

## **A TAP INTO THE RELATIONSHIP BETWEEN LAW AND ECONOMICS IN RESOLVING THE PROBLEMS ASSOCIATED WITH CATTLE GRAZING IN NIGERIA**

**Dr. J. O. Odion, Associate Professor & Ag. Head, Department of Business Law, University of Benin, Nigeria, [job.odion@uniben.edu](mailto:job.odion@uniben.edu)**

### **ABSTRACT**

The problems associated with cattle grazing by cattle farmers in Nigeria have become multi-furious and hydra headed. In recent times, there has been an upsurge in conflicts and strife between cattle grazers and owners of farmlands across the length and breadth of the country. These conflicts have led to the monumental loss of lives and properties and presently challenge the peace and unity that hitherto existed in the country. This essay proposes that these conflicts are avoidable or at least manageable through negotiated consensus between the affected parties. This we posit can be done on the basis of an exploitation of the emerging discipline in law now focused on the relationship between law and economics.

**Key Words:** Cattle, Grazing, Law, Economics and Dispute

### **INTRODUCTION**

The recurrent decimal of conflict between cattle farmers or rearers and farmers across the length and breadth of the country has become intractable (Aidaghese, 2016). There are documented incidents of conflicts and skirmishes between most farming communities in the country and the herders who assist these cattle farmers in grazing the flock. The usual scenario is that the cattle grazer in search of arable land filled with green field for the feeding of the cattle often wander into individual or communal farms with the attendant result of the destruction of the crops and other farm produce of the farmers. In most cases either the farmer challenges the cattle grazers and a confrontation results or the farmer in exasperation attacks and kills a cow in the flock. This is followed by well-planned and coordinated attacks by the cattle grazers in which people are killed and properties worth millions of naira are destroyed. In most cases as a result of such reprisal attacks, an entire village could be sacked or almost wiped out.<sup>1</sup> These attacks have taken place in virtually all the states in what is often described as Southern Nigeria made up of predominantly Christian communities. When this is juxtaposed

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<sup>1</sup> The attack of Agatu Community in Benue State is perhaps one of the worst in recent times. The entire community consisting of more than three villages was wiped out by the invading cattle grazers. The next place of call was a community in Anambra State where a similar attack led to the loss of lives and millions of properties. The same sordid scenario of destruction was replicated at the Federal Polytechnic Ado-Ekiti where the institution's farmland was destroyed by the marauding herd of cattle (Vanguard, 2016).

with the fact that most of the cattle grazers in the country are of the Fulani extraction in Northern Nigeria, who are largely Muslims, then it is apparent that these skirmishes have the potential for precipitating inter-tribal, inter-religious as well as regional conflicts and possibly wars that could threaten the peace and tranquillity in the country and ultimately the sovereignty and corporate existence of all the nationalities and religions that make up the country.<sup>2</sup>

Incidentally, the tribal and religious coloration to this seeming economic conflict is not helped by the decades of mistrust and suspicion between these two sides of the divide which is largely influenced by regional or ethnic considerations. This mutual suspicion is even more now, given the fact that the current president of the country is from the Northern region of the country and is often perceived as sympathetic to these cattle grazers. In the same vein, there are rumors that the frequency and intensity of these attacks by the cattle grazers is influenced by the feeling and display of impunity by the cattle grazers, palpably because their “man” is at the helm of affairs in the country (Aidaghese 2016)

Strangely, very few have paused for a while to consider the fact that the cattle grazer and the farmer are both engaged in farming, the all-important sector that is now key to economic survival in view of the dwindling fortunes in the oil sector, the country’s mainstay). In the same vein, not many people realize that both parties are businessmen whose modus operandi is to invest in their separate genre of farming for the purposes of making a profit.

It is even more revealing that in the concerted attempts to resolve these conflicts and probably resolve the problem at hand, the approach of policy makers and the legislature in the country, both state and federal, has been to engineer policies or make laws that would make it possible for farm ranches to be established specifically for cattle grazing in the respective states.<sup>3</sup> Whereas some states in the North readily latched at the prospect of establishing these cattle ranches, most states in the South are antithetical to the idea.<sup>4</sup> This is even more disturbing in view of the fact that the policy of the federal government as epitomized by the Minister of

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<sup>2</sup>On the 8<sup>th</sup> of October 2015 Elders of the South-West Region in reaction to the kidnap of their foremost leader and politician, Chief Olu Falae, threatened to banish all Fulani herders from their communities. In reaction Alhaji Rabiu Kwankwaso a former Governor of Kano State asked these leaders of the South-West to “shut up” See the (Punch, 2015).

<sup>3</sup>Some states of Northern Nigeria, e.g Niger and Kano States have commenced the process of acquiring large expanse of land in the state for cattle grazing purpose. There is presently the National Grazing Bill before the National Assembly for the purposes of enabling the Federal Government to acquire lands in the states of the federation for cattle grazing purposes.

<sup>4</sup>Presently Ekiti State Government has just passed the Anti-Cattle Grazing Law. It criminalizes cattle grazing on unauthorized places and imposes penalty on defaulters (Vanguard, 2016).

Agriculture is to establish these ranches and import special green grasses to be cultivated for the purposes on establishing and sustaining these ranches.<sup>5</sup>

Therefore, consistent with government's interventions through direct regulation through policy thrusts and law, the persuasive and negotiating powers of the affected parties, i.e., the cattle grazer and the farmer to come together and agree on the best way to do their business devoid of economic losses and the devastating effects of the resulting conflicts outlined earlier is often ignored.<sup>6</sup> As is often the case, the state subrogates itself to the rights of these parties and attempts to fix a deal for them without a whiff about their impute. This is because there is a presumption of freedom of contract between the parties, therefore the resolution of any conflict between the parties ought to be done within the confines of the terms and conditions of the contract.

This is why it has become necessary to propose that the State avoids getting involved in a direct regulation of the business relationship between the cattle grazer and the farmer. It will be demonstrated that a better approach is that based on an indirect regulation which focuses on harnessing the positives from a relationship between law and economics. It will be argued that the state instead of prescribing laws that prohibit or criminalize open cattle grazing or the farmer and the cattle grazers getting involved in endless litigation, both of them can negotiate and arrive at a reasonable compromise.

### **CIRCUMSCRIBING THE RELATIONSHIP BETWEEN LAW AND ECONOMICS**

The relationship between law and economics has attracted a lot of attention in recent times. This is because there is a lot of benefit to be derived from a convergence of law and economics in the resolution of the problems confronting the world (Emiri, 2013). Most advocates of the relationship between law and economics justify their push on the basis that in the distribution of the scarce economic resources available, law plays a pivotal role in striking a balance between the competing ends (Leary, 2005). They also argue that in the resolution of the conflict of interest between state intervention in business and contractual obligations economic considerations ought to play a leading role (Posner, 1983; see also Coase, 1960; Calabresi, 1961 and Markovits, 1998).

As a starter, the term "law and economics" is used to circumscribe the relationship between law and economics, where economic values pre-supposedly plays a domineering role. In this

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<sup>5</sup>The Minister of Agriculture gave this hint at the end of the Federal Executive Council meeting of 1<sup>st</sup> March 2016. As a matter of fact the push for the importation of this special grass is causing ripples in the polity (Punch, 2016).

<sup>6</sup>There has been this debate as to whether the Government should directly regulate private business or it should adopt a more flexible indirect regulatory measure (Posner, 1992, p.151).

symbiotic relationship the method of economics is used to rationalize legal problems and vice-versa (Friedman, 1987). This is because, as shall be revealed soon, the efficiency of a law is measured in the economic terms by the limited financial implications of its enforcement. A law is also measured by the level of equilibrium it strikes between the citizenry in the allocation of resources. Accordingly, a law is efficacious if does not cost the state so much to enforce. In this regard, tax laws are deemed efficacious only if the return from their strict enforcement is the increase of government revenue through increased payments. Whereas laws that are enacted to regulate business undertakings by individuals and corporations may be regarded as ineffective if so much of the tax payers monies are expended in enforcing them without getting the commensurate financial benefits (Cooter and Ulen, 2016, p.2). On the other hand, the law is relevant in the streamlining of economic policies of countries to ensure that they are geared towards the overall benefit of the citizenry. In practical terms, law is a useful tool in the regulation of business and other commercial undertakings in order to ensure that the rights of the parties thereunder are protected. Accordingly, because of this overlap between legal systems and political systems some of the contending issues are often resolved on the basis of studies in political economy and constitutional economy as well as political science. The practical effect of such considerations are often felt when laws are enforced and the desired results are not attained. Often, lawyers ask, "How will a sanction affect behaviour?" For example, if punitive damages are imposed upon the maker of a defective product, what will happen to the safety and price of the product in future? Accordingly, the impact of law on the economic and political policies of a country becomes a central issue (Cooter and Ulen, 2016, p.3).

Historically, study in law and economics is traced to Adam Smith, who as early as the eighteenth century discussed the economic effect of Mercantile Legislation. However, the more in-depth analyses involving the use of principles of economics to regulate non-market activities are traceable to the works of the leading lights like Coase (1960) and Calabresi (1961).

There are two schools of thought on the relationship between law and economics. These are the positive law and economics school as well as the normative law and economics school (Calabresi, 1972). Positive law uses economic analysis to predict the effects of the various legal rules. The positive theorist believes that common law, that is case law, is sufficient so long as it recognizes the relevance of market forces in its enforcement. They urge that the legal system should as much as possible force transactions into a market model (Emiri, 2013; see also Rubin, 1977; Epstein, 1982). In effect, this school of thought believes that the efficacy of law is determined by the economic benefits derivable from it. Accordingly, a positive economic analysis of tort law would predict the effects of strict liability rule as opposed to the effect of the rule of negligence (Attanasio, 1988). The dividing line is that whereas strict liability is imposed to reduce the burden of proof placed on a consumer plaintiff in a product liability suit,

a positive economist view point is that the error or mistake complained about is part and parcel of the business for which blameworthiness need not be ascribed to anybody (Shadwell, 1987, p.235). This explains the initial reluctance by the courts, even in Europe, to impute a strict liability standard in product liability law. The reason was that such a high standard would discourage enterprise and in the long run lead to economic losses for the state. In the words of Grubb:

There is a divide between those who believe negligence provides the best balancing mechanism and those who feel strict liability provides better incentives for producers to prevent harm and better internalizes the cost of the activity. (Grubb, 2000, p.18)

However, on the part of the normative school of thought, they argue that there is the need to go beyond the economic cost, but to look into the long term economic consequences of various governmental policies and laws. They believe that efficiency is a desirable goal that the law ought to pursue. Whereas, the Normative school of thought emphasize the “ought” requirement in expected efficacy of the law, the Positive school of thought argue that every effort should be made to make a law effective even if it involves infractions on the rights of others. In their view, it is primarily the interest of economic scholars concerned about legal reforms to canvass for an “ought to” position in this regard.<sup>7</sup> The emphasis is on the economic analysis of efficiency, more often expressed as allocative efficiency.<sup>8</sup> It is furtherance of the aforesaid, that the *pareto efficiency* concept in the analysis of the economic efficiency of legal rules was propounded. In the opinion of proponents of this concept, a legal rule is efficient if it could not be changed so as to make one person better off without making another worse off. Veritable examples in this regard are some of the proposed anti-grazing laws in Nigeria. Such laws if enacted and enforced in the manner they were conceived originally, it would mean the displacement of some persons engaged in a type of farming (Cattle grazing) for the benefit of another farmer (Crop farmer).<sup>9</sup> This was certainly a ground breaking concept with far reaching implications for product liability law and in the long basis for consumer protection. Fundamentally, it underscores the basis for the state evolving protectionist laws in favour of the consumer as against the manufacturers and suppliers of goods and services. To what extent would consumer protection laws be assessed as efficient in the protection of the consumer? Will it be better to protect the consumers who are more in number than to consider the economic interest of few manufacturers? What should be the basis of ascertaining the

efficiency of the institutions put in place for the articulation and protection of consumer rights? Whilst, a *pareto efficiency* analysis, would determine the efficiency of consumer laws and institutions put in place for its enforcement on this narrow confines.<sup>10</sup> It has been criticized as not totally reflective of the indices for ascertaining efficiency of public institutions.<sup>11</sup>

One of the criticisms often labeled against the *pareto efficiency* concept and by extension normative economics is that the use of the concept in economic analysis is so abstract and classical that it often undermines human rights and the concerns for distributive justice.<sup>12</sup> It is argued that it concentrates so much on the economic variables that the basic rights of the individual that the law is aimed at protecting is ignored. Accordingly, in the context of consumer protection, economic considerations cannot be placed in the front burner far and above the basic rights of the consumer. Whatever, economic considerations to be examined should be in the context of protecting the economic interest of the consumer as well as ensuring that less public funds are wasted in that regard. It is in the light of the aforesaid that it has been argued that the assumed benefits of law and policy should now be assessed on the *theory of second best*. The proposal is that, "if the fulfilment of subset of optimal conditions cannot be met under any circumstances, it is incorrect to conclude that the fulfilment of any subsequent subset of optimal conditions will necessarily result in an increase in allocative efficiency"<sup>13</sup> Accordingly, any expression of public policy, whose desired purpose is undefined in area of allocative efficiency, is viewed with suspicion. Thus, otherwise economic concepts like mergers and acquisition have been viewed from that perspective. The relevance of law and economics can be appreciated even without focusing on the division between the normative school of economics and the positive school.

#### **A PEEP INTO THE COESEAN THEORY AS A PARADIGM OF THE RELATIONSHIP**

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Ronald Coase was one of the primogeniture of the relationship between law and economics. It was his view that economic parameters could be used to resolve complex legal problems with maximum effect. Coase (1960) in his in depth analysis of the problem associated with the cost of enforcing state sponsored regulatory measures in business, opined that business people should be given the leverage to negotiate and settle their way out of problems associated with the production and distribution of their goods or services. In his view, the risk of injury or damage to a potential buyer or consumer of goods is a *transaction cost* which should be built into the cost of production by the business person, albeit a manufacturer. Accordingly, where the transaction cost is insignificant when compared to the expected profit from the business, then the risk is worth it, as such a risk can be effectively taken care of by the market mechanism. His analogy of the farmer and their farm, the meat supplier and their cows was instructive. It is his argument that instead of litigation between the farmer and the meat supplier over the destruction of the former's crops by the latter's cows, a negotiated settlement that would factor that risk into the cost of production by the farmer and the seller will be less expensive and more effective. A negotiated settlement in this context could involve both parties either deciding amongst themselves who should build the wall around the farm or, amongst themselves, who should undertake the expenses of doing so. The argument by the proponents of the synergy between these two disciplines is that it is better and more pragmatic for the business people themselves to fix the cost of redressing this extra cost of doing their business than for the courts to do so for them. Becker in his classic analysis also cited the following example: *Eddie's Electric Company* emits smoke that dirties the washing hangers at *Lucille's Laundry*. *Eddie's* can completely abate the pollution by installing scrubbers on its stacks, and *Lucille's* can completely exclude the smoke by installing filters on its ventilation system. Installing filters is cheaper than installing scrubbers. No one else is affected by this pollution because *Eddie's* and *Lucille's* are near to each other and far from anyone else. *Lucille's* initiates court proceedings to have *Eddie's* declared to be a "nuisance." If the action succeeds, the court will order *Eddie's* to abate its pollution. Otherwise, the court will not intervene in the dispute. What is the appropriate resolution of this dispute? (Cooter and Ulen, 2016, p.5). As it was resolved between the farmer and the owners of the cows, since it is cheaper for *Lucille* to install the filters to protect her clothes from the effect of *Eddie's* pollution, an efficient intervention of the law ought to be one that would encourage her to install the filters rather than compelling *Eddie* to install the scrubbers on its rack. This is because ultimately the burden of the extra cost of installing it will be passed on to the ultimate consumer by way of increased prices (Cooter and Ulen, 2016, p.5 Calabresi (1961, p.275) points out that the costs of an accident include (a) the cost of preventing the accident; (b) the cost of the harm done to the victim; and (c) the transaction cost of enforcing the law to redress the harm. In his view, where the cost of preventing an accident will outweigh the cost of redressing the injury resulting from the injury, it is more financially prudent to treat the accident as part of the production process.

This is because, from an economic point of view, the manufacturer should factor in the likelihood of paying compensation for injuries arising from its errors in the production process as part of its cost of production. Accordingly, they should be prepared to pay for such an accident without waiting for the law to intervene or going through the rigours of litigation.

However, the Coasean theory is premised on an assumption of a perfect market situation. This has been criticized as in practice, there is no perfect market (Breyer, 1982, p.32). Players in the market are often tempted to manipulate the market to suit their peculiar goals. The distortion in the interplay of market forces can be understood from two perspectives. First, the consumer is assumed to be a rational and careful person who can readily make informed choices. This is far from the truth as most consumers are ignorant, gullible and at times often blinded by haste and sheer desires, that they often make the wrong choices (Cranston, 1984, pp.23-28). Second, there is the assumption that businessmen will compete freely and fairly for the patronage of consumers. However, in practice there is a lot of business stratagem used by business to out fox their rivals as well as entrap the consumer. These business antics include advertisements, sales promotions, price fixing and syndicating amongst others. For example, through advertisement manufacturers distort the information about the goods and services offered to the consumer, thus ultimately denying him the much needed information to make informed choices (Cranston, 1984, p.24).

This is where competition law will come into play to address these incidences of market imperfection and failure. Competition policy and law will work in the area of laying the blue print for manufacturers and producers of goods and services to compete freely and attract patronage from the consumer. In this regard, monopolies or the dominant position of companies or other business organizations are outlawed. Competition law is essentially anchored on a free market system (Taylor; Cambridge, 2006). The goals of competition legislation include the following: The encouragement of free and open markets, the provision of fair and equal competitive opportunities to all market participants, the promotion of allocative efficiency, the maximization of consumer welfare and the establishment of transparency and fairness in the regulatory process (Dimgba,2016 ). In driving home, these set objectives, competition is expected to create four distinguishable parameters for measuring efficiency in the market place, the *productive efficiency* which is aimed at ensuring that goods and services are produced at minimal cost, *allocative efficiency* which ensures that available resources are used efficiently, *dynamic efficiency* encourages firms to be innovative in their production methods to reduce production risks and cost, *inter-temporal efficiency* which emphasizes the utilization of available resources for the long term benefits of the citizenry (Dimgba,2016 ).

## THE COASEAN THEORY AND THE RESOLUTION OF THE CONFLICT



It is apparent from the foregoing that, just as Coase had decades ago proposed that the farmer and the cattle rancher could come together and negotiate a resolution of the conflict of interest arising from the latter's cows coming to destroy the former's crops, it is not out of place for farmers in Nigeria and their cattle grazers to come to such peaceable resolution without the resort to violence and the resultant loss of lives and properties.

In practical terms, the cattle grazer should see the likelihood of his flock straying into the farmer's farm and destroying his crops as a transaction cost that must be borne by the business. He could either chose the option of constant payment of agreed compensation for the quantum of crops destroyed by his cattle or he could negotiate with the farmer to acquire the farm ostensibly for feeding his cattle. Since the farmer is in the business of farming for profit purpose, it is possible that he could give up his farm and relocate elsewhere if the price is good. Conversely, the farmer could negotiate with the cattle grazer to acquire his flock as part of his farm, in which case he ceases to see the cattle as the enemy destroying his farm nut rather as part of his farm. What follows may be the likelihood of the farmer ceding a part of his farm for the purposes of feeding his cows whilst maintaining the other portion as his farm for his crops. A high fence that will prevent the cows from straying into the crop farm is a possibility though, as imperfect as the coasean theory is, this burden of expenses on the farm may be passed on to the buyer in the form of high costs for the farm produce

Similarly, owners of vast expanse of yet to be cultivated land can, subject to negotiations and proper pricing, cede the same to the owners and cattle herders for their cattle grazing purposes. In this way, communities and individuals alike can maximize the economic benefits of the business and live together in peace and harmony.

This is where government intervention becomes veritable. Through a policy thrust anchored on subsidy, government at whatever level could subsidize the expenses of either party, i.e., the farmer or the cattle grazer so that the economic cost of resolving their differences will be mitigated and ultimately there will be no basis to pass the buck to the hapless consumers.<sup>14</sup> Government need not intervene directly by churning out laws to either prohibit or permitting grazing. There already exist in our criminal laws abundant provisions dealing with the reckless or negligent use of animals to either disturb public peace and order or to cause nuisance to members of the public.<sup>15</sup> As observed earlier, the relevance of competition law in this context is best appreciated from the angle that the farmer and the owner of the cows will not suffer the disadvantage of direct government intervention in their business with the attendant nuances of over-regulation which often stifle business. Since they are both involved in the business of

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<sup>14</sup>This is what is recommended to the states in the Northern Region of the country that are focused on acquiring and funding grazing fields for cattle rearing.

<sup>15</sup> In Edo State of Nigeria, sections 7-10 of the Animal (Disease) Law Criminal Code Cap 8 Laws of Bendel State of Nigeria, make elaborate provisions for the safe and sanitary transportation of cattle in the State.

farming, albeit different types of farming, what is expected is that indirect regulation by way of preventing underhand dealings or sharp business practices amongst them ought to be the emphasis of any legislation. One of these two shades of farming business should not be allowed to dominate or subrogate the other, they can co-exist. This is best achieved through a negotiated settlement. As noted earlier, direct regulations in the manner of fines and penalties would only end up driving the prices of the goods in question upward. Accordingly, if the owner of the cows is forced to build the wall when it is more expensive for them to do that compared to the farmer, then the owner would try to reduce their “transaction cost” by passing same to the ultimate consumer (Cayne and Trebilock, 1973, p.396).

### CONCLUSION

The author has in the course of this essay examined the possibility of a private and contractual resolution of the conflict between owners of farmlands and the owners of cows with respect to the cattle grazing in the country. It is the author’s view that the problem has become intractable, volatile and now threatens peace, tranquillity and the sovereignty of this country. Government has done well to intervene in order to stop the tide of the violence and the consequences that has resulted from the conflict between these set of “farmers”. However, the author’s treatise is that the Government need not intervene through direct and prescriptive legislation as it is trying to do presently through the proposed National Grazing Law.<sup>16</sup> Government cannot effectively use this piece of legislation to force communities or state to donate or cede their farmlands to the cattle herders for grazing period. As a matter of fact Government ought not to be directly involved in the acquisition, setting up of grazing lands or the importation of the so-called special grass for feeding the cattle.

The author has argued that the crop farmer and the cattle herders are both farmers and business people who are in it for profit. All that government needs to do is to provide the enabling environment through proactive policies anchored on agricultural subsidies to make the cost of these two vital categories of farming less expensive and hazardous for them. This will ultimately engender huge potentials for the agricultural sector in the country with increased food production at reasonable and affordable prices.

Once this is done, it will be easy for these two set of farmers and business people to negotiate amongst themselves and using the scale of preferences and opportunity cost, determine amongst themselves which of the genre of farming should prevail in a particular community or state and at which particular time. Each set of farmer will readily be prepared and able to make financial sacrifices in the nature of a “transaction cost” to settle the other and remain in

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<sup>16</sup>Supra footnote 3.

business without endangering the other one's business nor resorting to the crude and barbaric option of violence and senseless killings as means of emasculating and annihilating the other. This is where the relationship between law and economics has been propounded as the necessary tool and driving force for this new orientation.

Accordingly, given that these set of farmers are largely illiterate and un-informed, it becomes the duty of policy makers and those charged with the implementation of these policies to engage these farmers on this issue and guide them appropriately. In this regard, community leaders, local politicians, Agriculture Extension Officers, the religious ministers amongst other stake holders have a lot of jobs on their hands.

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See Vanguard Newspaper, 30<sup>th</sup> August 2016 <https://www.google.com.ng/search?q=Vanguard+Newspaper> accessed on 12/06/2017