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Assignment question.

1. How can a Lebanese retain or lose his or her newly acquired Nigerian citizenship.
2. Social contract theory explains the evolution of states, what other explain the same, and their strengths.

1.

Since 1979, there have been significant changes in the law relating to citizenship in Nigeria. These changes came with the enactment in that year of the Constitution of the Federal Republic of Nigeria (CFRN) 1979. The citizenship provisions of the 1979 constitution have been slightly modified and re-enacted in the 1989 constitution which came into effect on October 1, 1992.

It was the Independence Constitution that created for the first time a Nigerian citizenship properly so called. Chapter II of the Independence Constitution (1960) Constitution, which contained its citizenship provisions, prescribed the requirements for the acquisition and loss of Nigerian citizenship. It also contained “inter alia” provisions relating to dual citizenship. Provisions were also made for the deprivation and renunciation of a person’s Nigerian citizenship. Pursuant to the enabling provisions of the constitution , the Parliament enacted the Nigerian Constitution Act1960 which was subsequently amended by the Nigerian Citizenship Act 1961.

Which the Nigerian citizenship may be acquired namely: by birth, by registration and by naturalization.

The following excerpt of Chapter III of the Constitution of the Federal Republic of Nigeria 1999, spells out the conditions under which a person may gain, retain or lose Nigerian citizenship.

1. **Citizenship by birth.**

Section 25(1) The following persons are citizens of Nigeria by birth-namely-

1. Persons born in Nigeria before the date of Independence, either of whose parents or any of whose grandparents belongs to a community indigenous to Nigeria;

Provided that a person shall not become a citizen of Nigeria by virtue of this section if neither of his parents or his grandparents was born in Nigeria.

1. Persons born after October 1, 1960 of whose parents or any of whose grandparents is a citizen of Nigeria;
2. Persons born outside Nigeria either of whose parents is a citizen of Nigeria.

The implication of this provision is that two foreign nationals whose aircraft is on a forced landing in Nigeria may sire a child who qualifies as a Nigerian citizen by birth. Nonetheless, if such a child also qualifies for the citizenship or countries of his or her parent’s citizenship, then he or she must elect, upon attaining 21 years of age, whether to retain his or her Nigerian citizenship or the citizenship of other country or countries. Upon attaining his majority, such a dual citizen can no longer hold Nigerian citizenship with another country or nationality. Although in Britain and the United States, the principle of *jus soli* is firmly established, it is still very doubtful whether the makers of Nigeria’s 1979 and 1989 Constitutions intended to incorporate this principle without qualification. The principle of *jus soli* postulates that a child is the citizen of the country where he is born even though his parents where aliens in that country. This proposition is unaffected by the fact that his parents are aliens ineligible for naturalization in the country of their child’s birth. Under the current law, only a person who has a parent or grandparent who would have qualified as a birthright citizen at the time of that person’s birth, if such parent or grandparent were alive on the date of independence, would come under categories (b) and (c). As regards makes persons born outside Nigeria, either of whose parents is a citizen of Nigeria, the law no longer makes a distinction between those born before and those born after October 1, 1960. However, a distinction is still made between off springs of birthright Nigerian citizens and those of non-birthright Nigerian citizens. This distinction arises from the operation of Section 28 and 30 respectively of the 1979 and 1989 Constitutions which define citizen-parent and citizen-grandparent for purposes of Chapter III as birthright Nigerian citizens only. This definition, which excludes parents and grandparents who acquired their Nigerian citizenship by registration or naturalization at independence, disqualified their offspring as birthright Nigerian citizens under sections 23(1)(c) and 25(1)(c) respectively of the 1979 and 1989 Constitutions. The current law denies birthright Nigerian citizenship to persons born outside Nigeria to non-birthright Nigerian citizens. In other words, children born outside Nigeria to naturalized or registered citizens do not qualify for birthright Nigerian citizenship and can only become Nigerian citizens if they otherwise qualify under sections 26 and 27 of the current Constitution.

1. **Citizenship by registration.**

Both the 1979 and 1989 Constitutions provide for two categories of persons who may acquire Nigerian citizenship by registration. The first category comprises any woman who is or has been married to a Nigerian citizen while the second category consists of any person of full age and capacity born outside Nigeria, any of whose grandparents is a citizen of Nigeria. In both situations, the President must be satisfied that the applicant:

1. Is a person of good character;
2. Has shown a clear intention of his (her) desire to be domiciled in Nigeria; and
3. Has taken the oath of allegiance prescribed in the Sixth Schedule to the constitution.

It may be observed that the first category is gender-restrictive in that it does not apply to a man who is or has been married to a Nigerian citizen. However, no distinction is made as to the method by which the spouse of such a woman acquired his Nigerian citizenship. Unlike the first category however the second category covers males and females alike. It should be stated at this point that the constitution does not provide any form or prescribe the manner in which the applicant for registration. It is submitted therefore that the certificates of sponsors prescribed by the Nigerian Citizenship Regulations for that purpose should continue to be used. Apart from these two categories mentioned above, the 1989 Constitution created a third category of citizenship by registration. This comprises” a non-Nigerian child adopted by a citizen of Nigeria in accordance with a procedure

Approved by any law force in Nigeria”. If the procedure under which the adoption was effected is “”not approved” by a statute in force in Nigeria, such a child will not qualify for citizenship by registration under the new law. The only option open to such a child, it would appear, is, if otherwise qualified to naturalize upon attaining majority. Meanwhile by virtue of this constitutional provision, such a child remains an alien under the Nigerian law despite his adoption by Nigerian citizens.

1. **Citizenship by naturalization.**

An alien may apply to the President and may be granted a certificate of naturalization if the alien satisfies him as to the matters prescribed under section 25(2) of the constitution. Section 25 is a substantial re-enactment of section 9 of the schedule of the 1974 Decree although there are some key changes in the new law worthy of note. Some relate to the factors that influence the consideration of applicant’s application for naturalization, and these include: good character, intention to be domiciled in Nigeria, acceptability and assimilation into the local community and ability to make useful contribution to the welfare of the country. These factors will now be considered in greater detail.

1. **Full age and capacity.**

The applicant must satisfy the President that he is of full age and capacity. Generally, the concept of legal capacity encompasses full age, but the context in which it is used may negate such inclusive interpretation. In the present context therefore, it is submitted that capacity envisages attributes of legal capacity other than the attainment of majority. This means the absence of legal disabilities such as insanity or bankruptcy. The implication of this is that an applicant for naturalization must establish that he has attained the age of majority which is 21 years and that he is not an insane person or an undischarged bankrupt.

1. **Good character.**

To qualify for naturalization, an applicant must also satisfy the President that he or she is a person of good character. The law provides for how the President is to be satisfied ia.to an applicant’s good character, certificates are required in a prescribed form from two sponsors who must themselves be citizens of Nigeria. Although the regulations require such sponsors to be Nigerian citizens other than by naturalization, this must now be read subject to sections 39 and 41 of the 1979 and 1989 Constitutions respectively. The place of origin of a naturalized citizen is neccesarily outside Nigeria, and it is solely on that basis that this distinction is made between him and the birthright citizen. It is a further requirement of the law that one of the sponsors of the applicant should be a “a minister of religion, legal practioner, medical practioner, dentist, accountant or civil servant specially qualified by salary, or any other person of standing in the community” acceptable to the President. Other than membership of any of the listed groups, no further qualification is required from a person to enable him sponsor an applicant for naturalization. Both sponsors must by their certificates, attest to their personal knowledge of this applicant, his or her good character, attest to the best of their knowledge of the belief, the correctness of the personal particulars of the applicant as contained in the application.

1. **Intention to be domiciled in Nigeria.**

The president must be satisfied by the applicant of “a clear intention of his desire” to be domiciled in Nigeria. As in the case of an application for citizenship by registration, the law provides a form for the statutory declaration of the applicant’s intention to reside permanently in Nigeria. Such a declaration appears to be sufficient proof of applicant’s intention.

1. **Acceptability and assimilation into local community.**

It is also a requirement for naturalization that the applicant must satisfy the President that he or she is, in the opinion of the Governor of the state where he or she is or proposes to reside, acceptable to the local community in which he or she is to live permanently, and has been assimilated into the way of life of Nigerians in that part of the Federation. There is no doubt however that the knowledge of an indigenous language will remain a relevant consideration in determining whether an applicant has been assimilated into the way of life of Nigerians in that part of the country where such language is spoken and presumably he or she is to live permanently. Whereas in the old law, the application for naturalization was required to be made to the commissioner, i.e. Minister of Internal affairs, the current law requires that such an application be made to the president.

1. **Useful contribution to Nigeria.**

An applicant must also satisfy the President that he or she is a person who had made or is capable of making useful contribution to the advancement, progress or wellbeing of the country. The test of determining an applicant’s potential for making the required contribution may be stated thus: does the applicant possess attributes or qualities which can positively affect Nigeria or a significant part of her population? Some relevant factors in the application of this test will include the applicant’s possession of such skill or talent that is in short supply in Nigeria, of education or training that can propel the country along path of economic or technological advancement and of wealth that can enhance the lives of a significant section of the citizenry. An applicant’s reputation for philanthropy and noble deeds will also be relevant.

(f) **Oath of allegiance.**

The applicant must also satisfy the President of having taken the oath of allegiance prescribed by the constitution. By that oath, the applicant solemnly swears that he or she will be faithful and bear true allegiance to the Federal Republic of Nigeria. He thereby also undertakes to preserve, protect and defend the Constitution of Nigeria. The import of this oath is quite clear. By swearing the oath, an applicant pledges unalloyed loyalty to the Nigerian nation. Such an applicant becomes bound by the spirit and letter of the Constitution.

(g)  **Residence.**

The President must also be satisfied that the applicant has, immediately preceeding the date of his application, either resided in Nigeria for a continuous period of 15 years or resided in Nigeria for a continuous period of 12 months and during the period of 20 years immediately preceeding that period of 12 months, he resided in Nigeria for periods amounting in the aggregate to not less than 15 years.

(h) **Renunciation of current citizenship.**

As in the case of an applicant for citizenship by registration, the grant of a certificate of naturalization to the applicant is conditional upon effective renunciation of the applicant’s current citizenship within a period of 12 months from the date of such registration or grant. In effect, if an applicant is granted a certificate of naturalization, he or she does not by that fact alone become a Nigerian citizen if he or she possesses the citizenship of another country at the time of such grant. In such a situation, such a grant is only a conditional grant and raises only a rebuttable presumption in favour of the grantee; such an applicant only becomes a Nigerian citizen if he or she renounces his or her extant citizenship within 12 months of such grant. It follows from this then that if the applicant fails to renounce his or her extant citizenship within the stipulated time, the grant of the Nigerian citizenship lapses.

**DEPRIVATION OF CITIZENSHIP.**

No birthright Nigerian citizen may be deprived of his or her Nigerian citizenship. This is a reversion of the pre-1974 legal position. Under specified conditions, a non-birthright citizen may be deprived of his citizenship. The law prescribes two basic scenarios which will trigger such deprivation of citizenship. The first situation provides that such a citizen has, within 7 years of his naturalization, been sentenced to imprisonment for a term not less than three years. The second situation applies to both citizens by registration and citizens by naturalization; and by contrast, does not seem to allow the President the exercise of any discretion. The law mandates that the President “shall” deprive such a person of his or her citizenship once he is satisfied from the record of proceedings of a court of law or tribunal, or after due inquiry in accordance with regulations made by him, either:

1. That the person has shown himself by act or speech to be disloyal towards the Federal Republic of Nigeria; or
2. That the person has, during any war in which Nigeria was engaged, unlawfully traded with the enemy or been engaged in or associated with any business that was in the opinion of the President carried on in such a manner as to assist the enemy of Nigeria in that war, or unlawfully communicated with such enemy to the detriment of or with the intent to cause damage to the interest of Nigeria.

2.

**THE SOCIAL CONTRACT THEORY.**

The concept of social contract theory is that in the beginning man lived in the state of nature. They had no government and there was no law to regulate them. There were hardships and oppression on the sections of the society. To overcome these hardsips they entered into two agreements which are:

1. “**Pactum Unionis**” and
2. “**Pactum Subjectionis**”.

By the first pact of unionis, people sought protection of their lives and property. As a result of it a society was formed where people undertook to respect each other and live in peace and harmony. By the second pact of subjectionis, people united together and pledged to obey an authority and surrendered the whole or part of their freedom and rights to an authority. The authority guaranteed everyone protection of life, property and to certain extent liberty. Thus, they must agree to establish society by collectively and reciprocally renouncing the rights they had against one another in the state of nature and they must imbue some one person or assembly of persons with the authority and power to enforce the initial contract. Thus, the authority or the government or the sovereign or the state came into being because of the two agreements.

Thomas Hobbes theory of Social Contract appeared for the first time in Leviathan published in the year 1651 during the Civil War in Britain. Thomas Hobbes’ legal theory is based **“Social Contract”.** According to him, prior to Social Contract, man lived in the **State of Nature.** Man’s life in the State of a Nature was one of fear and selfishness. Man lived in chaotic condition of constant fear. Life in the state of Nature was **‘solitary’, ‘poor’, ‘nasty’, ‘brutish’, and ‘short’.** man has a natural desire for security and order. In order to secure self-protection and self-preservation, and to avoid misery and pain, man entered into a contract. This idea of self-preservation and self-protection are inherent in man’s nature and in order to achieve this, they voluntarily surrendered all their rights and freedoms to some authority by this contract who must command obedience. As a result of this contract, the mightiest authority is to protect and preserve their lives and property. This led to the emergence of the institution of the “ruler” or “monarch”, who shall be the absolute head. Subjects had no rights against the absolute authority or the sovereign and he is to be obeyed in all situations however bad in all situations however bad or authority or the sovereign and he is to be obeyed in all situations however bad or unworthy he might be. He advocated for an established order. Hence, **Individualism, materialism, utilitarianism and absolutions** are inter-woven in the theory of Hobbes.

John Locke’s theory of social contract is different from that of Hobbes. According to him, man lived in a state of nature, but his concept of the state of nature is different as contemplated by Hobbesian theory. It was reasonably good and enjoyable, but the property was not secure. He considered state of nature as a “**golden age**”. It was a state of “peace, goodwill, mutual assistance, and preservation”. It was free from the interference of others. In that state of nature, all were equal and independent. This doesn’t mean, however, that it was a state of license. The state of nature was pre-political but not pre-moral. Persons are assumed to be equal to one another in such a state, and therefore equally capable of discovering and being bound by the law of nature. So, the state of nature was a ‘**state of liberty**’, where persons are free to pursue their own interests and plans, free from interference and, because of the Law of Nature and the restrictions that imposes upon persons, it is relatively peaceful. **Property** plays an essential role in Locke’s argument for civil government and the contract that establishes it. John Locke considered property in the state of nature as insecure because of three conditions, they are:

1. Absence of established law;
2. Absence of impartial judge; and
3. Absence of natural power to execute natural laws.

Thus, man in state of nature felt need to protect their property and for the purpose of protection of their property, men entered into the “social contract”.

Jean Jacques Rousseau was a French philosopher who gave a new interpretation to the theory of social contract in his work “The social contract” and “Emile”. According to him, social contract, the life in state of nature was happy and there was equality among men. As the overall population increased, the means by which people could satisfy their needs had to change. People slowly began to live together in small families, and then in small communities. Divisions of labour were introduced, both within and between families, and discoveries and inventions made life easier, giving rise to leisure time. The invention of private property, which constituted the pivotal moment in humanity’s evolution out of a simple, pure state into one, characterized by greed, competition, vanity, inequality, and vice. For Rousseau the invention of property constitutes humanity’s ‘**fall from grace**’out of the state of nature. For this purpose, they surrendered their rights not to a single individual but to the community as a whole which Rousseau termed as ‘general will’. Rousseau’s theory inspired French and American revolutions and given impetus to nationalism. He based his theory of social contract on the principle of “**Man is born free, but everywhere he is in chains**”.

COMPARISON OF THE THEORY OF SOCIAL CONTRACT OF THOMAS HOBBES, JOHN LOCKE AND JEAN JACQUES ROUSSEAU.

Hobbes asserts that without subjection to common power of their rights and freedoms, men are necessarily at war. Locke and Rousseau, on the contrary, set forth the view that the state exists to preserve and protect the natural rights of its citizens.

2. Hobbes view was that whatever the state does is just. All of society is a direct creation of the state, and a reflection of the will of the ruler. According to Locke, the only important role of the state is to ensure that justice is seen to be done.

3. Hobbes theory of social supports absolute sovereign without giving any value to individuals, while Locke and Rousseau supports individual than the state or the government.

CRITICAL APPREHENSION.

1. Rousseau propounded that state, law and the government are interchangeable, but this is in present scenario is different. Even though government can be overthrown but not the state. A state exists even if there is no government.
2. Hobbes concept of absolutism is totally a vague concept in present scenario. Democracy I the need and example may be taken from Burma and other nations.
3. According to Hobbes, the sovereign should have absolute authority. This is against the rule of law because absolute power in one authority brings arbitrariness.
4. Locke concept of laissez-faire is not of welfare oriented. Now in present scenario, every state undertakes steps to form a welfare state.

MERITS OF THE SOCIAL CONTRACT THEORY.

The social contract theory was one based on individual rights. The term social contract represents implied agreements by which people form democracy’s and maintain a social order.

The theory justifies action outside of self-interest (common good). The individuals gave up some of their rights to a government in order to receive security and social order. The social contract theory rationalizes why it is in one’s best interest to willingly give up their natural rights in order to acquire the many benefits provided by social structure.

It provides a clear way to analyze issues regarding relationship between people and government (e.g. why is it acceptable to punish someone for a crime?). The social contract theory justifies the concept that state authority must be derived from the consent of the governed and that the covenant of the governed rationalizes political authority, therefore Hobbes argument is more convincing.

**THE FORCE THEORY**

There is an old saying that war beget the king and true to this maxim, the theory of Force emphasizes the origin of the state in the subordination of the weak to the strong. The advoctes of the theory argue that man, apart from being a social animal is bellicose by nature. There is also a lust for power in him. Both these desires prompt him to exhibit his strength and in the early stages of the development of mankind a person physically stronger than the rest captured and enslaved the weak. He collected in this way a band of followers, fought with others, and subjugated the weak. After establishing the state by subjugating the other people in that place the chief used his authority in maintaining law and order and defending the state from aggression from outside. Thus force was responsible not only for the origin of the state but for the development of the state.

This theory is based on the well-accepted maxim of survival of the fittest. There is always a natural struggle for existence by fighting all adversaries among the animal world. This analogy may be stretched to cover the human beings. By emphasizing the spiritual aspect of the church the clergymen condemned the authority of the state as one of brute force. This directly lends credence to the theory of force as the original factor in the creation of the state. The socialists also, by condemning the coercive power of the state as one bent upon curbing and exploiting the workers, admit of force as the basis of the state. The theory of force is supported by the German philosophers like Friedrich Hegel, Immanuel Kant, John Bernhardi and Triestchki. They maintain that war and force are the deciding factors in the creation of the state. Today in the words of Triestchki – “state is power, it is a sin for a state to be weak”. That state is the public power of offence and defence. The grandeur of history lies in the perpetual conflict of nations and the appeal arms will be valid until the end of history.

MERITS OF THE FORCE THEORY.

The theory made slates conscious of building adequate defence and army to protect the territorial integrity of the state. That is why the commanders of the war or Senapti as an important post in ancient kingdoms.

The theory contains the truth that some states at certain points of time were definitely created by force or brought to existence by the show of force. When the Aryans came to India they carried with them weapons of all kinds and horses to use in the war against the non-Aryans and by defeating the non-Aryans they carved out a kingdom in India.

**THE DIVINE ORIGIN THEORY.**

It is a theory of political authority and not a theory of the origin of state. The state, its advocates maintain was created by God and governed by His deputy or Vincegerent. It was His will that men should live in the world in a state of political society and He sent His deputy to rule over them. The ruler was a divinely appointed agent and he was responsible for his actions to God alone. As the ruler was the deputy of God, obedience to him was held to be a religious duty and resistance a sin. The advocates of the Divine Origin Theory, in this way, placed the ruler above the law. Nothing on earth could limit his will and restrict his power. His word was law and his actions were always just and benevolent. To complain against the authority of the ruler and to characteristic his actions as unjust was a sin for which there was divine punishment. The theory of Divine Origin so enunciated, believed in and accepted, thus, implied

1. That God deliberately created the state and his specific act of His grace was to save mankind from destruction.
2. That God sent his deputy or Vincegerent to rule over mankind. The ruler was a divinely appointed agent and he was responsible for his actions to God alone was Deputy the ruler was. All were ordained to submit to his authority and disobedience to his command was a sin for which there was divine punishment.

The main points in the doctrine of the Divine Rights of Kings may, thus, be summed up:

1. Monarchy is divinely ordained and the king draws his authority from God.
2. Monarchy is hereditary and it is the divine right of a king that it should pass from father to soil.
3. The king is answerable to God alone; and
4. Resistance to the lawful authority of a king is a sin.

MERITS OF THE DIVINE THEORY.

Although the divine theory is totally discredited as an origin of the state, there are some good things in it. The summum bonum of the theory is that it stimulated discipline and law-abidingness among the subjects at a time when these were the needs of the hour in those anarchical conditions. This theory also created the moral responsibility of the rulers, because they were cast with a divine injunction to rule to the perfect satisfaction of the heaven.