



# Democratic Secrecy Theory: Implications for Nigerian Democracy And Development

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## Abstract

This work examines the theoretical concept of “Democratic Secrecy theory” in political theory making and research. The central concern of the paper rests on the attempt to demonstrate how the stated theory has implications in Nigeria’s incipient democracy and economic prosperity. Using primary and secondary data predicated on the Democratic Elitism theory, the work has attempted to show the contradiction between the necessity for secrecy in governance and the imperatives for the freedom of information law in Nigerian democratic dispensation. The paper argues that, the dilemmare main edlargely unresolved both institutionally and constitutionally. Finally, the paper recommends the immediate further qualitative and quantitative research so as to forestall a renewed confrontation between head vocates of accountability and opacity in governance in Nigeria.

**Keywords:** Democratic secrecy theory, Democratic Elitism theory, Freedom of information Act 2011, Quantitative and Qualitative Research

## Introduction

Democratic secrecy undermines the availability of information about what governments are doing and why. Freedom of information is increasingly recognized as an important precondition for the meaningful exercise of many fundamental human rights [1,2] and above all for democratic accountability and deliberation [3]. Some scholars sees freedom of information as an important mechanism for ensuring that public authorities are responsive, efficient, and effective in formulation and execution of policy [4].

This begs an important question; how can democratic secrecy

have implication in a democratic country, where questions of democratic values of transparency and accountability in governance, presumably carry so much developmental weight, differ so remarkably in their effort to implement access to information legislation?. Robert has since agrees that, there is a wide spread consensus that legitimacy of public authority depends at least in part, on its transparency [5]. This paper will make the case for explanation grounded on “Democratic Elitism theory”. It will do so by demonstrating democratic secrecy theory’s capacity for implication in Nigeria’s incipient democracy and development endeavours. The problem of governance has emerged as the core issue of African politics at the beginning of the sixth decade of independence. The inability to devise and maintain workable political arrangement has increasingly been attributed to the weakness of state structures of the continent [6]. The deteriorating relationship between states and their social orders has impeded the creation of institutional medications, thereby enhancing the propensity towards statism and official repression while simultaneously limiting the reach of public agencies [7]. The crisis of political authority has been no less severe than the crisis of economic impoverishment [8]. Many of the efforts to institute democratic regimes in contemporary Africa have resulted from the absence of legitimacy of state leaders and from their need to assert centrality [9]. In a situation where control of the Nigerian state apparatus was a critical channel to wealth and hence social mobility, political interaction was particularly competitive and corruption became rampant. In the first republic the aspects was analyzed and the second and third republics has been dealt with by Diamond [10].

The paper will focus largely on the Nigerian fourth republic. The near absence of accountability in governance has the implication to undermine state institutions as central government revenues increased, and the challenges of state authority has ensued. The democratic secrecy together with other policies had conspired to further the gap between state and society on the one hand and citizens and elites on the other, particularly with regards to

citizens' access to government information for democratic and developmental participation.

The Freedom of Information Act 2011 was the product of many compromise and political pressures. No federal agency urged its passage and, for a time, even the president's approval of it seemed uncertain. The administration of the statute has not been particularly impressive. The bureaucracy did not want this law. Unfortunately, this attitude of opposition has manifested itself during the first and second years of the Act's operation in excessive processing fees, response delays and plea for ignorance when petitioned for document in terms other than an exact title or other type of precise definition.

The fundamental basis of a democracy lies in an alert and articulate public, active in the affairs of state. Without that participation, a democratic government cannot truly be said to exist. Yet, the idea of men having rule over their own daily affairs, either directly or through chosen representative, does not rest upon any sense of the people having inherently wise or virtuous. Rather, given factors of information, it is hoped that seemingly reasonable decisions can be arrived at, presented argued, altered, and finally settled upon. Such behavior is manifested as in particular vote, a legislative determination by elected representatives, and administrative decisions by government officials. The action of each, whether citizen or office holder, is affected by the availability of information. Consequently, the perception and understanding of such a behavior itself becomes an element of information which can be utilized at some future time for arriving at another public policy decision. Even in so abstract a model as this, the importance of accessible information, to both government and the governed, should be apparent [11].

This paper is divided into six parts, the first section situates the Democratic Elitism theory within the existent literature on the freedom of information, the second section highlights the intellectual foundation of democratic secrecy theory. The third section show that Democratic secrecy and Democratic Elitism has a global trend, fourth section demonstrate the constitutional and institutional contradiction between the necessity for secrecy in governance and the imperative for the freedom of information in Nigerian democratic dispensation, the fifth section illustrate how democratic secrecy has implication for democracy and development in Nigeria, the last part concludes with recommendation for immediate future further research.

Perhaps the most enduring contribution of survey of attitude towards freedom and civil liberties has been the finding that elites are more supportive than ordinary citizens of democratic rights and freedoms. This was Stouffer's central findings about 55 years ago in his ground breaking investigation, and it has been corroborated in works of [12,13] and others. Upon these findings, a theoretical edifice has been created: the theory of Democratic Elitism [14]. In essence, this theory holds that, elite groups serve as major repositories of democratic values in western type of democracies. More strongly supportive of ideals of democracy than the general public including civil society, elite groups providing an important bulwark against non democratic

proclivities were documented by Stouffer, who found the American public to be relatively intolerant and unsupportive of individual rights and freedoms; like the Nigerian counterparts practicing both federalism and presidentialism.

Unfortunately, according to Key [15], those who are most intolerant and least supportive of democratic rights and freedoms are likely to be without significant influence like the Nigerian civil society and the media. In contrast, those who do have significant influence are more tolerant, more supportive of democratic principles and more consistent in applying those principles in particular cases. The reasons for these difference, it has been suggested [12] that, "decision makers and public policy making move in circles where basic democratic values are more salient and intellectual consistency is more often demanded (as seen in the politics of the freedom of information Act 2011 and its implementation), hence, their attitude are more closely connected to basic democratic creeds". As such, they are the group most likely to resist encroachment upon individual rights and freedoms and must be balanced against other values such as national security. In tribute to these qualities, this elite group has been lionized as "the guardian of democracy" [13].

Do these characterizations of masses and elites or civil society and government attitudes offer an accurate picture of contemporary Nigerian society? Are citizens less supportive of individual rights regarding freedom of access to official information? Our greatest observation in Nigeria is that, no single governing elite in Nigeria have so far identified his or herself with the freedom of information Act 2011, and this one alone will constitute a major flaw in the theory itself, if the freedom of information is considered as a fundamental human right.

Answers to the above questions regarding the characterization of masses, elites and civil society interface on democratic rights and values should be the focus of subsequent future qualitative and quantitative research in Nigeria.

### Theoretical Conceptual Clarification

In this paper democratic secrecy theory is define to include the totality of what is hidden in a democratic setting by the three critical sectors of the Nigerian society during the fourth Republic, namely; military, politics, and business, from the citizenry. The theory contend that only these critical sector group members as opposed to the citizens decide what is to be accessed in the form of information from political and economic participation. These custodians of democratic secrecy derive their power, strength and inclusion from their location at, and control of reservoir of knowledge of various sectors of the society as well as from their shared values and belief. The paper assumed the lack of constitutionalism in the 1999 constitution making, lack of autonomy of local government councils, immunity clause for the executives, In modern Nigeria, presidents have increasingly made use of executive agreements to circumvent the formalities of treaty ratification, as in the case of "Green Tree Agreement", the future judicial in-camera review of the Freedom of information Act 2011, as enshrined in section (23), non disclosure of Council

of State meeting papers, non accessibility of the Federal Executive Council's Minutes of Meetings, and even secret balloting by the citizens to constitute what the paper called "democratic secrecy theory" in Nigeria's fourth republic. Before undertaking any exhaustive review, it is pertinent to expose its recent intellectual foundation, expressed in Weberian notions of Red-Tapism and Bureaucratic Secrecy and Thompson's democratic secrecy.

Weber in his article argued that "every bureaucracy seek to increase the superiority of the professionally informed by keeping their knowledge and intentions secret. Bureaucratic administration always tends to be an administration of "secret sessions" in so far as it can, it hides its knowledge and action from criticism... the concept of the "official secret" is the specific invention of bureaucracy, and nothing is so fanatically defended by bureaucracy as this attitude.... In facing parliament, the bureaucracy, out of a pure power instinct, fights every attempt of the parliament to gain knowledge by means of its own experts or from interest groups... bureaucracy naturally welcomes a poorly informed and hence a powerless parliament – at least in so far as ignorance somehow agrees with the bureaucracy's interest [16].

By democratic secrecy theory we mean, in a democracy, representatives of the citizenry, whether elected or appointed may momentarily cloak their decisions making of their policies in secrecy for the good of the nation-to protect it from enemies and to assure its survival. Those representatives must remember that the secrecy they impose is only momentary and that the shrouded decisions and policies they make, once made known to the citizenry, must be accepted to them. The citizenry, in turn, accept such secrecy only in limited instances and on a momentary basis in order to have the confidence that their representatives are making decisions and policies acceptable to them. A government failing to honor these arrangements, we have been warned, may well be one not worth the cost of preservation [11].

Secrecy by corporations, military and other private organizations stems from many of the same factors that produce secrecy in public agencies. First of all, corporations are bureaucratic organizations and as Max Weber argued in his classic essay on bureaucracy that "a preoccupation with secrecy is an inherent characteristic of bureaucracies [16]. As Weber also notes, secrecy is a major power resource of bureaucracies in maintaining competitive advantage over rival organizations. Indeed, secrecy is the darker side of expertise, one of the major sources of bureaucratic power, since it is a means for withholding the fruits of expertise from external agencies. When information is disseminated, on the other hand, the competitive advantage diminishes, just as with public bureaucracies, corporate bureaucracies do not hoard information primarily for competitive reasons, however, but, because it is essential for the fulfillment of the larger goals of the organization. In the case of modern corporate and military bureaucracies, control over information is necessary for the realization of such goals as profit maximization or stability [17] of course any of these critical sector group members can carry secrecy far beyond the point where it

serves organizational goals and becomes instead pathology with adverse implication for both public and private policy regarding democracy and development.

So, there can be bureaucratic secrecy and is defined institutionally, functionally and relationally. It is a set of interrelated governmental institution of relatively recent origin responsible for making opaque rules, and controlling and regulating decision [18]. Functionally, this is a state of institutions embodying representativeness, and carrying out specific goal, including security and maintenance of order and welfare (all of which can be made secretly). Relationally, the state is not a thing or an event or a field reality, but 'a set of relationship and interaction among social classes and groups that is maintained, organized and regulated by political power [19].

It is important to note and understand the Nigerian state within the context of Democratic secrecy theory. In the same vein [20] argues that "in most of post-colonial African state, the only way for elites to secure life and prosperity and some freedom was to be in control, at any rate, to share in the control of state power". Has the old presumption of secrecy really been overthrown in favour of a new presumption of openness?

According to Max [16] "every bureaucracy seeks to increase the superiority of the professionally informed by keeping their knowledge and intentions secret". The above depict a mutual distrust between citizen and the state. The general supposition is that, there is the need for collaboration between the state, citizens, businesses and civil society. But it is ironical that what obtains at the moment is what the paper refers to as "Democratic secrecy theory" in Nigeria. The essence of all openness laws are for democratic governance and economic development. The world over, access to information is becoming a symbol of meaningful democracy and as a crown jewel of liberal economic development. But the two years of Nigeria effort towards freedom of information regime is highly doubtful and unsettling.

Basically the Nigerian freedom of information law had three major problems namely: the militant nature of the advocates, the high turnover of the legislators since the inception of the fourth republic, and the hydra-headed Official Secrets Act 1962 as amended [21]. There is a serious doubt and apprehend among the Nigerian democratic elites and the attendant fear and ambivalence associated with transparency and accountability in governance in Nigeria which has serious implication for democratization and development. This is worrisome, given the much needed open government on the one hand and the need of state secrecy on the other.

This brings us to the concept of democratic secrecy. There is a massive culture of secrecy with little oversight throughout government during the past 13 years in Nigeria, and has seriously eroded our democratic and developmental processes [21]. The problem is not readily resolvable, because it creates a continuing challenge for governance and democracy [22].

The conflict involves the basic dilemma of accountability: democracy requires publicity but some democratic policies

require secrecy. On the one hand; the policies and processes of government must be public in order to secure the consent of the governed. Democracy requires that citizens be able to hold officials accountable, and to do that citizens must know what officials are doing, and why.

On the other hand, some policies and processes, if they were made public, could not be carried out as effectively or at all. Examples are in Foreign Policy and Law Enforcement which even the Freedom of information Act 2011 gives exemptions. If for example, ceding Nigeria's Bakasi Peninsula was negotiated in the Nigerian National Assembly of the fourth Republic, or had been open to the Nigerian Press all the terms of the final "Green Tree Agreements" fully disclosed, leaders would almost certainly not be able to reach an agreement or if plans to crack down on Niger Delta militants or Boko Haram insurgents were revealed even after it took place, the success of the amnesty programmes and the safety of the future operations of similar kind would be jeopardized.

The dilemma of democratic secrecy may be thought of as an uncertain and citizens and civil society cannot evaluate some policies and processes because the act of evaluating defeats the policy or undermines the process. Two choices that face Nigerian democrats may be to abandon the policy of accountability or to sacrifice accountability i.e. democratic secrecy.

The Nigerian state has not been able to reform, restructure and expunge the dangerous portion of the secrecy law with the view to harmonizing it with the existing access to information Act in Nigeria. And majority of Nigerians lack awareness about the freedom of information law.

Unless there is a concrete resolution of the legislative statutes, inconsistencies between certain provisions of the Official Secrets Act 1962, the Oath of Office, the Oath of Secrecy, Public Service Rules, Criminal Code Act on the one hand and the general spirit of the Freedom of information Act 2011 on the other, the Act may not serve the primary purpose of entrenching the democratic values of transparency and accountability in governance, nor would it empower the citizenry with the needed information to hold their government accountable for economic prosperity.

It is clear that much more research is needed on how to reconcile the secrecy laws and the freedom of information Act 2011 in Nigeria, particularly with reference to when to stick to accountability and under what condition shall we sacrifice it.

### Intellectual Foundation of Democratic Secrecy and the Imperative for Openness

For Plato, there is no direct transparency that leads from the world of empirical moral bodies, to that of the idea – and indeed moral bodily beings are as such only granted an indirect access to the latter (see the notion of being "blinded" by the dazzling "sunlight" of idea). As is often noted however, Plato's language is all drawn from the discourse of appearance and of vision; i.e. idea etc. but it is considered a higher vision with respect to vision properly named i.e. empirical, bodily, and mortal. For the true

philosopher, the ideas can be apprehended, but only through the empirically indirect path of thought [23].

If it is granted that transparency cannot be realized under the condition of a fallen world, then it seems likely that we must assume that transparency cannot be realized at all. As St. Paul puts it, in a famous passage (I Corinthians 13) "For now we look through a glass darkly, but then face to face". Then the promise of transparency begins to emerge as the formula for a structural impossibility." [23]. The desire for transparency should itself become more transparent so as to avoid the notion of an absolute transparency that I believe can lead to greatest obfuscations. The intimate yet ambivalent connection between the demand for perfect transparency and democratic forms of government, whose aim include guarding against misinformation while expanding the sphere in which an informed public can enter into political decisions (a public sphere perhaps infinitely extended by electromagnetic networks). But by complicating the notion of transparency do we not also complicate the notion of inform action? [23].

The moral discourse that condemns secrecy and rewards transparency may cause us to misread the symbiotic relationship between these terms. We need to find different ways of staying with aporia of transparency-as secrecy and secrecy- as transparency.

Despite common demand to support either transparency or secrecy in political and moral terms, we live with the tension between these terms and its inherent contradiction daily.

Kant argues that "uncovering secrets always might unveil the fact that the truth thus revealed is part of a greater system of secrecy and merely a supplementary fold in the structure of veiling itself. Enlightenment always might in fact be the dupe of apparent transparency, and transparency might still be a kind of veil [24].

It is argued that Kant's claimed reconciliation of politics and ethics in the appendix to "Perpetual Peace" founders on an irreducible element of secrecy that no amount of publicity could ever dissipate. This shows up figuratively in image of veiling, and more especially in the paradoxical, very transparent veil associated with British politics in a footnote to "the Contest of Faculties". This figure suggests that the structure of the 'public' itself involves a kind of transcendental secrecy that cannot be publicly overcome, and that public space therefore, cannot become fully visible to itself. A similar problem reappears in the supplementary "secret article" that Kant includes in the second edition of "Perpetual Peace", which specifies, "secretly", that heads of states should take secrets counsel from the open and public discussions of philosophers [25].

Kant demonstrates a kind of secrecy in a democracy by citing the example thus: "Now the monarch of Great Britain has waged numerous wars without asking the people's consent [24]. The King is therefore an absolute monarch, although he, not be so according to the constitution. But he can always bypass the latter, since he can always be assured, by controlling the various powers

of the state that the people's representatives will agree with him; for he has the authority to award all offices and dignities. This corrupt system, however, must naturally be given no publicity if it is to succeed. It therefore remains under a very transparent veil of secrecy".

"The person who has decisive supremacy has no need to conceal his maxims" [24] so that revealing the secret can also be a power play, but that, according to this negative test, no maxim that does not pass the test of publicity can be considered moral [25].

But, according to Kant himself, moral politics itself is based on a secret. This secret is even the secret of the secret, the secret itself, the very secret that allows for the possibility of a moral politics in the first place. This secret is so secret that one must not even try to find out what it is. In saying so, Kant immediately violates the secret that he has just put in place as the very foundation of moral politics. And by blowing the secret of the state (of any state) in this way, Kant, according to his own doctrine, is guilty of the highest treason and risk an exile and death. This is the political price of philosophy, or perhaps its political secret. To avoid this consequences, the secret of the secret must be re-established, its violation must be kept secret; but as this philosophical violation of the political secret is absolutely indispensable if politics is to have a chance finally of being moral, this secret violation of the political secret must be made public, but somehow made public secretly [25].

In Kant's words, "the jurist, having taken as symbols the scales and the swords, does not hesitate to throw the sword into the balance when the scales are not coming down on his side" [24] however, in order to decide, not the cases under the law, but the case of the law itself, this force must be absent. The right of right must be spoken secretly by the philosopher from beyond the boundaries of the force and indeed of right which is why the philosopher cannot be king; and rather tends to join the legislator in his exile, outlawed, structurally sentenced to death [25,26] from which secret position he hopes to make himself heard, knowing that he cannot exactly be listened to. This secret place of exile for the philosopher, which is nonetheless a public place, and even the place from which what is public can be defined – for philosophy is intrinsically public, rationally speaking it should have no secrets – this secret but radically open and thereby exposed place is what we are calling the frontier: it is always on the edge of the mechanical system of right, the zone of transition between systems of right [25]. In sum, the secret of the law is that necessity knows no law, whereas all law must know necessity.

The state secrecy then, concerns something that precedes the decision between truth and falsehood or justice and injustice, namely, the decision between silence and speaking. It is something manifest that nonetheless is not open to negotiation. The very essence of state secrecy is to operate unobserved, hence it is the prerogative of power to withhold certain issue from debate, avoid justification and instead take care of business behind closed doors. However, political secrets are not necessarily synonymous with political crimes – they do not even have to

be something unknown, it is enough that they are left unsaid. Political secrecy opens up a discretely space for action that do not have to be accounted for, that will not have to stand the trial of legitimization, that will not have to be justified since, ideally, they will never be known or discussed.

The secret and its inherent power effect are based on a social constellation made up of three basic positions. First, person A, who knows the secret; second, person B, with whom A shares it; and third, person C, who is kept in the dark about the secret and is thus excluded from the knowledge shared by A and B. Following the footsteps of Machiavellian political theorists of the 16th and 17th centuries developed a rich corpus of rules and guidelines, for a rational and efficient political conduct that assign prominent role to political secret.

Bodin sees state secrecy as simply as governmental technique and means and rules through which the state is founded, strengthened and augmented. Since discretion and secrecy are viewed as the most important conditions for sustaining and expanding power, the authors recommend a variety, of social techniques designed to hid a person's thoughts and intentions, such as deception and dissimulation, cunning, waiting, silence and the control of affects. Here, state secrecy is a form of managing information that restricts politically relevant knowledge to the smallest possible group. It implies a form of "cool conduct" that privileges discretion, dissimulation and opacity over communication, authenticity and morals. The basic idea of that political secrecy is not altogether unreasonable: decision should be left to small groups, and the most efficient way to pursue one's goals is in secret. The split between personal morality and public good is viewed as a necessary differentiation for the sake of political stability. In the light of the confessional wars of 16th and 17th centuries, it makes sense to keep personal faith and conscience out of politics. Bracketing morality, then, is a means of pacifying society.

Only in the 20th century will this separation of politics and morality be recast as an inherently contradictory and tragic conflict. Political secrecy as a rational and necessary political instrument has not disappeared altogether). According to the birth of modern political man in the 18th century takes place within the confines of secret societies, that is, under the protective cover of a bourgeoisie culture of secrecy that is directly opposed to the clandestine operations of the state. The onset of political modernity, the establishment of popular sovereignty and democracy, starts with the establishment of an entirely new culture of secrecy. Democratic state secrecy, demonized in the modern moralization of politics is paradoxical. It both consolidates democracy as a tool of security and undermines it by following exceptions from the rule of law [27].

On the one hand, modernity discovers secrecy as an essential basis of society "common good worth protecting. It sees privacy as a protective space that contains the secrets of individuals, families, groups and associations. Secrecy has its own rules and limits, rules of caution, rational foresight and strategic shrewdness that often preclude violence but for reasons of efficiency, not

ethics. Secrecy, for is neither part of the law nor subject to it," and a real power begins where secrecy begins.

Simmel recognized the irreducible potential of secrecy as a basis fact of social relations, his important study of the role of secrecy in society assumes a ratio of knowledge to ignorance, while admitting that the calculation of such ratio would be unfeasible [28]. But as long as transparency is opposed to secrecy the dream of a perhaps total transparency – an absolute knowledge, a sphere of truth untainted by doubt and lies – remains viable, if only as a regulative ideal.

Transparency provides for holding those in power to account. Accountability is the real prize, for it is this that regulates a democracy. Without it, democracy reverts to the monarchical, feudal, totalitarian, oligarchical or baronial power structures that democracy is defined against [27]. So is there any space for secrecy? Secrecy occupies the squeezed middle in contemporary liberal democracy. On one side it is challenged by calls for transparency and openness; on the other it is trumped, in moral terms, by privacy. Citizens, that is, are commonly said to have a right of privacy but not exactly a right of secrecy.

Open government is the new mantra and *modus operandi*, it is championed not only for access to and participation in, governance it afford the public, but for the transparency capital it bestows open organizations or individual advocating it. Transparency has become a sign of cultural and moral authority.

How does transparency attain this position? The case for open and honest communication was made forcefully by 18th century thinkers such as Kant- arguing against secret treaties in "perpetual peace" (Bennington...) and Rousseau, whose "search for transparency sought not merely to reveal the truth of the world, but also to make manifest his own internal truth, his own authentic self" [29,30] invokes Jeremy Bentham to act as the godfather of transparency in its modern political context. In her historical overview of transparency paid attention to Bentham's faith in public opinion as that which not only guarantee legal security', but also offer virtue a theatre, where morality is put into practice and witnessed by all". In terms of practical implementation, the 18th century also saw the first freedom of information Act in the form of Anders Chydenius' ordinance on freedom of writing and of the press of 1766, instituting the principle of publicity [27].

An account of 20th century transparency, at least in terms of open government, is perhaps best recounted through the North American lens because of the growing importance and influence of the USA during this era. As such, modes of transparency advocated in the U.S. were quickly adopted elsewhere. In the early 20th century, Woodrow Wilson's presidential campaign had been fought on a call for the governmental and financial reform contained in the "New Freedom". In 1913, Wilson wrote:

"Government ought to be all inside and no outside. I, for my part, believe there ought to be no place where anything can be done that everybody does not know about... Secrecy means impropriety [31].

His professed allegiance to openness did not stop at the national level. Wilson's "14 point"; which informed the flavor of Armistice and became the basis of the League of Nations, began with an insistence upon transparent diplomacy: point one call for: "Open covenants of peace, openly arrived at, after which there shall be no private international understanding of any kind but diplomacy shall proceed always frankly and in the public view".

The American 20th century was penetrated by a series of importance legislative measures to demonstrate commitment to open government, the creation of Federal Register in 1935- the Principal mechanism by which US citizens can keep abreast of agency decision making, after that, there was the administrative procedure Act of 1946 which required federal officials to publish information about their operations. It can be seen as a direct progenitor of both the disclosure requirements of World Trade Organizations agreements and the Freedom of information Act, implemented in 1966 in the U.S. and strengthened following the resignation of President Richard Nixon. Though it is possible that in practice some Freedom of information initiative have resulted in tighter central management of information, the Act affirms that government documents belong to citizens and "articulates a presumption that they should be accessible" [32]. In the wake of the Freedom of information success, a bill that later became the Government in the Sunshine Act was first introduced in 1977 and was signed into Law in 1976. After the cold war, principles of the Freedom of information Act spread around the globe [27,33] calls the period between the collapse of the Soviet Union and the collapse of the Twin Towers as the "Decade of openness; with global explosion of laws". After September 11 2001, secrecy returns with Homeland security act, Patriot Act, as a turning point.

Surprisingly, democratic secrecy has made a dramatic come back in the country that purport to be the most democratic, even before the Al-Qaeda attack on September 11 2001, the bush administration claimed executive privileges in several high profile requests for information, fighting off congressional calls of private sector advisors on energy policy and stalling the release of Reagan-era documents under the Presidential Records Acts. But September 11 turned this tendency into a habit, sometimes justifiable (as in details of special operation in Afghanistan) but more often reflectively; example White House official granted former presidents veto powers over release of their administration records, ordered agencies to use the most restrictive and legalistic response possible to Freedom of information requests, and denounced leaks even as mayors and local law enforcement complained about the federal government's failure to share information [33].

To ensure democratic secrecy by dismantling of public information system, the United States Attorney General John Ashcroft highlighted the deference that will be given to individual agencies in their withholding decisions, in a memorandum for heads of federal department and agencies in October 12 2001. Mr. Ashcroft stated "when you carefully consider Freedom of information Act requests and decide to withhold records in whole

or in part, you can be assured that the Department of Justice will depend your decision unless they lack a sound legal basis or present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records”.

Another tactics used more frequently since September 11 2001, has been the state secrets privilege, a claim invoked by the attorney general asserting the national security implication of allowing a civil suit against the government to continue are so great because of their potential to reveal sensitive national security information that the courts must dismiss the law suit altogether. There has been retrenchment of information policy in Nigeria since 2011 that is based more on a response to a security threat by Niger Delta militant and Boko Haram insurgents. The result has been a diminution in the availability of public information since the passage of the freedom of information Act 2011, which has serious long-term consequence and implication for democracy and development in Nigeria if it remains the status quo.

“If a right to the secret is not maintained, we are in a totalitarian space [34] from this perspective, secrecy functions as a constitutive element of transparency, while transparency defines itself as a reaction against secrecy. A regime that embraces transparency will only ever be able to go so far before it tips over into totalitarian because of its parallels with surveillance, particularly when extended to citizens. Resisting the call to be transparent to the state is, then, automatically registered as a sign of guilt. But if the regime doesn’t go far enough, if it shrinks back from applying transparency to its own actions, the regime meets the charge of totalitarianism coming the other way for acting covertly, autonomously and without explicit mandate. Hence, an infinite hesitation, a radical undecidability, within any democracy that count transparency among its operating principles, hence too the prospects of a debate between transparency and secrecy that will never be concluded, because far from being inimical to each other, they are symbiotic [27].

Apart from the disclosure required by state or global regulatory bodies, transparency at an organizational level in the private sector is discretionary. The transformation of architecture of the public sector over the last two decades has caused confusion about the applicability of disclosure laws, most of which were drafted with the purpose of improving transparency within government agencies staff by government employee. As work left government departments- to go to contractors, privatized utilities, and non-profit organizations- the principle of access to government documents began to break down [32]. It is feared that the inclusion of “commercial-in-confidence” clause in government contracts with private companies ensuring confidentiality increase mismanagement of funds and a lack of accountability to the public [35]. Secrecy is therefore possible even when government agencies sign up to a code of transparency. Every neoliberal subject lives with the tension between openness and secrecy in these terms.

## Global Trend of Agitations over Access to Government Information

The right of access to information to make government accountable is not a new concept. It appeared in the 18th century during the age of enlightenment. The Swedish freedom of press adopted in 1766 set the principle that government records were by default to be open to the public and granted citizens the right to demand document from government bodies. Anders Chydaneus, a Swedish legislator was believed to be the sponsor of the First Freedom of information Act in Sweden having being influenced by the Chinese Censorate during the era of the Chin Dynasty. The 1789 French Declaration of the Rights of man called for access to information about the budget to be made freely available: “all the citizens have right to decide either personally or by their representatives as the necessity for all public contribution, to grant this freely, to know what uses it is put” [2].

A similar declaration adopted in the Netherlands in 1795 stated: “Every one has the right to concur in requiring from each functionary of the public administration, an account and justification on his conduct”.

In the United State, the founding fathers recognized the powers of the executive to control information as a means of limiting participation. In the declaration of independence, one of the complaints against the British rule recognized how preventing open government and meetings undermine democratic activities, and Patrick Henry railed against secrecy of the constitutional congress saying “the liberties of a people were, nor ever will be, secure, when the transformation of their rulers may be concealed from them” [2].

In the same vein, “the separation of public record and legislative bodies is also one of the reasons for the American revolution, while the constitution established a national postal system for the distribution of information and the first amendment of the Bill of rights focuses on information access and exchange, assembly and press”. As Quinn further notes, “the idea of public information was a radical concept at the time of American revolution. However, the framers of the American constitution clearly considered this issue to be a major priority”.

For over one hundred years, Sweden and to some extent Finland and curiously the country of Columbia remain along among the nations in taking this principle to legal right to ward off democratic secrecy. It is not until following the Second World War with the creation of the United Nations and International standard of Human Rights that the right to information began to spread and countries began to enact comprehensive laws for access to government held document and information.

Since 1945 when the United Nations convened a conference on the freedom of information and the movement of international propaganda, a foundation was laid as to the rights of citizens regarding information concerning their governance. Subsequently, other treaties, conventions and agreements at the regional and global levels were to be the order of the day

regarding access to government information law by the elites to serve as a bulwark against democratic secrecy. Nigeria in the early and late 1990s attempted to have the same access to information regime through the efforts of stakeholders from elite largely drawn from the civil society and the media segments of the Nigerian population.

To further secrecy, even though military rule is by its nature has been authoritarian and closed, Nigeria's army leaders have maintained close relations with powerful elite groups and in particular with prominent civil servant and ethno-regional leaders to undermine access to information by the citizenry [36]. Military governments in Nigeria have therefore generally been a source of continuity rather than change in terms of granting access to information. Their longevity is symptomatic of the strength of the armed forces in Nigerian society and of the centrality of their role in sustaining the position of dominant political elements in the country.

Article 19 of the universal declaration of Human rights called for all reasons to have a right to seek and receive information. Soon after, many Nordic countries began to attempt the Swedish model. Finland enacted its own Laws in 1951, Norway and Denmark in 1970. In the next thirty years, they were followed by the United States in 1966. These efforts were mainly the result of extended campaign led by the media elites with some governing elite supports and many took decades to succeed [33]. There is a growing body of treaties agreement, work plans and other statements to require or encourage nations to adopt anti-democratic secrecy laws. The growth is especially strong in the area of good governance, leadership, development and anti-corruption, where most new treaties now require that signatories adopt laws to facilitate public access to information. There is also growing recognition of the freedom of information as a human right in both the international human right treaties and regional convention.

Thinkers as far back as Max Weber have argues that modern administrative states have an inherent institutional interest in secrecy (1978:1922:922-933) and indeed all law whether secretive or open were delayed by – and introduced over the objection of- important sections of the bureaucracy and political executive elites. This led Robert [32] to avers that: “there are some intriguing suggestions that the origin of the Swedish (pioneer of the freedom of information law) transparency may be partly in economic concern, a notable factor appear to have been the desire among a small group of liberal politicians to overturn decades of collusion between their elite political opponents and elite mercantile interest, collusion which had contributed to pervasive corruption and endemic financial mismanagement”.

Subsequent upon the above sentences McClean [3] asked, “If freedom of information is fundamental to contemporary democracy and development, why have democratic countries different so markedly in their willingness to enshrine and implement formal right of access to government file? Nigerian scenario is that of entangling and faltering implementation

endeavour over the past two years since the passage of the freedom of information Act 2011.

Conversely, there is a considerable evidence that economic norms, if not actual interest serve as justification for resistance among officials to implementation of disclosure law once they are in place” [37].

Vetoing of anti-democratic secrecy legislation is not a new thing in democratic societies. President Ford's Chief of staff at the time was Donald Rumsfeld; Rumsfeld's deputy was Dick Cheney. Rumsfeld and Cheney advised Ford to veto the freedom of information legislation. President Ford vetoed it because, according to Strom, he, Rumsfeld and Cheney believed that it took away too much Presidential powers (Strom, c). Jack Straw of Britain also vetoed the British freedom of information Act, as did Blair [38].

In his “social order in changing societies” Samuel Huntington averse that, in developing country like Nigeria, the state cannot afford an “open door policy” toward demand made upon it by civil society. Were it to adopt this open door policy it would soon suffer from a “system stress” leading to chronic political instability. Who say development, therefore must say less political participation and openness. Democracy in other words, is somehow antithetical to development in such societies” [39].

Anti-secrecy law does not necessarily ensure democratic values such as accountability, transparency and good governance as seen in “corporate corruption, accounting fraud, and exorbitant compensation paid to chief executive officers. The scandals at ENRON, WORLDCOM, TYCON and Guantanamo Bay Prisons has been examples of such greed and democratic secrecy [40].

In the same vein, anti-democratic secrecy laws can be helpful, according to Malaluan [41] “openness about official information is said to boost the economic potential for a country, as the private sector look for a host of indicators such as availability of information on policies programmes, official rules and distribution of resources before making an investment”.

Since in the word “government openness about policies and regulations has become a pre-requisite for investment in current neo-liberal trade environment” [42]. As further argued by MacDonnel [43] that, “the largest users of access to information laws in the United states and Canada are business seeking to determine the corporate climate for regulatory policy or seeking procurement contact with public sector. The attempt to end the secrecy and ensure liberal economic development as pointed out by Banisar [2] was when the former soviet crumbled and he went further to state that, “though Sweden adopted the first access to information legislation over 200 years ago, more than half the countries adopting the law have done so in the last decade”, which is in tandem with Francis Fukuyama's “End of History”.

Surprisingly, in South Africa, found out that information “remains inaccessible to many of the historically excluded sector of the society”. The literature appears to be ambivalent about



whether the adoption of access to information in a nation would indicate that it would be implemented effectively [44,45].

A study also found that the level of government openness varied, even across nations that held similar economic and political development. Also, a number of autocratic governments have moved towards greater fiscal transparency in the last decade as a strategy to increase foreign investment and development assistance. Similarly other nations (such as Singapore, Malaysia and Nigeria) have embraced fiscal transparency without adopting and implementing properly access to information law embracing democratic governance and serious minded development endeavours or supporting genuine free press [21]. It is Rodan [46] who posits that access to economic information does not ensure political openness though it can promote transparency in supplying information to the financial and banking sector and may be useful in creating stable regulatory environments to attract international investors.

The habit of secrecy in former British colonies then has a deep root in British political and administrative development. From the early 1960s onward, however, the general acceptance by elite and public alike of the British bureaucracy underwent some erosion [47]. The culture of secrecy has a habit of growing. Once it has taken hold, a large proportion of government policy and action becomes opaque to citizens. This opacity allows for corruption to breed and lack of democracy and development set in.

It is only to acknowledge that countries with the lowest gross domestic product per capita like Nigeria face a stark challenge for resource allocation. The institutions of transparency, accountability, anti-secrecy may need more time to develop. It is difficult to foresee how political and economic openness will come to fruition in an environment which political participation is not valued.

Freedom of information is increasingly seen as a basic political participation right within the context of substantive democracy, and this clearly relates to participatory and accountable government, as well as freedom of expression and opinion [48].

### **Institutional and Constitutional Contradictions in Nigeria's Access to Government Information Law**

The Nigerian Freedom of information Act 2011 cannot work together with the Official Secrets Act, if not repealed and amended. The drafters of the Act officialized this fundamental contradiction in section 30 of the Act when they attempted to make both as complimentary by law and procedure. At the moment, the Freedom of information Act and the Official Secrets Act, Oath of Secrecy, Oath of Office, Public Service Act and Criminal Code Act are mutually exclusive.

There is also a contradiction in section 27(1&2) of the Act which states that "Nothing contained in the Criminal Code or the Official Secrets Act shall prejudicially affect any public officer who, without authorization disclose to any person any public record and or information".

According to Senator Lee Maeba on the 15th March, 2011 during the Senate deliberation on the Freedom of information law, says that, "the constitution of Nigeria 1999 needs to be amended for any freedom of information to flow and this was among the sections of the constitution that President Obasanjo hang on to say he was not going to sign because he would go to jail for confronting the constitution's section 39(3a). The section is the cog in the wheel of openness, democracy and development in Nigeria and it remains intact despite the review of the 1999 constitution.

Similarly, henceforth, information access will be based on legal procedure and formal basis. Exemption one secures state secrets from the public, exemption two cloaks in secrecy advisory memoranda – the stuff of which policy is made, exemption seven shield investigatory files from the public eye. These materials important as they are in democratic governance and development planning are beyond discovery through the Official Secrets Act and Allied extant laws before the passage of the freedom of information Act. The Act now re-established the government prerogative to maintain that democratic secrecy, and hence the deadlock in the implementation, as the reaction from within government is that which is characterized by hostility and indifference. The National Assembly undermined the Act by deliberately refusing to consider it in its 2011 appropriation Act even as 2011 budget was signed less than 24 hours in between them. Ministry of Justice can only give memorandum and guide line on access to information law but the issue of overseeing the act is recommendable to be done by Information Commissioner or Ombudsman who is expected to be non-partisan. At the moment, the institution is non-existent due largely to financial implication.

It is questionable whether the "big bang" approach to implementation of anti-secrecy law in Nigeria was the correct approach given the recriminations between the state and civil society organization. It has cause significant disquiet among implementers. Also, the Nigerian constitution of 1999 does not provide for states as implementers of federal laws as in the case of the Freedom of information Act.

Advisory Group of anti-secrecy law if formed should advise the attorney general on implementation separated from the implementation committee. Both the National Assembly committee on the review of the 1999 constitution and the Presidential Committee on the review of the constitution must swing into action now to streamline and resolve the stated contradiction for meaningful development and democracy to flourish in Nigeria.

A critical question in the coming years will be whether cohesion and optimism to do away with democratic secrecy can be sustained by the stakeholders as challenges persist and as the substantial funding provided to the Nigerian civil society by international donors and philanthropies declines.

Although the administration of the anti-secrecy law has not always been consistent with the spirit of its enactment, the

policy instruments generally reflect a desire to open government information. The fundamental basis of a democracy lies in an alert and articulate public, active in affairs of state. Without that participation, a democratic government cannot truly be said to exist. To justify secrecy is to undermine democratic practice as well, failing this, democratic practice will not certainly disappear in Nigeria, but it will, undoubtedly, be diminished with the subsequent rise in lack of confidence in government.

### Implications for Democracy and Development

World Bank position is unequivocally that Africa has no chance of attaining meaningful economic growth and development unless it first moves squarely into modalities of governance that include political accountability, participatory politics and a free market – economy. History suggests that political legitimacy and consensus are a precondition for sustainable development --- underlying a literary Africa's problem is a crisis of governance.

Obasanjo began his anti-corruption effort in 2000 with passing of the corrupt practices bill and the creation of the Independent Corrupt Practices Commission. In 2002, he created the Economic and Financial Crimes Commission (EFCC). The Economic and Financial Crimes Commission's investigation of public corruption escalated in 2006 when it pronounced that 31 of the country's 36 governors were under investigation, non was investigated and punished and nothing was known about the magnitude of the corruption due to lack of functioning Freedom of information law, all the governors enjoyed their alleged loot under the cover of section 308 of the 1999 constitution that gave them immunity from prosecution. In the year leading up to the April 2007 elections Obasanjo hijacked the anti-corruption campaign [49].

"The government of former President Olusegun Obasanjo also agreed in 2003 that it would support disclosure law as condition for a US \$17 million aid package negotiated with UNDP in 2003 (United Nations Development Programme, Nigerian government and Human Rights Programme, 2003). But he twice declined to assent the bill during his eight year tenure, the editors of Vanguard Newspaper editorialized after the House of Representatives passed the bill "that Nigeria would join the league of open democratic societies, the bill... has removed the shackles from the media for conducting investigative journalism... and would allow the Nigerian media to beam its searchlight on public officials. Henceforth, public service will cease to be attractive to those who in the past have considered public office as a method of self-enrichment... it is a brave new world for the Nigerian media and its people." (Vanguard, September, 1, 2004). Surprisingly, two year after the passage of the bill into law, the lot of Nigerians has not positively been impacted. The constitution appears to require that all international commitment be ratified by the senate.

However, budget planning and transparency, public sector efficiency, and government accountability remain atrocious in most states and local government areas in Nigeria. For instance, Human Rights watch reports catalogues of the widespread secrecy and incompetence with which River states administered

it massive annual budget of \$1.3 billion dollar in 2006, a figure that exceeds the annual budgets of several West African countries [50]. The Oputa panel also failed to readily release its conclusions.

Worse still, government is not entrenching the culture of accountability by beginning to sanction and prosecute those that breach established financial management rules and regulations. Examples: Leadership Newspaper of Monday 12th November, 2012, lamented that "This stealing is too much!: N2.8 Trillion stolen – Ribadu Report, N2.6 Trillion stolen – fuel subsidy Report, 1.2 Trillion stolen annually or the equivalent to the 250,000 barrel of oil per day, N256 billion stolen in the first quarter of 2012 via separate theft of 24 million barrels of oil as alleged by Dr. Aganga, the Nigerian Minister of Trade, N100 billion stolen from pension funds, N10 billion estimated loss to Nigeria via the National communication commission frequency scam, and 35.8 million dollar and sundry dubious annual payment to Tompolo and Co. under the rubrics of the Amnesty programmes, the paper asked: can this house survive? All this happen during the Transformation Agenda's Development Planning in nigeria's fourth republic, and a functioning Freedom of information Act would have prevented or reduced such unaccountable behavior.

In the same vein, according to House of Representatives Member, Honourable Galambi, "it was on record that, Obasanjo can be a worse armed robber, given the way he auctioned many government assets without defining their real market values. His singular auctioning of four oil refineries, NITEL and Ajaokuta Steel Company where they were sold at 30% of their real values was part of our economic problem. Moreover, the 16 billion dollars spent on power without proper explanation and significant improvement on electricity supply indicates the highest form of opacity in governance. The legislator made the remark while reacting on the former President Obasanjo's comment calling members of the National Assembly as "rogues and robbers", shortly before celebrating the case of Nigeria's fuel subsidy bribe recorded audio that implicated the investigating committee of the House of Representatives.

At this progress has one fundamental failing: it did not benefit the majority of Nigeria's population, 92% of whom live on less than \$2 day. Human development indicators are staggeringly low; in 2006 life expectancy was 43 years, 194 per 1000 children born alive died by the age of five, and Nigeria's income inequality ranked 159th in the world [51]. Despite the improvements in fiscal management, budgets were not implemented as stated, funds were impounded by the president, and extra-budgetary spending continued [52]. Had the ruling elites and the ruling party wanted, a functioning Freedom of information law should have been strengthen to help develop Nigeria and its democratic governance. The most unsettling issue is that neither the key opposition politicians or political parties are requesting information about these issues, and other cases of corruption such as Halliburton, Willbros and Jefferson case, nor clamoring for strengthening the Freedom of information law, this has a serious implication for our democracy and quest for development.

"Secrecy is in retreat" [53] as part of "second wave of

democratization” “The international freedom-of-information movement stands on the verge of changing the definition of democratic governance. The movement is creating a new norm, a new expectation, and a new threshold requirement for any government to be considered a democracy... the ideal openness regime would have governments publishing so much that formal request for specific information... would become almost unnecessary” [54].

It is not possible to talk of good governance democratically or even economic development in an opaque regime, it is against this background that James Madison argues that: “A popular government without a popular information or a means to acquiring such is but a prologue to a farce or a tragedy or perhaps both, knowledge is power and those who possess it have the power to rule, a people who mean to be their own governors must arm themselves with powers which information gives”.

There are many ways in which freedom of information can be seen as an essential component for economic development and fighting poverty through empowerment, as it impacts on its economic, social and political aspects. Where information flows freely, democratic governance and economic development is facilitated. (Experts Group meeting on freedom of information and sustainable development, 2008, 17-18 March, Paris).

Access to information is for instance essential for citizens to make informed choices during election time or civil society organizations to fulfill their mandates. The freedom of information Act and the government transparency it promotes, has a direct consequence on fighting corruption which in turn has a tangible impact on development because it restricts the funds available for public services, quality education for all, and antipoverty programmes.

While from an economic perspective when businesses have access to accurate market prices, or interest rates this will reduce market biases and if regulatory procedures are transparent and easily accessible this will facilitate small and medium entrepreneurship, and encourage foreign direct investment.

Also, the sharing of scientific information is also crucial when addressing global problems such as climate change. There is no hope of combating such complex environmental threats if there is no sharing of research data and pooling of resources by governments, scientists and organizations. However, despite the importance of reducing democratic secrecy for political democratic process and economic development and prosperity in Nigeria, it has nonetheless rarely been prominent on the development agenda, and it is more likely to be found within the framework of good governance and human rights. It is widely argued that there is a negative correlation between democratic secrecy and economic development. Here are some common arguments which highlight this link.

Democracy demands that individuals are able to participate effectively in decision making and in assessing the performance of their government. This participation depends on access, for instance, to information about the state of the economy, social

systems, and other matters of public concerns such as the use of public funds. One of the most effective ways of addressing poor governance is through open, informed debate. Freedom of information Act 2011 and the public oversight it engender through institutions such as Information Commissioner or Ombudsman, media, courts and appeal process, can be effective in generation of checks and balances on the exercise of public power. Effective access to information may also promote a sense of ownership within society and therefore give meaning to, and strengthen the citizenry.

Institutionally, public bodies are often the principal collectors, holders and disseminators of population, cultural and scientific data and materials. This information can be a key resource for shaping how individuals, civic society, communities, associations and businesses can participate, and it can facilitate their action by providing an accurate information base. In short, empowerment means enabling right-holders to claim their rights and participate within the development process. In Nigeria, it appears that unless there is a concrete resolution of the constitutional inconsistencies between certain provision of the Official Secrets Act and the freedom of information Act 2011, development will be a mirage.

According to the (Expert Group 2008), the Link between access to information law and economic development conceal a multitude of questions:

How can we demonstrate and quantifiably measure the correlation between the openness and development, freedom of information and poverty eradication? If so, what methodological tools could be elaborated and would this even be useful in promoting democracy?

How can the freedom of information as against democratic secrecy be made prominent on development agenda of Nigeria? How can it be marketed as an integral part of the fight against underdevelopment and ensure democratization?

Democratic secrecy is highly likely to meet up with the necessary prerequisites for the adoption of a disclosure law. According to Bannett, there are two conditions that were essential for a law to be adopted, namely, the fundamental commitment to the institution of liberal democracy, manifested in a long history of democratic rule. Such states, it was thought, would be more responsive to the case for protecting citizens rights against state authority and robust enough to tolerate the uncertainties that could be generated by a new disclosure law. A second prerequisite was a period of significant growth in the public sector, or at least a perception of growth, leading to concerns about the erosion of accountability. On the contrary, Nigeria is among the new adopters “struggling with poverty, political disenfranchisement, and widespread corruption [55]. The adoption of the disclosure law in Nigeria was basically as a result of pressure from sophisticated international non- governmental organization in concert with Breton Woods’s institutions, making it as a priority, and as a condition for interaction. Example, in September 2002 Pakistan, as Nigeria in 2003, eventually agree to adopt a freedom of information ordinance in return for US \$1.4 billion in aid from

the IMF (Memorandum of Economic and Financial Policies for the Remainder of Fiscal year 2002/2003, IMF, Washington D.C.).

Another implication for Nigeria is to take note that power has shifted also to some institutions such as World Trade Organization, International Monetary Fund and the World Bank. According to Robert “these organization actively promote transparency as a tool for improving governance. However, transparency is a malleable concept that can be bent to many different purposes, and the particular kind of openness promoted by these organizations is often designed to protect the interest of the financial and commercial enterprises of the First World”. Holding these supranational organizations to the principle of transparency in their operation is not possible yet. Long protected by the cloak of diplomatic confidentiality, these institutions have steadily resisted openness policies like those in force in the advanced democratic state.

Transparency has a problem namely; the potential for misuse of information is equally troubling. Many of the emerging systems of regulation by revelation depend heavily on non-governmental organizations to collect and disseminate information. Supposedly, these are unbiased and competent organizations working solely for the public interest. In reality, they are unelected, unaccountable, and sometimes less transparent than the institutions they suppose to monitor [1].

Another problem is that transparency encourages a new kind of devolution not from central to local government, but from government to civil society. Even relatively open governments are less than happy about this development, as the new glare of scrutiny shines on them along with everyone else.

This democratic secrecy has prioritized regime security over the human security of ordinary citizens. As Ake notes, “the struggle for power had become so intense and so absorbing that it overshadowed everything else, including the pursuit of development. Nigerian should, like South Africa adopt right-to-information laws that accommodate the realities of privatization and that may provide better way of thinking about boundaries of the right to information in an age when government itself has a shrinking role in the production of critical services.

The Nigerian Federal Courts’ willingness to use their discretionary powers may determine the effectiveness of the Freedom of information Act 2011. And whether this is beyond the competence of Nigerian courts or even whether the judiciary will be deferring to the executive branch when applicant allege improper classification of document remains to be seen.

## TOWARDS FURTHER RESEARCH

Virtually all theories in the social science can be shown to generate implication that will prove to be false by the Lieberman and Horwich, the paper is judging democratic secrecy theory and the democratic elitism theory on the basis of their implied empirical consequences for democratic political participation and economic development in Nigeria, under the implication analysis in social theorizing. The paper did not test the theories,

rather, it evaluated them on the basis of the weighted evidence from a wide range of relevant evidences, therefore, we suggest a wide array of expansion of democratic secrecy theory and the democratic elitism theory within the context of the Freedom of information Act, such that, how should we decide whether temporary secrecy is justified or not? Also it appears that whether temporary secrecy or exemptions does not of course always diminish accountability? To what extent should publicity be sacrificed? This proposed future research is intended to broaden the discussion of democratic government secrecy common among leaders and neglected in the literature.

Suppose the implication of these theories worked for several other nations. The question is how does the theory work for Nigeria? We recommend the choice of quantitative data-based research to be the future attempt by any other scholar with interest in the field. A more demanding test occurs when these theories are examined under circumstances that are different from the context in which the theories were initially. Here, the theories are less widely to pass, but failure does not necessarily means that the theories are wrong for the original context or for contexts that are similar to it.

Zetterberg suggest that, the implication of any theory must fall under one of the following: theory as a classic, theory as criticism, theory of taxonomic and theory as scientific. In our case, we are largely treating these theories as criticism, thereby opening a window of opportunity for further research.

We conclude that, democratic secrecy and the Nigerian freedom of information theories were contradicted and argues that the socio-economic determinant of democracy are not yet ripe in Nigeria to support the compromise between the stated theories as suggested by the proponent of democratic secrecy theory, hence, the need for further research.

Ake perceptually capture the character of the colonial state at independence in the following words: “it continued to be totalistic in scope... it represented itself as an apparatus of violence, had narrow social base and relied for compliance on coercion rather than authority. He argues that, leaders have grossly failed in changing the character of the colonial state as “a coercive force unable to transform power into authority and domination into hegemony”, or into that of an organization capable of meeting the genuine aspiration of the citizens [20].

The court that suppose to be the guardian of democracy in Nigeria falters in Nigeria as justice and judiciary also suffers erosion of trust during democratic secrecy period as the judiciary is still faced with several challenges including slow reform process which has generally lagged behind current developments in access to information law, human rights practices, terrorism, the prosecution of corrupt and financial crimes that militate against democracy and development. In the same vein, the immediate past chief justice of Nigeria Mustapha confessed that “though we have recorded some commendable success in stabilizing this country on many occasion, our failures appears more visible in the eyes of ordinary citizens”. He argues that the judiciary was in

urgent need of radical surgical reform". Similarly, the immediate past President of the Nigerian Bar Association, Joseph Dauda, has effectively accused the Nigerian judges of "selling justice to the highest bidder" and insisted that there was empirical evidence to support his accusation. The Freedom of information act 2011 is highly likely to complicate the doctrine of separation of power in governance in Nigeria.

Democratic secrecy is likely to flourish since African state suffers three crises at the moment namely, a crisis of capacity, a crisis of governance and a crisis of security. The capacity crisis relates to favorable loyalty, the crisis of governance consist of the failure to organize politics based on constitutional rather than violence, and the crisis of security stem from the lack of control of the organized and random violence in the state.

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