two different operations, both died in a motor accident while the kidnapers were asporting them to an unknown destination. A Columbian and three British citizens were kidnapped at about the same time by gun wielding criminals in Obeh, Abia State. Their security detail, a corporal and the

38. K. Houreld: 'Ransoms Fuel Surge in Nigeria Kidnapping,' Washington Post, July 11, 2007.

39. B. Wellington: 'Nigerian Militants Target Children for Ransom Schemes,' 4 *Terrorism Focus*, 26 (2007).

driver conveying them to Afam through Owaza were instantly killed by the gun men. The kidnapped men worked for Netco Dietsman, a joint venture between the Nigerian Government owned National Engineering and Technical Company and Dutch Maintenance Company, Dietsman. The former Director-General of the National Youth Service Corps (NYSC), Major-General Edet Akpan (rtd.) was kidnapped in Uyo, his home town, in Akwa-Ibom State.⁴⁰

Kidnapping and Abduction jurisprudence in Nigeria is inchoate, characterized by paucity of case law because until it assumed its current notoriety, cases were far in between and hardly reported. Section 364 of the Criminal Code provides:

Any person who unlawfully imprisons any person, and takes him out of Nigeria, without his consent; or unlawfully imprisons any person within Nigeria in such a manner as to prevent him from applying to a court for his release or from discovering to any other person the place where he is imprisoned, or in such a manner as to prevent any person entitled to have access to him from discovering the place where he is imprisoned; is guilty of a felony, and is liable to imprisonment for ten years.⁴¹

The Penal Code also provides in section 271 thus:

Whoever takes or entices any person, under fourteen years of age if a male or under sixteen years of age if a female, or any person of unsound mind out of the keeping

40. J. Osuntokun: 'The Kidnapping and Murder in Ekiti State,' *The Nation* Newspapers, 11th February, 2010.

41. Criminal Code Act Cap 77, Laws of the Federation of Nigeria 1990.

of the lawful guardian of such person without the consent of such guardian or conveys any such person beyond the limits of Northern Nigeria without the consent of someone legally authorised to consent to such removal, is said to kidnap such person.⁴²

Section 273 further provides:

Who ever kidnaps or abducts any person shall be punished with imprisonment for a term which extend to ten years and shall also be liable to fine.⁴³

While section 274 provides:

Who ever kidnaps or abducts any person in order that such person may be killed or may be so disposed of as to be put in danger of being killed, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.⁴⁴

The foregoing provisions also follow the common law definition of kidnapping; consequently, we will review case law from the various jurisdictions of the Anglo-American common law tradition pursuant to understanding the nature of the crime of kidnapping and abduction and proffering solutions to its control and ultimate curtailment. It will be

42. Penal Code Act, Cap. 89 Laws of the Federation of Nigeria 2004.

43. *Ibid.*

44. *Ibid.*

instructive to explore the elements of the crime of Kidnapping.

Element of the Crime of Kidnapping

The House of Lords established that there were four ingredients of the crime of kidnapping in the case, *R v. D* thus:

- i) the taking or carrying away of one person by another;
- ii) by force of fraud;
- iii) without the consent of the person so taken or carried away; and
- iv) without lawful excuse.⁴⁵

In the case *R. v. Wellard*, the Court of Appeal established that the:

Taking and carrying away did not have to involve physical removal of the victim. It was enough if the defendant so acted as to cause the victim to feel that she was compelled to submit to his instructions and move a comparatively short distance from one place to another.⁴⁶

The English and Wales Court of Appeal in *R. v. Cort* held that:

The way in which the defendant caused the victim to move from one place to another did not have to involve coercion. It was

45. *R. v. D*. [1984] AC 778.

46. *R. v. Wellard*, (1978) 67 Cr App R 364.

enough if the defendant induced the victim to make that journey by fraud.⁴⁷

In the case, *Hendy-Freegard v. R*⁴⁸ at the lower court, the appellant had been convicted of two counts of kidnapping, on 6th September 2005, to life imprisonment with a recommended minimum term of seven and half years and on the second count to life imprisonment with a recommended minimum term of ten years. The facts of this case are, happily extraordinary. The appellant is a confidence trickster who combines seductive charm with an astonishing capacity to deceive. At the heart of what the Judge rightly described as a ‘web of deceit and lies’ was his pretence that he was an undercover agent working variously for MIS or Scotland Yard. Once his victims were under his influence he took control of their lives, directing them what to do and where to live. His directions often exposed them to substantial hardship. He treated them with callous cruelty and fleeced them and their parents of sums of money totalling approximately five hundred thousand pound sterling.

Some aspects of the appellant’s conduct laid the ground for the charges of dishonesty of which he was convicted. The Crown searched however, for an offence that would encapsulate all aspects of the appellant’s conduct and, in particular, the deprivation, as a result of his malign influence and deception, of his victims’ freedom to pursue their own lives. The Crown decided that the offence of kidnapping would fit this bill. A single count of kidnapping was charged in relation to each of the four victims on the basis that it could be shown that each had been induced by deception to make a journey that he or she would not have made had he or she known the truth, and that the facts constituted the

47. *R. v. Cort* [2003] EWCA Crim 2149; [2004] 1 Cr App R 18.

48. [2007] EWCA Crim 1236; [2007] 3 WLR 488.

ingredients of the offence of kidnapping, as identified by Lord Brandon in *R v. D*.⁴⁹ The Judge accepted the latter proposition and directed the jury accordingly. He subsequently, treated the two counts of kidnapping in respect of which the jury returned guilty verdicts as enabling him to impose sentences that reflected the overall seriousness of the appellant's behaviour. The facts were as follows: The two counts of kidnapping on which the appellant was convicted alleged initially that each victim was kidnapped between the 14th and 31st March 1993. In the case of Sarah Smith the latter date was altered by amendment to the 30th April, 1993. Thus, in each case, the kidnapping was alleged to have occurred close to the beginning of the story. The story began at the end of 1992. The appellant obtained employment as the manager of the Swan Public House in Newport, Shropshire. There he met three students who were studying at a nearby agriculture college. These were John Atkinson, his girl friend Sarah Smith and another girl called Maria Hendy. He persuaded John Atkinson to work part time in the pub as a barman.

Shortly after the Christmas vacation of 1992, the appellant's relationship with Maria Hendy became sexual. At about the same time the appellant falsely told John Atkinson that he was a secret agent investigating an IRA cell at the agriculture college. He said that as a result of his having uncovered the cell his life was in danger as were the lives of those associating with him, namely John Atkinson, Marian Hendy and Sarah Smith. He said that, for this reason, it was necessary for them all to leave Newport. He told John Atkinson not to disclose these matters, but to tell the girls that he, John Atkinson, was terminally ill, and persuade them to go together on a farewell tour of the country.

49. *R v. D* [1984] 1 AC 778.

John Atkinson carried out this plan. The girls agree to leave with the two men. At the time that they were due to leave, however, the appellant fell ill and was taken to hospital and Maria Hendy accompanied him. John Atkinson and Sarah Smith set off together and went, initially to a friend's farm. The appellant and Maria Hendy subsequently joined them there and they set off for a tour of the country. In the course of the journey visits were made to the parents of the students. At some stage each of the girls became aware of the appellant's alleged membership of the secret service. The group settled in a flat in Sheffield. Maria Hendy became pregnant; the other three went out to work. The appellant took from them all the money that they earned and subjected them to humiliating house rules. He made them draw out and hand over to him money from their bank accounts.

Maria Hendy's relationship with the appellant lasted until 2002. She had two children by him and continued to live in Sheffield, while the appellant travelled around the country. John Atkinson remained under the appellant's influence and acted in accordance with his directions until 1997, when he managed to extricate himself from the relationship and restructure his life. By then he had been induced to hand to the appellant substantial sums of money, much of which was obtained from his family.

Sarah Smith remained under the appellant's influence until after he had been arrested by the police in 2003. She moved around the country, staying in a variety of accommodation under directions, often in some discomfort. The appellant would relieve her of money that she earned or obtained from other sources. On occasions he had sexual intercourse with her.

Elizabeth Richardson, Caroline Cowper and Kimberly Adams came under the appellant's influence at different times during this period, to the detriment of each of them.

The appellant met Elizabeth Richardson in Sheffield and started an affair with her. He told her that he worked for M15, and was on the run. He made her give him substantial sums of money. The relationship ended; but in 2000 he tracked her down and resumed it. He persuaded her to go away with him to start a new life in the South East. It was the Crown's case that he had induced her to go with him by fraud and this was kidnapping. The jury acquitted him of that charge.

Whilst working in London, the appellant met Caroline Cowper and began a relationship with her. They agreed to get married and the wedding day was fixed for 2 February, 2002, but the relationship broke down. The appellant obtained substantial sums from Miss Cowper's bank account by deception.

The appellant began a relationship with Kimberly Adams in March 2002. He told her that he was a spy, working under cover as a car sales man in London. They became engaged in August 2002 and planned to marry in November 2002. The wedding was then postponed. The appellant induced Kimberly Adams to part with large sums of money, some of which was obtained from her father.

It was and is the Crown's case that the element of taking and carrying away can be achieved by causing the victim to move from one place to another, even where the victim is unaccompanied. Thus, to the Crown, any movement caused by the appellant's misrepresentation that he was an undercover policeman amounted to kidnapping by fraud. There was clear evidence that as a result of the fraud, Sarah Smith and John Atkinson went where they would not otherwise have gone and continued to do so for over ten years. Manifestly, they were deprived of their liberty for that long period of time.

The court however, felt that the foregoing submission failed to focus on the critical issue whether there can ever be

a case of kidnapping that does not involve the offence of false imprisonment. The Crown argued that kidnapping does not necessarily involve false imprisonment.

The defence case is that the Crown misinterpreted the authorities upon which it relies. Kidnapping is a variety of false imprisonment if taking and carrying away is all that is relied on, this must involve deprivation of liberty. This does not have to involve physical coercion. It is enough if the kidnapper induces the victim to accompany him by persuading her that it is necessary to so do, whether by threat or fraud. Causing a person by fraud to go from one place to another unaccompanied can not amount to kidnapping. The trial Judge rejected the defence argument that it was imperative the defendant took or carried away the victim, that is that he accompanied the victim, that the word 'takes' connoted a physical involvement of the defendant with the victim. In rejecting this submission the Judge said:

Neither counsel have placed before me any dictionary definition of the word 'takes.' It is not without significance in my judgement that the current edition of Webster's New English Dictionary and Thesaurus defines the word as including: 'to grasp, or to seize, to gain, to win, to choose or select, to lead, to carry, to swindle, to deceive, to procure, or to escort.' The word 'take' is in my judgment wide enough to encompass the allegations made by the Crown within the said counts.⁵⁰

50. Note 45 *supra*.

Not satisfied with the foregoing ruling, the defence sought further rulings from the Judge, posing specific questions. These included the question 'does the defendant have to accompany the victim at the time of the alleged taking and carrying away?' to which the judge answered 'no' whereupon the judge summed up to the jury thus:

Kidnap is a serious offence representing the deprivation of a victim's liberty. The House of Lords, in a celebrated case, laid down the ingredients as follows:

1. There must be a taking or carrying away of one person by another.
2. The taking or carrying away must be by force or fraud.
3. The taking or carrying away must be without the consent of the person so taken or carried away.
4. The taking or carrying away must be without lawful excuse. So the ingredients of the offence which the prosecution must prove, in any particular case of kidnap are: one, there must be a taking or a carrying away of one person by the other; two, the taking or carrying away must be by force or fraud; three, the taking or carrying away must be without the consent of the person so taken or carried

away, and; four, the taking or carrying away must be without lawful excuse.

Now, it does not end there. The Court of Appeal has provided a further refinement and held that where the allegation alleges as here, a kidnap by fraud, once the fraud alleged within the count has been proved, that fraud then cancels out the consent of the person taken or carried away. In other words, fraud negates consent. It disposes of the requirement for the ingredient because, members of the jury, consent obtained as a result of fraud can not be true consent. Now in relation to all the kidnaps alleged in this case, the Crown's allegation is that it was by fraud. Namely, that the defendant pretended that he was or passed himself off as an M15 or an M16 agent or a Metropolitan Police Officer or, alternatively, that he worked for Secret Services of the United Kingdom with a brief to infiltrate and report on the IRA.

The word 'take' and 'carried away' must be given their ordinary meaning in the English Language. 'Take' within the context of this case, means to physically move or to cause the complainant to physically move from one place to another. 'Carrying away,' in the context of this case, also means moving the victim from one place to another. It need not be very far. Quite a short distance will suffice. It is not necessary that the victim should be physically moved, for example by being picked up and carried away. It will be quite enough if, because of the defendant's conduct, the practical effect on the victim was that he or she felt compelled to move because of the defendant's instructions. That would be quite sufficient. If that happened, then that victim would have been carried away and that is what the Crown alleges happened to the complainants in this case. It follows from what I have

said, members of the jury, that there is no legal requirement that the defendant must accompany the victim when they move from one place to another. For example, here you will recall that the move by John Atkinson and Sarah Smith from Newport was separate from the defendant and Maria Hendy.⁵¹

The foregoing rulings and direction on the law by the Judge are trite and may not be faulted without strong argument. In *R. v. Reid*,⁵² one issue raised was whether it was a necessary ingredient of kidnapping that the victim should be held and secreted. Giving the judgment of House of Lords, Cairns LJ, observed:

Russel cites 1 East Pleas of the Crown 429 where the statement is: ‘The most aggravated species of false imprisonment is the stealing and carrying away or secreting of some person, sometimes called kidnapping, which is an offence at common law.

We can find no reason in authority or principle why the crime should not be complete when the person is seized and carried away, or why kidnapping should be regarded, as was urged by counsel, as a continuing offence involving the concealment of the person seized.⁵³

The foregoing decision was relied upon in *R v. Wellard*,⁵⁴ in that case, the defendant induced a girl to accompany him about 100 yards to his car and to get into the back of it. He did so by falsely pretending to be a police officer searching for drugs and saying that he would escort her to her home.

51. *Ibid.*

52. *R v. Reid* [1972] 56 Cr App R 703.

53. *Ibid.*

54. Note 43 *supra*.

Before he could drive away, her boy friend arrived with two other men and extricated her from this situation. The trial Judge Robert Goff J, directed the jury that the first element that prosecution had to prove was that the defendant deprived the victim of her liberty. This, however, was not enough. He had to secrete his victim or carry her away. As to the latter requirement it was not necessary that the victim should be physically carried. It should be quite enough if, because of his conduct, the defendant had the practical effect upon (her) that she felt compelled to submit to his instructions and, for example, to work a short distance.⁵⁵

On appeal, the point was taken that the offence of kidnapping was not complete unless and until the defendant succeeded in taking the victim to the destination to which he wished to take her. Lord Justice Lawton remarked that the deprivation of liberty has not been in dispute. What was in issue was the carrying away. He concluded:

All that has to be proved is the false imprisonment, the deprivation of liberty coupled with a carrying away from the place where the victim wants to be. It may be that in some circumstances the movement would not be sufficient in the estimation of the jury to amount to a carrying away. Every case has to be considered on its own facts. In this case the victim was carried away by the appellant for no less than 100 yards and put into a motor car. In our judgment, there was ample evidence that the victim was carried away from the place where she wanted to be, namely by the side of her boyfriend on

55. *Ibid.*

Stafford common. There is nothing in the point of law which is raised in this appeal.⁵⁶

The prosecution relied on this passage in submitting that inducing a person by fraud to move even a short distance from one place to another constituted kidnapping. That submission however must be ranged against the fact that the Judge and the Court of Appeal had held that to make out the offence of kidnapping the prosecution had to establish that the defendant had deprived the victim of her liberty.⁵⁷

It will be instructive in this regard, to examine the decision that has been regarded as identifying the elements of the common law offence of kidnapping in its contemporaneous development. In *R v. D*,⁵⁸ the appellant was the father of a daughter who in proceedings in the Family Division had been made a ward of court. Care and control was awarded to the mother. The father was convicted of two counts of kidnapping. The first related to events that occurred when his daughter was two years old. The father, with two violent men whom he had recruited for the purposes, broke into the flat where his daughter lived with her mother and literally carried her away by force. The child showed no signs of distress. She was subsequently restored to her mother.⁵⁹

The events giving rise to the second count occurred when the daughter was five, by which time the parents were divorced. The father on that occasion wrenched the child by force from the arms of her mother, carried her to a car and made off with her. In these circumstances it was not disputed by the defence that the daughter had been taken and carried away.⁶⁰

56. *Ibid.*

57. Note 45 *supra*.

58. [1984] 1 AC 778.

59. *Ibid.*

60. *Ibid.*

The issue related to consent. The Judge had directed the jury that the taking had to be without the consent of the child, if they found that she was capable of giving consent, and otherwise without the consent of her guardian. The Court of Appeal had quashed the conviction, holding that there was no offence of kidnapping a child under 14 and further that the offence of kidnapping could not be committed by a father against his own unmarried minor child. The House of Lords allowed the appeal by the Crown and restored the conviction.⁶¹

In the only substantive speech in this matter, Lord Brandon remarked that the House had for the first time, to examine the nature, ingredients and scope of the offence as it was under modern conditions. After a reference to the relevant authorities he characterized the offence thus:

From this wide body of authority six matters relating to the offence of kidnapping clearly emerge. First, the nature of the offence is an attack on, the infringement of the personal liberty of an individual. Secondly, the offence contains four ingredients as follows:

- (1) the taking or carrying away of one person by another
 - (2) by force or by fraud;
 - (3) without the consent of the person so taken or carried away; and
 - (4) without lawful excuse.
- Thirdly, until the comparatively recent abolition by statute of the division of criminal offences into the two categories of felonies and

61. *Ibid.*

misdemeanours, the offence of kidnapping was categorized by the common law as a misdemeanour only. Fourthly, despite that, kidnapping was always regarded by reason of its nature, as a grave and (to use the language of an earlier age) heinous offence. Fifthly, in earlier days, the offence contained a further ingredient, namely, that the taking or carrying away should be from a place within the jurisdiction to another place outside it, this further ingredient has however, long been obsolete, and forms no necessary part of the offence to day. Sixthly, the offence was in former days described not merely as taking or carrying away a person, but further or alternatively as secreting him, this element of secretion has, also become obsolete, so that, although it may be present in a particular case, it adds nothing to the basic ingredient of taking and carrying away.⁶²

The foregoing recognize the infringement of the personal liberty of an individual as an element of the offence, it however does not establish how this element can be satisfied when the taking and carrying away was achieved not by force but by fraud? We shall now look to the next case for an

62. *Ibid.*

answer to that question, which unfortunately it did not answer.

In *R v. Cort*,⁶³ the facts were as follows: The appellant pleaded guilty to two counts of kidnapping and 10 counts of attempted kidnapping after a ruling of law by the Judge. On appeal, he contended that the ruling was wrong. The facts were that the appellant had on numerous occasions, stopped his car at a bus stop, falsely told those at the bus stop that the bus had broken and offered a lift to a single woman standing in the queue. The women usually refused, but two accepted, and the counts of kidnapping related to these. The first changed her mind and asked to be let out of the car and the appellant complied. The second was taken by him to her destination. The issue was whether the offence of kidnapping could be made out in circumstances where the alleged victims had consented to being taken in the appellant's car to the very place that they wished to go. The Judge ruled that the offence could be made out if the consent was induced by fraud.⁶⁴

The Court of Appeal dismissed the appeal that challenged this ruling. Giving the judgment of the Court, Buxton LJ, cited *R v. D* while *Wellard* had been referred to in argument. He focused on the four elements of the offence identified by Brandon and sought to apply them to the facts of the case before the court. So far as the first ingredient, 'taking and carrying away,' was concerned, he observed:

There is no doubt and it was not disputed, that in the case of the two ladies that went with Mr. Cort in his motor car, they were indeed carried

63. [2004] 1 Cr App R 18.

64. *Ibid.*

away from where they originally were, and wanted to be, that is to say the bus stop.⁶⁵

So far as the second ingredient 'by force or fraud' was concerned, he observed:

They were carried away by fraud, in the sense that they would not have got into Mr. Cort's car unless he had told them the lie that he did about, the bus having broken down. Detailed discussion was reserved for the third ingredient, 'without the consent of the person so taken or carried away.'⁶⁶

The argument of the defence that the type of fraud referred to in the second ingredient was the type of fraud that, in cases of rape and fraud can 'vitiates an otherwise apparent consent,' namely, mistake as to identity or as to the nature of the act in which the victim is engaging, so that lack of consent still had to be established. Lord Justice Buxton observed in that regard:

As we have already pointed out, the application of that line of authority to the case of kidnapping produces a surprising outcome. The definition of the offence inculcates the defendant in cases of fraud, but then exculpates him unless fraud is as to a very unusual and limited matter not in fact likely to arise in most kidnapping cases.⁶⁷

65. *Ibid.*

66. *Ibid.*

67. *Ibid.*

The submission that the fraud referred to by Lord Brandon fail to be limited in this way was rejected by the court. Consequently, the court reached the conclusion that there was probably no room for the requirement of lack of consent in the case of kidnapping where the taking and carrying away was induced by fraud. The requirement, without the consent of the victim, becomes redundant as consent obtained under fraud and misrepresentation cannot be consent properly so called.⁶⁸

The court regard *Cort* as bad law for what it considered an essential ingredient of kidnapping, that is, 'deprivation of liberty,' which was not established in the case, neither was it established according to the court in *Wellard*. For the these reasons, the House of Lords held per Lord Phillips CJ, that the Judge was wrong to rule and to direct the jury that causing a person by fraudulent misrepresentation, to move from one place to another, unaccompanied by the defendant, of itself sufficed to constitute the element of 'taking and carrying away' in the offence of kidnapping. Such a movement can not of itself constitute either taking and carrying away or deprivation of liberty. The appellant's ground of appeal in *Hendy-Freegard v. R* against conviction for kidnapping was accordingly upheld. The sentence on the dishonesty count was however sustained.⁶⁹

The jury however is still out on what constitutes the requirement of 'deprivation of liberty,' as an essential element of the crime of kidnapping. In contradistinction to the rather restrictive characterization and interpretation of that requirement by the English apex court, the English Court of Appeal underscored the fact that a person can indeed become the effective prisoner of another without necessarily

68. *Ibid.*

69. Note 45 *supra*.

being bound or secreted away. In *Emmanuel Francis v. R*,⁷⁰ the applicant was convicted on count 1 of the indictment of false imprisonment; on count 3, blackmail; and on count 5, robbery. On 20th September 1999, he was sentenced to a term of three years detention under section 53 (2) of the Children and Young Persons Act 1933, with two months periods of detention concurrent on the other counts of indictment. He now renews his application for leave to appeal against conviction after refusal by the single judge.⁷¹

He had appeared with two co-accused, Jay Richard McConnel, who was also convicted on count 1 of false imprisonment, on five counts of blackmail and one of robbery. He was detained for four years under section 53 (2) of the 1993 Act. His application for leave to appeal against conviction was refused and has not been renewed. The other person on the indictment was Kerry Hutton, a young woman, who was charged with false imprisonment and blackmail. She was acquitted on both counts.⁷²

The facts of the case were as follows: In 1995, the complainant, Thomas Birkert, was a school boy aged about 17 or 18, studying for his 'A' Levels. Some years earlier, he had received an inheritance and subject to some parental supervision, controlled a bank account containing several hundred pounds. He also had a bank card. He owned a Renault car. His complaint was that for a period of four days, beginning in the evening of Wednesday 1st November 1995, he was imprisoned by the applicant, Francis and McConnell. For part of the time he alleged that the young woman Hutton had participated in this imprisonment, she was however acquitted.⁷³

70. *Emmanuel Francis v. R* [1998] EWCA Crim 92 (15th January, 1998).

71. *Ibid.*

72. *Ibid.*

73. *Ibid.*

Events began while Birkert was shopping in a video shop in South Kensington. He was approached and beckoned outside by the appellant and McConnell. He went outside to meet them because, he said, he was afraid of Francis on account of some previous trouble between them when he claimed Francis had stolen a cassette player from him. On this occasion, he said that outside the video shop the applicant and McConnell forced him to hand over his watch, a ring and ten pounds although, in the event, both defendants were acquitted in respect of that allegation. Birkert said that the two youths told him that he was to go to his bank and use his cash card to obtain money for them. They threatened him that if he ran away they would catch him and hurt him. He went with them, he said unwillingly, to a bank in Knights Bridge, where he withdrew sixty pounds. That was subject of count 3, the offence of blackmail. Thereafter the two youths made him take them to his motor car, and he was made to drive them to various places in and around London; took his golf clubs and pool cues....This course of conduct continued until Saturday 4 November. The appellants withdrew several sums from his accounts. On Saturday 4th November, Birkert was again forced to arrange for money to be transferred into McConnell account, he called the mother to so request, but the mother told him the money can not be transferred immediately. The appellant then forced Birkert to arrange for his mother to bring cash to a petrol station near Guildford. When the applicant, McConnell and Birkert attended, the Police on the instruction of Birkert's mother were arrested.⁷⁴

The issue for determination on appeal was whether Birkert was falsely imprisoned? The defence at the trial was that Birkert had been entirely willing to go with the defendants. That he had, as it were, kicked over the traces of

74. *Ibid.*

his usual rather sheltered existence and had been only too happy to experience a different way of life.⁷⁵

In the written grounds of appeal before the Court complaints is made first of the Judges direction on the law relating to false imprisonment. After reading count 1 to the jury and drawing to their attention that it alleged that the applicant had assaulted and unlawfully and injuriously imprisoned Thomas Birkert and detained him against his will, the recorder said this:

What is false imprisonment? Members of the jury it consists, first of all, of the unlawful and intentional or reckless restraint of a person's freedom of movement from a particular place.⁷⁶

He stressed that:

In other words, it is an unlawful detention which stops a person moving and acting as he would wish.⁷⁷

The defence argument against the last sentence was that Birkert had not been prevented from moving from a particular place but was ordered to drive around from place to place; he had not been confined to a particular place. The court sees no merit in that argument in the light of further clarification by the recorder:

Obviously false imprisonment may take many forms. At one extreme it may consist of a literal imprisonment of an individual within walls and

75. *Ibid.*

76. *Ibid.*

77. *Ibid.*

behind bars. It may also consist of the restraint of an individual's movement, not within a single space of confinement but upon the restriction of his movement accompanied by violence, or the threat of violence, which makes the person the effective prisoner of a particular person who is committing this offence.⁷⁸

The court agreed with the trial court when he said that he could not fault the Recorder's direction on false imprisonment. Consequently, the court for the foregoing reasons held that it finds no merit in the three grounds of appeal before the Court and that it had no hesitation in saying that the application should be refused.⁷⁹

In the American case, *State of North Carolina v. Antonio Lamarquisa Ripley (State v. Ripley)*⁸⁰ the Supreme Court of the State of North Carolina was required to determine whether the asportation of robbery victims from an entrance way into a motel lobby during the commission of a robbery with dangerous weapon was independent act legally sufficient to justify defendant's separate convictions of kidnapping.⁸¹

The defendant, Antonio Lamarquisa Ripley was indicted by the Onslow County Grand Jury for 15 counts of second-degree kidnapping; 9 counts of robbery with dangerous weapon, 3 counts of attempted robbery with a dangerous weapon and 1 count of assault by pointing a gun. On 30th May 2003, the defendant, with four accomplices committed their first robbery with a dangerous weapon at the Hampton

78. *Ibid.*

79. *Ibid.*

80. 172 N.C. App.453,617 S.E.2d 106, 2005 N.C App. Lexix 1801 (N.C.Ct. App., 2005).

81. *Ibid.*

Inn in Jacksonville after 9.00 p.m. The defendant then relocated the group to the Extended Stay America Motel, also in Jacksonville. The defendant remained in the vehicle while McCarthur, Toye, and Alexander entered the motel's lobby and approached the front desk clerk, demanding and taking the motel's money at gun point. Rather than fleeing the motel, the robbers hid in the lobby and ordered the front desk clerk to return to her position. Moments later, as motel patrons entered the lobby, the robbers leapt from their hiding places and robbed the newly acquired victims at gunpoint. During this robbery, one of the accomplices observed Dennis and Tracy Long and Skylar and Adrian Panter walking through the parking lot toward the motel lobby entrance way.⁸²

The most critical facts in the matter, based on the testimony of Tracy Long during trial is that, as her husband was opening the door to the motel lobby, she observed individuals lying on the floor and, believing a robbery was taking place, she prevented her group from entering. As she attempted to turn her party away from the motel, one of the robbers ordered the Longs and the Panters at gun point to enter the lobby. Once inside, the Longs and the Panters were ordered to the floor, searched and robbed. The robbers recovered eight dollars from Tracy Long, the only individual carrying currency. The defendant and his accomplices fled the scene, and law enforcement eventually apprehended the perpetrators.⁸³

At the close of the State's evidence, the defendant made numerous motions, including one to dismiss all second-degree kidnapping charges. The trial court denied this motion. The defendant offered no evidence. After being instructed by the trial court, the jury deliberated and on 19

82. *Ibid.*

83. *Ibid.*

March, 2004 returned verdicts of guilty for 15 counts of second-degree kidnapping, 7 of the 9 counts of robbery with dangerous weapon, and 3 counts of attempted robbery with a dangerous weapon. Upon receiving these verdicts, the trial court consolidated the defendant's charges and sentenced the defendant's in the presumptive range to four consecutive prison terms of 117 to 150 months.⁸⁴

The defendant appeal the trial court's denial of his motion to dismiss nine of his fifteen second-degree kidnapping charges. In a divided decision, the Court of Appeal reversed the trial court's denial of defendant's motion to dismiss the nine kidnapping charges and vacate these convictions.⁸⁵

On 6th September, 2005, the State sought a temporary stay, which was allowed, petitioned for writ of *supersedeas* which was allowed on 6th October, 2005, and filed its notice of appeal based upon a dissent. The Supreme Court pursuant to Rule 16 (b) of the North Carolina Rules of Appellate Procedure restricted its review to the Court of Appeal's reversal of the four second-degree kidnapping charges.⁸⁶

To convict the defendant of second-degree kidnapping of the Longs and Panters, the State was required to prove beyond reasonable doubt that the defendant, acting by himself or acting in concert, confined, restrained or removed the victims from one place to another for the purpose of facilitating the commission of a felony. The court also held that a trial court in determining whether a defendant's asportation of a victim during the commission of a separate felony offense constitutes kidnapping, must consider whether the asportation was an inherent part of the separate felony offense, that is, whether the movement was 'a mere technical

84. *Ibid.*

85. *Ibid.*

86. *Ibid.*

asportation.’ If the asportation is a separate act independent of the originally committed criminal act, a trial court must consider additional factors such as whether the asportation facilitated the defendant’s ability to commit a felony offence, or whether the asportation exposed the victim to a greater degree of danger than that which is inherent in the concurrently committed felony offense.⁸⁷

Basing its decision on the *Irwin case*,⁸⁸ the court concluded that the asportation of the Longs and Panters from one side of the motel lobby door to the other was not legally sufficient to justify the defendant’s convictions of second-degree kidnapping. The moment the defendant’s accomplice drew his firearm, the robbery with a dangerous weapon had begun. The subsequent asportation of the victims was ‘a mere technical asportation,’ that was an inherent part of the robbery the defendant and his accomplices were engaged in.⁸⁹

The court found the defendant’s asportation of the victims to be a ‘mere technical asportation which is an inherent part of the commission of robbery with a dangerous weapon. As the defendant’s actions constituted a ‘mere technical asportation,’ of the victims which was an inherent part of the commission of robbery with dangerous weapon, the defendant can not be convicted of the separate crime of second-degree kidnapping, thus, affirming the court of Appeal’s decision vacating the defendant’s four convictions of second-degree kidnapping.⁹⁰

87. *Ibid.*

88. 304 N.C.at 103, 282 S.E. 2d at 446.

89. Note 84 *supra*.

90. *Ibid.*

In *Carron v. State*,⁹¹ the court held:

We hold that in order for a person to be convicted of kidnapping with intent to commit or facilitate the commission of another felony the offending movement or confinement must not be slight, inconsequential, and merely incidental to the other felony; must not be of the kind inherent in the nature of the other crime; and must have some significance independent of the other crime in that it makes the other crime substantially easier of commission or substantially lessens the risk of detection.⁹²

In *State v. Irwin*, the Supreme Court of the State of North Carolina clarified the separate act requirement, by holding the defendant's asportation of an employee at knife-point from the front to the rear of a pharmacy to open the safe and obtain drugs was 'an inherent and integral part of the attempted armed robbery,' and thus, such asportation was legally insufficient to convict the defendant of a separate charge of kidnapping. 'To accomplish defendant's objective of obtaining drugs, it was necessary that one of the employees go to the back of the store and open the safe' The court also observed that the defendant did not expose the victim 'to greater danger than that inherent in the armed robbery itself, nor is the victim subjected to the kind of danger and abuse the North Carolina Statute was intended to prevent.'⁹³

91. 427 So.2d 192 (Fla. 1983).

92. *Ibid.*

93. 304 N.C. 93, 103, 282 S.E.2d 439, 446 (1981).

The foregoing review and analysis of the case law drawn from different jurisdictions of the Anglo-American Common Law tradition, evince the centrality of ‘deprivation of liberty’ as an element of the crime of kidnapping and abduction. It is one element which presence must be proved beyond every reasonable doubt by the prosecution in order to ground a conviction in a kidnap case. That consideration brings us to the need to answer the question, what is ‘deprivation of liberty’?

To answer that question, we must first distinguish between the means, nature and effect of the ‘deprivation of liberty’ of an individual. It is when these dimensions of ‘deprivation of liberty’ have been ascertained that its applicability as an element or ingredient of the crime of kidnapping can be justified.

It is our view that the trial court’s treatment of the novelty of the *Hendy-Freegard* case⁹⁴ is more futuristic and better meets the need to keep the law abreast of social realities. The trial court went beyond the formal, restrictive and statutory characterization which requires that the victim of kidnap be bound and confined in space as determinant of kidnap, to underscore the effect of the subtle means by which the culprit nevertheless created the same effect as if his method of depriving his victims of their liberties were within the scope of the formal characterization of deprivation of liberty.⁹⁵

Consequently, we align with the trial court in its characterization of the conduct of Mr. Hendy-Freegard as the crime of kidnapping, resulting in the deprivation of the liberty of his victims over a rather long spell of time during which they were unable to exercise their freewill and choice, to live their lives the way they wished. The *Merriam-*

94. Note 45 *supra*.

95. *Ibid.*

Webster's II Collegiate Dictionary defines the word liberty thus:

The quality or state of being free. The power to do as one pleases. Freedom from physical restraint; arbitrary or despotic control. The positive enjoyment of various social political, or economic rights and privileges. The power of choice. A right or immunity enjoyed by prescription or by grant. Privilege, permission especially to go freely within specified limits. Freedom; free, at leisure, unoccupied.⁹⁶

Going by the foregoing definition of the word liberty, can it be said of Hendy-Freegard's victims that their lives when the incident ensued had the quality or that it was in a state of being free; had power to do as they pleased and freedom from physical restraint; had the power of choice or the permission to go freely within specified limits? The answer of course is negative. The victims suffered deprivation of liberty which did not literally entail their being physically restrained, confined, bound and or secreted within a space, but nevertheless had their freedom of choice curtailed by the 'web of deceit' and the subtle psychological manipulation' which Hendy-Freegard employed with even greater devastative effect than if he had used force of arms and threats and violence to cow his victims to doing his bidding. Besides, the element of violence and force was there in the background in the form of the supposed 'real and imminent reprisals by the IRA' whose ruthless *modus operandi* against people it targets for elimination is etched in

96. F. C. Mish *et al.*, (eds.), *Merriam-Webster*' Eleventh Edition, Springfield, Ms., Merriam-Webster Incorporated, 716 (2004).

the psyche of the public and the mere contemplation of its detail is alone sufficient to cow even those who are members of the espionage and the security community.⁹⁷

For the entire duration of the 'kidnap' the victims were veritable robots who were completely from all intents and purposes, in virtual captivity, and evil influence of Mr. Hendy-Freegard who took total control of their lives; directing them what to do and where to live.⁹⁸

Hendy-Freegard used fear to capture his victims, they were overawed by the intricate web of lies which he spurned about his being a secret agent who was himself along with those associating with him cut in a dangerous web of espionage, and counter insurgency involving the dreaded IRA. Thus, fear was the means of capture, the only difference between this capture and the formal element of 'taking' and 'carrying away' was the device used in inducing and sustaining fear in the victims. Rather than using say, dangerous weapons, Hendy-Freegard deployed his uncanny skill at deception to induce and sustain fear in his victims. The over all effect of his conduct was the same as if they were physically bound and confined in space, they could no more pursue their lives the way they would have wished. He single handedly altered the course of their lives; they were induced by deception to make journeys which otherwise they would have not made but for the deception and confined also through deception to live strictly in certain precincts of the United Kingdom, which had the same practical effect upon the victims as they felt compelled to submit to his instructions.⁹⁹

The fact of this case only underscore one fact, that a person can be in effective captivity without being literally subjected to any physical restraint. In the light of the

97. Note 45 *supra*.

98. *Ibid*.

99. *Ibid*.

foregoing, we submit with due respect, that their Lordships characterization of the element, 'deprivation of liberty' was too restrictive and fails to comprehend the complexity thrown up by the novelty of the *Hendy-Freegard case*. In contradistinction to their Lordships lack of sagacity, the English Court of Appeal in *Emmanuel Francis* held that a person can become an effective prisoner of another not necessarily in confinement at a single space but upon the restriction of his movement, thus, false imprisonment may not consist of literal imprisonment of an individual within walls and behind bars. The law must be able to keep pace with the ingenuity of criminals in their perpetration of crime.¹⁰⁰

Overview of Theories of Crime Causation

The preoccupation in this segment is the critical evaluation of the various theories of crime causation, with a view to determining their explanatory value pursuant to unravelling the unprecedented upsurge of crime wave in Nigeria, particularly, the dangerous and pervasive crime of kidnapping for ransom; settling of political scores; and ritual. It is hoped that such analysis would yield the bases for determining causation and the understanding of crime patterns with a view to conceptualizing a holistic and comprehensive homeland security policy in Nigeria.¹⁰¹

We have adopted this schema because of the very complex nature of crime which does not make it amenable to being explained by a single all encompassing theory which connects the different social, economic, political, cultural and biological strands in crime causation. The manifestation of

100. Note 67 *supra*.

101. P.H. Wikstrom and R.J. Sampson: *The Explanation of Crime: Context, Mechanisms and Development*, Cambridge, Cambridge University Press, 8, 31,61,108,153,195,243 (2006).

criminal behaviour could be in form of the well structured organized crime syndicates, such as the Columbian and Mexican drug cartels; Japanese Yakuza and Triads. Criminality can be perpetrated by a psycho-path and or socio-path who is disturbed; it could be caused by inherent sheer savagery which induces violent behaviour; if unemployment and deprivation explains armed robbery and other crimes it may be difficult to establish a correlation between privation and prevalent and highly sophisticated white collar crimes which resulted in monumental corporate governance failures; such as the collapse of Enron. Thus, an eclectic schema which constitutes a constellation of variegated crime theories will explain with greater clarity the various forms of criminal behaviour; provide a direction for the proactive prevention of crime; establish crime prevention programmes; conceive a moral rearmament scheme that targets schools, family unit, neighbourhood, the work environment and criminal justice system.¹⁰²

In themselves, the various crime theories have their perspectives. For example, the classical theory underscores deterrence and punishment, with resultant emphasis on crime control. In contradistinction, sociological theories seek to provide plausible basis for rehabilitative justice system, which is predicated on the assumption that if the environment and the position which an individual stands in relation to others in the society impact and control their behaviour, it then follows that their behaviour can be altered by enhancing the quality of their social economic and political milieu.¹⁰³

The social conflict theory posits that crime is a value laden category, because the law as a device of social control

102. B. Fisse and J. Braithwaite: *Corporations Crime and Accountability*, Cambridge, Cambridge University Press, 1, 17, 59,133,158,218 (1994); J. Minkes and L. Minkes: *Corporate White Collar Crime*, London, Sage Publications, 39,81,102, 141,161,179 (2008).

103. J. Treadwill: *Criminology*, London, Sage Publications, *passim* (2006).

is veritable instrument the dominant group or class deploys to perpetuate their dominance. Thus, under the conflict theory, a person commits a crime when the law characterizes his behaviour as illegal.¹⁰⁴

The biological theory states that criminal behaviour is induced in individuals because of genetic factors; biochemical and or neurological imbalance. Accordingly, to the psychological theory certain people are predisposed to criminality because of their dysfunctional childhood which progressively results in impaired development of personality.¹⁰⁵

The biological and psychological theories may constitute the bases for a crime prevention policy which emphasize rehabilitation, since criminal behaviour is not attributable to the free will but rather on physio-neural conditions which can be treated. The biological and psychological theories however may be a double edged sword which may be used as basis for incapacitation if there are no remedies to reverse such biological and psychological problems.¹⁰⁶

According to the Strain Theory, people engage in criminal behaviour because they are experiencing strain or stress, as a result of which they become upset, thereby engaging in compensatory behaviours such as crime to escape from the strain they are subjected to. People under strain may steal to avert financial crisis; become violent in order to curtail taunts and bullying by others; engage in crime to avenge perceived wrongs; engage in illegal use of drugs for momentary escape from their predicament.¹⁰⁷

The most contemporaneous Strain Theory as propounded by Robert Agnew, identified two broad categories of strain

104. *Ibid.*

105. *Ibid.*

106. *Ibid.*

107. *Ibid.*

which could induce criminal behaviour *viz*: (1) when social others prevent one from goal attainment (2) when one is presented with negative or noxious stimuli and valued things are taken by others. Although there are several types of goals which when unattained and or unattainable could lead to strain; Agnew underscored *viz*: financial goals; status/respect and autonomy in the case of adolescents as the most crucial goals if unattained or unattainable may result in strain and concomitant criminal behaviour.¹⁰⁸

Arguably, attainment of financial well-being has been of the utmost concern to every Nigerian. Money is the most crucial goal of an average citizen in Nigeria. Thus, most communities inculcate work ethic which emphasizes hard work, diligence and thrift as the gradual means of earning a living. Money as a goal is also crucial because as the medium of economic exchange it is essential for the purchase of necessities, and other goods and services. Unfortunately, the preponderance of the people are precluded by invincible social barriers and glass ceiling from earning through formal, legal and socially approved avenues through employment. This seems to be the lot of most Nigerian youths whose expectation and promise of future wellbeing and actualization of their full potentials have been completely shattered. The resultant strain which such people are subjected to as a result of privation predisposes them to criminality in their bid to get money through drug trafficking; advanced fee fraud; kidnapping and abduction; armed robbery; human trafficking; ritual killing; prostitution; fake drug production and so forth.¹⁰⁹

Empirical studies have established a correlation between social economic exclusion from gainful, formal and legal

108. R. Agnew: *Why Do Criminals Offend?: A General Theory of Crime and Delinquency*, Oxford, Oxford University Press, *passim* (2004).

109. A. Agnew and J.M. Kaufman: *Anomie, Strain and Sub-Cultural Theories of Crime*, London, Ashgate, *passim* (2010).

employment and crime. Findings also suggest that people who are not content with their financial standing relative to others resort to crime to achieve financial ascendancy.¹¹⁰

Deriving from the proclivity to have money is the human craving for status and respect which are functions of high self esteem. Human beings generally desire to be fairly and justly treated, that is, they want others to respect them in their interpersonal and group relationship.¹¹¹

In the light of the foregoing, James Messerschmidt posits that the innate instinctive drive of man to emerge as a 'dominant male' or masculinity, encapsulating heterosexuality, toughness, competitiveness, independence. Like money, status and respect for most male Nigerians remains elusive. In a milieu where enduring values of gradualism, hard work and honesty have been eroded being rich regardless of how the high financial status and well being is attained becomes the only way status and respect can be earned in such society. Progressive and sustained inability to make money result in low self esteems among young males; they see their self worth and manhood devalued overtime. The resultant frustration, helplessness and desperation vary among ethnic nationalities. Such sense of alienation is more acute among young males in minority groups and other groups who have a collective sense of alienation from what they consider economic and political mainstream, especially with regards to access to socio-economic power which impinge ultimately on the allocative process of resources of the commonwealth. For the young male in such groups crime becomes the only means by which they can short circuit the

110. *Ibid.*

111. *Ibid.*

'economic limitations' supposedly imposed on them because of their collective experience as a group.¹¹²

The desire in adolescents for autonomy, if un-assuaged may lead to deviance and delinquency, drug abuse, sexual promiscuity and general dysfunctional behaviour, in an attempt to assert self autonomy.¹¹³

The ability to cope and absorb strain differs from individual to individuals; their response to strain will depend upon other factors such as the prevalent values in their immediate community or ethnicity; the degree of traditional social support, within the family, network of friends and social others will interact with the strain factor to induce criminal response.¹¹⁴

Equally, the cost/benefit outcomes of crime is also crucial for there to occur a criminal response where the probability quotient of detection and punishment is low relative to high returns of crime, there will be greater inclination to criminal behaviour, particularly, where the individual under strain is not under any moral inhibition, because of the permissiveness and condonation of criminal behaviour of the individual's immediate community.¹¹⁵

The Marxist Theory of crime is based on Marx's theory of dialectic materialism which seeks to explain social dynamics and statics in terms of the class conflict between the impoverished *hoi polloi* and the capitalists who own the means of production. To Marx, the capitalist production base is complemented by a superstructure of laws, legal institutions and other institutions of State which serve to perpetuate the continuous dominance of those who own the

112. J. Messerschmidt: *Masculinities and Crime: Critique and Reconceptualization of Theory*, London, Rowman & Littlefield, *passim* (1993).

113. *Ibid.*

114. Note 106 *supra*.

115. *Ibid.*

means of production. The consistent exploitation and capture of the surplus value generated from the labour of the workers lead to mass impoverishment, total alienation and poor living conditions. Thus to Marxists, crime is a manifestation of the inherent contradiction of a capitalist society.¹¹⁶

The control theory's point of departure is that most people tend to conform to social norms and laws because of the control and restraints which are imposed on deviant behaviour. Social control is exercised through the normal process of socialization within the family, social group and institutions. To the control theorist therefore, people generally are inclined to criminal behaviour in order to satisfy their needs because it is much easier to engage in crime than honest work to satisfy such needs. Their predisposition to crime will be dependent on the restraints and control they face, if control is weak or non-existent, then, people invariably will have recourse to crime in order to satisfy their needs. The efficacy of control is however dependent on the perception of inclusion or exclusion which the individual has of the society. Where the individual has a high sense of exclusion, he is alienated and tend to have a low stake in conformity to norms.¹¹⁷

The social disorganization theory departs from the focus on family, peer group, social group and institutions by focusing on the larger community and society as unit of analysis. It seeks to explain why certain individuals are more inclined to criminality than others. More importantly, the Social Disorganization Theory seeks to explain why crime thrives in certain societies than others, by delineating the

116. M. Cowling: *Marxism and Criminological Theory: A Critique*, London, Palgrave Macmillan, *passim* (2008).

117. C. L. Britt and M. Gottfredson: *Control Theories of Crime and Delinquency: Advances in Criminological Theory*, London, Transaction Publishers, *passim* (2003).

characteristics of societies which record high crime rates and how such characterization predisposed members to criminality.¹¹⁸

Crime thrives according to the social disorganization theory in communities which have dwindling economic opportunities, high population density, high dysfunctionality of family units, such as teenage single parenthood, single-parenting, and high rate of divorce; preponderance of population unskilled, unemployed, unemployable and underemployed. Thus, most parents lack the resources to exert control and authority which are necessary for the early socialization of children and young adults against crime, pursuant to their having a stake in conformity.¹¹⁹

Emile Durkheim in his celebrated work on suicide, propounded the theory of anomie; which he used to explain social dynamics. He posits that when there is abrupt changes or transitions in society, this results in the break down and ineffectiveness of norms to regulate behaviour; or when there is a total absence of normative regulations, there is a resultant lack of rein and control on human behaviour. He established a congruence between acute anomie, that is normlessness and high rate of suicide particularly during major social economic crisis.¹²⁰

Robert K. Merton adopted Durkheim's concept of anomie in his study of deviant behaviour. He distinguished between a society's culturally prescribed goals and the formal and institutionalized means of attaining such goals. Merton adumbrated that a state of anomie will occur where as in American society on which he based his study there is

118. M.A. Andresen *et al.*: *Classics in Environmental Criminology*, Boca Raton, CRC Press, 5, 29, 77, 83, 187, 395,431 (2010).

119. *Ibid.*

120. E. Durkheim: *Suicide: A Study in Sociology*, London, Routledge, *passim*, (2002).

an emphasis on culturally prescribed goal of individual success; without thereby emphasizing the formal and legitimate norms, such as education, and employment for their realization. The inability of the preponderance of citizens to realize such culturally set goals results in despair, desperations and disillusionment. The paucity of legitimate means for goal actualization; social exclusion predisposes the disenfranchised mass of people to short circuiting the institutionalized means of goal attainment by adopting illegal means to achieve culturally prescribed goals.¹²¹

From the foregoing analyses of the plethora of theories of crime causation, it is fairly discernable that virtually all the theories have explanatory value, thus a catholic adoption of one to the exclusion of others may not afford the type of rigour required when studying a complex social phenomenon like crime. It is therefore instructive to adopt a holistic paradigm of crime causation and control which adapts eclectically aspects of each theory.

Policy Framework for State Response and Intervention in Kidnap Cases

The probable policy direction and response of the State regarding kidnapping would be a function of the nature of a kidnapping case. The nature of a kidnap would depend on the motivations which could be either economic or political kidnapping. That distinction however is without prejudice to the fact that there is an overlap between both economic and political motives on the one hand and the groups which perpetrate both genre of the crime of kidnapping.¹²²

121. R. K. Merton: *Social Theory and Social Structure*, New York, Free Press, 1, 156,175,185,215 (1968).

122. N.J. Patten and B.C. Nugent: *National Security: Institutional Approaches, Policy Models and Global Impacts*, New York, NovaScience Pub Inc., *passim* (2010).

For example, kidnapping was adopted by the Niger Delta militants to draw the attention of the world to the plight of the host communities to oil exploration and producing companies and also as a profitable venture which proceeds partly finance arms procurement and for purely personal gains. Where it is fairly ascertainable what the motivations of individual cases of kidnapping are, then, those cases motivated by political objectives will have different dynamics than those motivated purely by economic objectives.¹²³

Where motives and demands are purely political, State response would depend on the long term anti-terrorism strategy. Both the United States and the United Kingdom have a policy of not granting concessions to hostage takers. This policy is informed by the resolve of the two governments not to be held to ransom by terrorists; and that concessions encourage perpetuation of future crimes. Nigeria may wish to adopt the foregoing mode of response to kidnapping.¹²⁴

Under what has come generally to be characterized as economic kidnapping, negotiation space is wider, embracing any one willing and able to pay the ransom. Thus companies, individuals and non-governmental organizations can respond and intervene independently of their State of nationality. Companies are not armstrung in negotiations by considerations of sovereignty, besides most transnational corporations doing business in volatile, and unstable regions take out political instability risk insurance cover which facilitates the management of kidnapping risks just like other operational risk in the normal course of operations.¹²⁵

123. *Ibid.*

124. A.A. Jordan, *et al.*: *American National Security*, Baltimore, The John Hopkins University Press, *passim* (2009).

125. *Ibid.*

Nigeria has not articulated a response policy to neither economic nor political kidnapping. The State response to what bears semblance of political kidnapping was the response of the State governments in the oil rich Nigerian Niger Delta where kidnapping was supposedly used as a leverage on the government to redress the pervasive poverty in the region. State governments drew on security votes to pay ransom for the release of expatriate oil workers. However attempts have not been made to articulate what the State policy goals should be for economic kidnapping which constitute preponderance of post amnesty cases, particularly in core South Eastern States of Imo, Abia, Anambra, Enugu and Ebonyi States. This group of States including Rivers State have enacted laws prescribing the death penalty for the crime of kidnapping. An integrated and well articulated response policy will define the parameter for public safety and responsibility. The focus of a policy framework should be to impact on the crime with a view to reducing the opportunities for its commission and generally addressing the social economic and political factors which predisposes the citizenry to engaging in kidnapping and other violent crimes.¹²⁶

It would seem that response policy to crime is highly influenced by the perception of the magnitude of danger which the pervasiveness or heinousness of the crime induces in the society and the level of public indignation against its perpetration. Where in its nature and *modus operandi* the crime constitutes what the State deems a real, clear and present danger, it may take drastic measures to curb its commission and spread; by way of enhancement of crime control capacity; joint security operations of the variegated security agencies and legislation. Policies could be

126. *Ibid.*

encapsulated in legislation, as exemplified by the spate of legislation by certain States that have recorded the highest rate of kidnapping.¹²⁷

In the United States of America, the crime of kidnapping was capitalized in an incident which represents a reference point in the annals of legal history in the United States. The subsequent Federal legislation and the punishment meted out to the perpetrator of the crime in this incident were influenced considerably by the level of public indignation and perception of the danger the crime poses and constituted to survival and sustenance of society.¹²⁸

On March 1, 1932 at about 9 p.m, Charles Augustus Lindbergh, Jr., the 20 months old son of a famous aviator was kidnapped in his Hopewell, New Jersey home. The kidnapper left a ransom note on the nursery window sill on which he demanded \$50, 000.00 ransom.¹²⁹

A second ransom note was received by Colonel Lindbergh on March, 1932, increasing the ransom demand to \$70,000.00. A third ransom note informed that intermediary appointed by the Lindbergs would not be accepted and requested communication in a newspaper. The agreed intermediary, Dr. Condon after receiving \$70,000.00 commenced negotiations with the code name 'Jafsie' in a newspaper column. At the end of negotiation the kidnapper received \$50,000.00 ransom in exchange for a note indicating that the kidnapped child was left on a boat styled 'Nellie' near Martha's Vineyard, Massachusetts.¹³⁰

The child could not be found on the boat, its decomposed body was however found about four and half miles south east

127. *Ibid.*

128. J. Douglas and M.Olshaker: *The Cases That Haunt Us*, New York, Pocket Books, 149 (2001).

129. L.C. Gardner: *The Case that Never Dies: The Lindbergh Kidnapping*, Piscataway, NJ., Rutgers University Press, *passim* (2004).

130. *Ibid.*

of the Lindbergh home. The Coroner's report showed that death occurred about two months, caused by a blow on the head.

On May 2, 1933, investigation of the incident yielded some results when the Federal Reserve Bank of New York discovered 296 ten-dollar gold certificate and one twenty-dollar gold certificate used by Lindbergh to pay the ransom were traced to one Hauptman, a German citizen from the province of Saxony. He was subsequently tried and found guilty of murder in the first degree. Bruno Richard Hauptmann was condemned to die by electrocution on April 3, 1936, at 8.47 p.m. This case led to the enactment of a Federal Statute, the Lindbergh Act prescribing severe penalties including death as exemplified in the Lindbergh Act, for transporting victims across State or national boundaries.¹³¹

Peter Weinberger, a month-old child was found missing from his Westbury, New York home on July 4, 1956, a ransom note, demanding for \$2,000.00 was left by the kidnapper. The kidnapper did not show up for the phony ransom package the police left at an agreed location. The kidnapper again on July 10 gave further instructions on another location to leave the ransom. He failed to turn up but left another hand written note.¹³²

Using the handwritten note, about two million samples of handwriting were eliminated leading on August 22, 1956 to a discovery by an agent at the US Probation office in Brooklyn of similarity between the ransom notes and the writing in the probation file of one Angele LaMarca. On investigation LaMarca was found to be a taxi dispatcher and truck driver

131. (48 Stat. 781 [codified at 18 U.S.C.A. SS 1201 et seq.]); (18 U.S.C.A.SS 1201 et seq., 1751 et seq.).

132. *The Weinberger Case*. Available at <http://www.fbi.gov/libref/historic/famcases/weinber/weinbernew.htm>.

who had many unpaid bills and was being threatened by a loan shark. He seemed to have committed the crime on impulse when he saw the one month old baby. LaMarca was arrested on August 23, 1956 after he had abandoned the baby alive in a heavy brush off a highway exit. All the police found on searching the area was a diaper pin and decomposed remains of Peter Weinberger. LaMarca was tried and sentenced to death on December, 14 1956, and was executed at Sing Sing Prison on August 7, 1958 after the failure of several legal appeals.¹³³

Crime, Crime Control and Conformity

The rather narrow perspective of viewing social control primarily within the context of enforcement of law and or the control of crime and deviance is no longer tenable. Social control must be seen within the broader perspective of the nation's capacity to regulate itself without recourse to force and coercion. This broad perspective implies a self-governance mechanism which underscores a society's eternal need for social integration by means of socialization into common value systems in the face of increasing social turmoil and opportunistic individualism.¹³⁴

Thus, under this schema, crime control would entail social integration and harmony which results in a lesser reliance on the use of force and coercion to induce conformity. Consequently, a futuristic crime control policy must be predicated on our national, albeit universalizable core values. We will demonstrate the interaction and relationship which exists between these core values, crime, crime control and conformity.¹³⁵

133. *Ibid.*

134. D. Garland: *The Culture of Control: Crime and Social Order in Contemporary Society*, Chicago, University of Chicago Press, 1, 27, 53, 75, 103, 167, 193 (2002).

135. *Ibid.*

Nigeria's crime control and administration of criminal justice system is overwhelmingly penal, less rehabilitatory with greater emphasis on deterrence without thereby socializing the citizenry away from criminality.¹³⁶

Virtually all the various theories of crime causation have explanatory value; it is therefore axiomatic that poverty and social deprivation would in varying degrees, adjusting for intervening variables predispose people to criminality.¹³⁷

Thus, where a society is characterized by pervasive poverty and social injustice, the preponderance of its citizenry will suffer untold privation and inclined to criminality in order to survive. Our preoccupation in subsequent segment is to demonstrate how decreasing State capacity to deliver on the social compact has stultified economic growth, development and resultant pervasive impoverishment of the citizenry, normlessness and high crime rate.¹³⁸

Consequent upon the collapse of the parliamentary system in Nigeria in 1966 through degeneration and revolutionary ouster, the State, its laws and institutions became dedicated instruments of despots and political forces and allowed to slip deeper and deeper in the mire of corruption and malfeasance far beyond the capacity of mere tokenism at reform and transformation.¹³⁹

The drift of the Nigerian State has been unremitting since 1966, resulting in progressive decrease in State capacity to deliver on the social compact by guaranteeing socio-economic rights and generally improving the well-being of the citizenry. Weak State capacity in turn leads to economic failure, unemployment and pervasive poverty which provide

136. *Ibid.*

137. *Ibid.*

138. *Ibid.*

139. *Ibid.*

a festering ground for malcontent, deviance and criminality.¹⁴⁰

Nigeria's economic growth performance since independence in 1960 has been disappointing with no significant improvement in living standards. Real economic growth averaged 3.5 per cent between 1960 and 2002, barely exceeding average population growth. The country has also lagged behind countries at a comparative level of economic development in 1960. Most indicators of social and economic progress, including real per capita income, real per capita consumption, literacy, access to clean water, and income distribution, indicate that poverty has worsened since 1960. Despite its human and natural resource wealth, Nigeria has become one of the poorest nations of the world. Per capita income in real terms was lower in 2002 than in 1975.¹⁴¹

Economic failure is attributable to erosion of the State's institutional and administrative capacities, corruption pandemic, inconsistency in economic policy, external shocks, unconscionable state of the rule of law and military dictatorship, rising ethnic nationality conflicts and the State's inability to implement its policies and decisions due to corruption and the refraction of such policies through the prisms of ethnic and sectional interests. The legacy of the 80s, 90s through to the turn of the century include deepening social cleavages, highly volatile polity, international isolation, a severely weakened State and a totally alienated populace.¹⁴²

Since 1966, Nigeria crossed the threshold into a latent state of Statelessness, the State; its laws and legal institutions lack majesty, authority and legitimacy. The polity is anarchical and characterized by a pervasive state of

140. *Ibid.*

141. H. Hino: *Nigeria* Washington D.C., International Monetary Fund, 4-84 (2005).

142. *Ibid.*

normlessness. The citizenry have not internalized the laws of the State and lack the psychological acceptance of the authority of the State. They are alienated from the State.¹⁴³

Consequently, the State has progressively lost its moral authority to socialize the citizenry away from criminality, hence there is a steep rise in crime rate, and particularly there is an upswing in the incident of the crime of kidnapping and abduction, which is the subject-matter of this chapter.¹⁴⁴

The succession of absolutist military regimes has left a festering laceration on the national psyche, which the few short-lived civil interregna have not healed. Nigeria has thus far existed at the precipice. The crucial question, however is for how long? For no society can survive where there is pervasive Statelessness and normlessness.¹⁴⁵

The State in Nigeria has lost the patriarchal moral authority which is necessary in the socialization process the same way a father who ought to constitute the central and dominant figure in a family unit loses authority as a result of his failure to discharge his obligations as the central and dominant figure to provide for the needs of members of his household. Patriarchal authority emanates from consistency in the discharge of those obligations. Where the obligations are habitually discharged in the breach, the Patriarch loses its grip and progressively becomes unable to rein in the behaviour of the citizenry. This outcome is inevitable because of the nature of the socialization process.¹⁴⁶

Socialization is effected by setting rules of human conduct, by forbidding certain conduct and encouraging certain conduct through operant reinforcement; preferred conducts are rewarded while deviation from them is

143. *Ibid.*

144. *Ibid.*

145. *Ibid.*

146. *Ibid.*

punished, thus, through a reward/punishment system deviant behaviour is discouraged and ultimately eliminated. However, because rules tend to be imperative, they must flow from authority which is derived from the capacity of the Patriarch to fulfil those obligations it owes to the people; such as the provision of social services and the general enhancement of their well-being.¹⁴⁷

Where there is lack of the Patriarchal State capacity as is the case of the Nigerian State, the State loses the moral authority to socialize people away from criminality and deviance through laws and punishment, that is, law enforcement. In fact, lack of State capacity stultifies the entire socialization process as people resort to criminal opportunistic behaviour to achieve their economic goal of basic survival and culturally prescribed goal attainment. The only means by which the citizenry can be socialized away from criminality to having greater stake in conformity is for the Nigerian State to effectuate those rights encapsulated in our core values and which appertains to the citizenry. Those core values must be the nucleus of our national security policy. These values include the promotion of prosperity and employment, protection of socio-economic rights, the rule of law, good governance, human liberty and democracy.¹⁴⁸

Where these values are factored into the national security matrix as critical element, authority of the State to prescribe the rules of social and economic behaviour and relationship becomes unassailable. Obedience to its law becomes habitual. The preponderance of the citizenry have greater stake in conformity, and in one stroke, deviance and predisposition towards criminality is reduced to a tolerable level, without recourse to force and coercion.¹⁴⁹

147. G. Schwartz: *Beyond Conformity or Rebellion: Youth and Authority in America*, Chicago, Chicago University Press, 33, 107, 193 (1997).

148. Note 3 *Supra*.

149. *Ibid*.

Conclusions and Recommendations

With out fear of contradiction, the high level of violent crime, particularly the upswing in the crime of kidnapping and abduction remains our most disturbing, pressing, present, clear and real danger. Nigeria is in serious crisis on account of the escalating crime rate. In so many ways, crime and violence undermine the quality of life of every Nigerian citizen. Aside from proximate impact on victims, crime and violence exact enormous and far reaching economic and social costs; it induces and creates a palpable ambience of fear and despairs for all citizens and stultify economic growth and sustainable development. Indeed, crime, nay the crime of kidnapping and abduction arguably is a major development challenge bedevilling Nigeria. Crime drives away investment, both foreign direct investments and domestic and consequently slows growth.

At a time when Nigeria is in dire need of diversifying away from its overwhelming dependence on the extractive sector, particularly oil, to tradable non-oil real sectors of manufacturing and tourism and so forth, it can ill afford the ongoing upswing in kidnapping and abduction and other crimes against the person. Crime is particularly anathema for the tourism industry.

The study proved that the crime of kidnapping and abduction and other crimes can only be curbed within an integrated and holistic national security policy framework which is predicated on the protection and preservation of core national values, goals and interests of Nigeria. At the heart of these core values must be the promotion of prosperity and employment, and the creation of the enabling social economic environment which will catalyse the generation of wealth for all citizens in the private sector.

The study finds that high incidence of the crime of kidnapping and abduction in Nigeria threatens the peace, security, general well being of the citizenry and economic development of the nation.

To prevent crime and to insure the greater safety of the people, law enforcement efforts must be better coordinated, intensified and made more effective at all tiers of government. The study also finds that crime is a localized social phenomenon and problem, necessitating first a localized response by State and local governments, pursuant to effective crime control. Such local response may then be complemented by federal interventions where local authorities have been overwhelmed and can not stem the tide of crime within the constraints of their logistics and financial resources.