

Doctrine of Completed Act in Jurisprudence: The Injustices, Hazards and Dangers

Bellarmino Nneji

bellarminechika@gmail.com

Department of Educational Foundations
Alvan Ikoku Federal University of Education
Owerri, Imo State.

Abstract

Justice is the sole basis under which social contracts were held for the emergence of civil societies. Any time justice is converted to a medium of injustice, then the fabric of a society has started tearing. Laws are meant to protect both the strong and the weak. This implies that each has equal desert of justice. However when the strong begins to take undue advantage over the weak of the society because of an unjust or biased principle or doctrine of law, then it becomes difficult to justify that the law protects the weak. It then becomes a tool in the hands of the strong to exploit the weak. The 'doctrine of completed act' is one of such means of perpetuating official injustice against the weak of the society. It is argued here, that the doctrine of completed act is a subtle way of perpetuating injustice by giving the strong undue advantage over the weak. It creates more disequilibria and imbalance. It is further argued and advocated that if the justice system ceases to acknowledge and rely on the doctrine as a means of justice dispensation, it will begin to serve as a deterrence to forceful, fraudulent and coercive appropriation of properties of the weak. It is a doctrine adopted by the strong of the society to deal with the weak of the society. It is concluded that rectificatory justice should be applied as a solution to those who acted under the cover of the doctrine so it can serve as a deterrence to potential(land)trespassers and usurpers.

Key Words: Doctrine of completed act, lawfare, rectificatory justice, jurisprudence, injustice, etc.

Introduction

Impunity can be backed and promoted by the law in certain cases and situations. This may be due to lack of critical reflection and thinking and due diligence when the law is coming into existence or when it is as a result of jurisprudential lacuna or interpretation. One of such situations is the emergence of the doctrine of completed act or action. This doctrine is mostly evoked where there are contentions about a project, a contract, mostly land issues, erection of buildings on lands under contentions, etc.

In these situations, a party might feel that if it acts fast enough in erecting a structure in the contested land, the party will have an edge or advantage in laying claims to the piece of land and ward off the other. This is based on the fact that the party thinks it would be improper or inconsiderate to be asked to pull down the structure. Here an appeal is made to pity, a sort of *misericordiam*.

The problem with such a view about completed acts is that it gives undue advantage to the wealthy or wealthier party over the other. In some cases the party who has the least chance of owning the land can use such a doctrine to claim a land that s/he knows if due process is followed, s/he would not have any chance.

From the other perspective, the doctrine creates unnecessary tensions and rivalries between parties. In most cases, it leads to violence, destruction of properties and loss of life. A party erects a structure, the other pulls it down for fear of the other using the advantage of the doctrine of completed act. This continues cyclically. Resources and lives are unnecessarily wasted.

Many individuals hide under this doctrine to perpetuate criminalities. The justice system may be promoting, perpetuating and institutionalizing injustice through this, thinking it has dispensed justice. The wealthy, the one with the upper hand, use it to deprive rightful, weak and poor owners of their space and property. It is bad system of appropriation.

It is the major thrust of this paper that the doctrine be less stressed and given support in justice dispensation. It creates more harm than good and aids official injustice to the weak. Laws meant to serve as deterrence should not acknowledge this doctrine. It is a tool in the hands of the rich and strong against the poor and weak of society. Whoever uses such intentionally to deal with the weak members of the society should be made to bear the brunt of not being protected by this doctrine. It is one of the conditions to make for a level and equal ground for both parties in a dispute. It should not constitute an undue advantage for those who feel strong and powerful over the other party.

Analytical Framework

The doctrine of completed act can be interrogated through many prisms of justice. That this doctrine can be successfully and justifiably critiqued as an accessory to injustice shows that it is not an original justice desert but seen much more as an outcome or pitfall of undue judicial precedence. What is implied here is that it is not a well propounded theory or principle of just appropriation, *ab initio*. It has no room in the various appropriation principles, especially in John Locke, considered as the father and apostle of private ownership of properties. Locke (2004) in his theory of appropriation only acknowledged rightful and just exchange by original land holders and later subsequent owners. He decried ownership by force, false pretences, sharp practices, or by fraud.

Justice has been a central theme in political thought and law. In most cases it is the basis of society. It is the balance on which a society and a system hangs. It is the major source of equilibrium. A just society must hang on a theory of law and a theory of morality. A concentric circle of these must have justice as its linkage.

Whenever a society loses or fails to adequately dispense justice, many things go wrong. There emerges disequilibrium. In order to restore the balance, justice must be dispensed. This is the essence of the aspect of justice known as rectificatory justice. Aristotle (1999) saw rectificatory justice as one of the ways to restore a disequilibrium. For Aristotle, when resources such as lands are distributed unequally or another's own unjustly acquired, rectificatory justice has to be applied. According to Roberts (2011) rectificatory justice rights injustice. It is a means to set aright unjust situations.

According to Crocker (2009), one dimension of Aristotle's rectificatory justice deals with when wrongdoers coercively or forcefully wrong their victims (like grabbing of lands or trespassing). That is to say that rectificatory justice restores a balance. This line of thought was equally explored by Manfred and Bernd (2009) emphasising the need for restitution and righting (past) wrongs in order to prevent future occurrences. Justice should be a balm to soothe and heal wrongs and restore balance. This is because memories of loss created by the doctrine (of completed act) will continue to haunt the weak forever. The thrust here is that it is possible to prevent whatever situations that would warrant ugly haunting memories and regretful reparations.

According to the entitlements theory of justice of Robert Nozick, a just distribution is one where resources like land are appropriated through voluntary transfers between individuals. Ab initio, individuals are entitled to their (land) holdings. This, was pointed out categorically by the Internet Encyclopedia of Philosophy (2025) that it needs no imposition by any institution, that is with the least governmental interference. Thus land holdings are by just appropriation or just transfers. Anything outside these two leads to injustice and thus demands rectificatory justice. This was equally emphasized by Rahman (2023) when he pointed out that when land holdings come by fraud, coercion, and force, then injustice sets in and requires another type of justice outside distributive justice, and that is rectificatory justice. The use of the doctrine of completed act trumps up this entitlement perspective of justice. Transfer of land holdings and other holdings is just only when based on its voluntariness.

The Application

Let us now cite some scenarios of examples where this doctrine of completed act are applied. It will help facilitate the appreciation of the thrust of this paper.

Mr. A has a land, or shares a boundary with Mr. B. A dispute ensues on the ownership of the land. Both lay claims. Mr. B has more resources and connections to authorities than Mr. A. He begins to erect a structure on the land as Mr. A continues to protest and complain. Overnight, before Mr. A could file a court case, Mr. B has completed his project (or has reached a significant level in his project). Mr. B in his defence relies on the doctrine of completed act and wins Mr. A. The structure cannot be pulled down. Why? Fortune (financial and material resources) has been invested. This would forever haunt Mr. A.

Another scenario. Mr. A shares a boundary with Mr. B. The boundary becomes contentious. Mr. B speedily erected a structure (probably a perimeter fence) before the boundary issue could be settled. The fencing cost a fortune. Mr. A sues. Mr. B relies on the doctrine of completed act and wins. The law refused Mr. A to pull down the fence. Mr. A continues to groan. Unfortunately, he lost because of the doctrine of completed act. He equally lost because s/he is

weaker financially and in other related ways. This loss will forever haunt him or her.

In all these, Mr. A initially followed the alternative or traditional dispute resolutions which Mr. B ignored and preferred a higher authority and system and therefore rushed to a court bearing in mind the advantages of the doctrine. This undermined the alternative resolution system as it succumbed to a higher authority system. Mr. B hurriedly completed the project with the hope of securing a ruling that would prevent any injunction or demolition based on the doctrine. This humiliates Mr. A instead of the system humbling Mr. B to be patient till the case is finally resolved equitably. Mr. B acted on an undue fast lane.

In all these, imbalance, disequilibrium, wrongful appropriation, etc. played out. How just was the entire system and process to the one who lost because of this doctrine? Would these have been the case if this type of doctrine was not in existence?

It is good to note that there has been cases where this doctrine has been faulted. It was refused to be applied or allow one hide under this doctrine to outsmart another. This was in citing the Supreme Court of Nigeria ruling in the case of AG Anambra State Government V. Okafor. Adejumo (2012) had ruled that:

It follows that in appropriate cases, a court of law will grant mandatory order of restorative injunction even where the act in question has been completed. I take the liberty to reproduce for emphasis the passage from the Supreme Court decision in AG ANAMBRA STATE V. OKAFOR (supra) 396 at 427 quoted by the Claimant, thus:

Although a mandatory injunction is sometimes classified as an interlocutory order of injunction in that it may be granted upon an interlocutory application, it is a different type of injunction, with its own features, and requiring a consideration of its own distinct principles. It is noteworthy in this respect that it is usually targeted upon a completed act and the order therefore may be made, for an example, to order a building which had been erected to be pulled down if it established that the defendant erected it stealthily in order to steal a match on the plaintiff on having noticed that an injunction was to be taken out against him.

This is a clear pointer that many hide under this doctrine to perpetuate criminalities. Whether it is to avoid injunction or to intimidate the weak, this doctrine has to cautiously applied, if not denied, to avoid giving the strong undue advantage over the weak.

Implications of Applying/Upholding the Doctrine Jungle Justice

This policy has led to many jungle justices in many societies and settings. The powerful employ all sorts of means to keep the other party away till s/he completes his/her act or reaches a reasonable extent so that *admisericordiam* could be evoked. In most cases, the 'weaker' is locked up or put away for significant period of time to perpetuate this trespass. People are incarcerated by their powerful opponents to achieve their aims in such cases. They come to be released after the 'act has been completed'.

Survival of the Fittest

This is related to jungle Justice. The powerful and strong stampede the weak. The weak in most cases unwillingly succumbs as s/he cannot match the opponent. Some hire hoodlums, some hire police (despite the fact that the current police act in many societies barred the use of police for land related tussles), others resort to physical abuse and harm. When these happen between communities, the toll becomes bigger and expansive.

Haunting Trauma (PTSD)

There is nothing haunting and traumatic as loss of important properties and holdings. After all efforts the restore balance and equilibrium are lost, the individual becomes desolate and despondent. The experience of the loss is traumatic. The memory is a lifelong one. It causes many psychological and other health related issues. It can equally kill one. It equally injures the personality of the victim. It kills and stifles his or her life flourishing. After the trauma, the stress disorder emerges. This, in some cases may be fatal and terminal.

Through the social contract, members of the society should be enjoying a flourishing life. This is one of the conditions for the support of government according to Locke (2004). Whenever this is violated, the principle of political obligation has to be evoked by the people. One way to evoke this power of political obligation is through the declination of the doctrine of completed act as a means justice dispensation. It breeds more breach of the social contract and extended injustices.

These are some of the dangers associated with the doctrine. The doctrine unsettles more than it should settle. It creates more victims than victors. It creates more imbalance and disequilibrium. It is one of the worst forms of justice dispensation.

The doctrine can be seen as a sort of lawfare. It is a lawfare in that it is now a tool in the hands of the strong to deal with the weak of the society. Just as the stronger society can intimidate the weaker society with warfare, the stronger individual can intimidate the weaker with such a lawfare instrument as the doctrine of completed act.

Justification for Stoppage

The doctrine of completed act has perpetuated more harm and injustices. People groan over loss of properties under this doctrine. Most victims, unwillingly lose their properties to aggressors and trespassers. It also emboldens violators and trespassers and even potential ones. The doctrine favours only the aggressors. It gives one party (the stronger and powerful) undue advantage over the other who might be the rightful and legal owner but has no wherewithal to match the opponent.

Certain justifiable reasons can be proffered against this doctrine and its further implementation. Some of these are highlighted below.

Equality of Rights

Just like it is argued that the accused is presumed innocent until proven otherwise by a competent jurisdiction, no one should cause an action to be completed and be backed by the law based on the doctrine until the entire contentions surrounding the matter are justifiably exhausted. This is because, the rightful owner, the one with the holding rights, has not yet been

decided. The same goes with boundary disputes. The parties involved are assumed to both have equal rights to the (land) property and as such the doctrine of completed act should never decide nor deprive one of his or her rightful ownership of the property.

All Have Same Rights

Since all have same rights to the property under contention until determined, none should have undue advantage based on the doctrine. The doctrine disadvantages the weaker.

The weaker might be weak due to circumstances but not weaker in law. The law should empower the weak to defend his or her right. The purported weaker one might be weak due to circumstances like not thinking or not ready to embark on a project on the land at the moment and time of trespass. The purported weaker party might not be around when the trespass was initiated. S/he might be incapacitated in many other ways. In view of all these, the law should not facilitate the usurpation, annexation or wrongful appropriation of another's property based on the doctrine of completed acts.

The caveat here is to deter intentional intrusion and trespass into another's property based on this 'dangerous' doctrine. The doctrine helps in trampling on the rights of the weaker person. It is like a defective contract. It needs revisiting.

The Weak/Weaker Party

In the administration of the doctrine of completed act, a weaker person or party always emerges. Circumstances can make one the weak or weaker party. Such circumstances at the material time may include: readiness, availability of material and financial resources, timing, incapacitations like health, disabilities, physical strength, etc. One can have financial resources and be characterised as weak based on the fact that the opponent has more power and access to authorities, judiciary, and other personalities. These can embolden one and weaken the other. True justice cannot give opportunities to such advantages. With respect to this doctrine, if indeed a just desert is vouched, justice can be delayed but not denied. Let justice be delayed provided it was not denied.

Evaluation and Conclusion

Earlier, it was pointed out that this doctrine could have come into existence from jurisprudential interpretation. This is based on a maxim of jurisprudence that those who have the right and power to interpret the laws are truly the lawmakers. In essence, a law can come into existence through legal interpretations. This new dimension (the doctrine) could have been introduced due to certain lacunae in positive laws. It could also be by judicial accident or miscarriage which came to be used as precedent.

The idea or allegation of sleeping on ones right - *vigilantibus non dormientibus æquitas subvenit* - may be an aid to this dangerous doctrine. The weaker one may not have the wherewithal to pursue a court case at the required level and material time. This disadvantage is then exploited by the wealthy or strong. If the law does not protect the weak in such a situation and circumstances, it becomes difficult to prove that the law protects the weak (especially when the weak later gets the necessary wherewithal). This is one of the issues with the idea of accusing one to have been sleeping on ones rights. This somehow spurs up the doctrine of completed act.

All lined up against the weak.

This doctrine has become a serious albatross on judicatures. Efforts are being made to defend and propagate it irrespective of its inherent injustices on the weaker party. There is need to revisit this doctrine. Why would one have undue advantage because of the doctrine of completed act? Why would another lose his land (land holding) because of such a doctrine?

It is in some cases argued that one was sleeping under one's right and therefore the doctrine of completed act is supported. This does not hold water in many ways. This doctrine is one of the ways to support and perpetuate impunity. It makes the rich and powerful to trample on the poor and weak in the society. It also emboldens potential culprits. One can wake up and decide to pounce on the property of a poor fellow based on this doctrine and still have his or her way.

Criminal elements in the society and property usurpers are encouraged with this to perpetuate their criminalities. Injustices can be perpetuated through this principle. Unscrupulous community leaders can equally use this to support their cronies and deal with their opponents. They will encourage their cronies to exploit the doctrine so that when they come into the matter, they will simply rely on it.

Whenever and if this principle is ceased to be relied upon, a lot of damages, injuries, injustices, etc. would have been taken care of. It would dissuade and deter people from forceful appropriation, trespass and entry into another's properties.

One should not hide under the doctrine of completed act to perpetuate criminalities. The law should not perpetuate injustices through the doctrine. Community leaders should not perpetuate criminalities through the doctrine. No one wants to take a blind risk by seeing his or her properties destroyed or demolished because of undue reliance on the doctrine of completed act. If the law indeed is meant to protect the weak against the strong, the poor against the rich, the illiterate against the enlightened, then the doctrine of completed act must not be seen as a true principle of justice. It gives undue advantage to the strong over the weak.

It is in rare cases that the poor has won cases against them despite the doctrine of completed acts. One has to recall that the perpetrator was initially motivated by the fact that since s/he has the resources, s/he would be protected by the doctrine. The perpetrator has access to authorities, can hire hoodlums, can influence panel members, has access to the judiciary (which can be used to intimidate the poor based on the fact that the poor cannot afford the services of a lawyer), intentional series of litigations can be employed by the strong, the court process can be unnecessarily prolonged to frustrate the poor fellow who gets wearied by the lawyers appearance fees. Sometimes the case may be filed where it costs the poor fellow fortunes to travel. If fortunately at the end the law does not oblige the doctrine, no one will like to take such unnecessary risks and gamble. It begins to serve as a deterrence. The more this doctrine is shunned the more and better the deterrence manifests. This is the summary position of seeing this doctrine as a typical example and case of lawfare launched against the weak of the society. We should respect one another's properties. We should learn restraint and patience. Let us start by resolving issues (amicably) first before embarking on a project on a contested property or land boundary. The doctrine of completed act is dictatorial. It is an inhuman treatment of the 'considered weak' party. The other party may be considered weak because it is thought s/he might not have the resources to match force by force or exert equal financial muscles.

The Bible in Luke 19:8 talked about restitution. Restitution is a heartedly effort to restore a balance or reverse a disequilibrium one created. The doctrine of completed act creates an imbalance, a disequilibrium, a displacement. This imbalance and disequilibrium must be reversed as a sign of justice, a soothing of harm done. Sacrificing justice on the altar of peace cannot be rationally justified. Likewise perpetrating and institutionalizing injustice under the aegis of peace is hypocritical. This is an aspect of knowingly and voluntarily sinning or committing an offence or inflicting harm on the other and then coming to talk of peace thereafter. This is the worst hypocrisy of Christianity. Peace can be camouflaged to justify injustice. Peace can be a coercive tool for the perpetuation of injustice. This is the reason behind the biblical call for restitution. Zacchaeus realized the importance of this need not to hide under this doctrine. He willingly decided to do the needful restitution. Anyone hiding under the doctrine should know that it was a clear adverted act and the sole solution is reverting back to the status quo – restitution. Justice is giving each his or her due. There is also justice in reversing injustice. A disequilibrium must be rectified. This is rectificatory justice. Aristotle (1999) hammered on the essence of this type of justice. Rectificatory justice remedies a disequilibrium. This makes the doctrine of completed act an unjustifiable act and doctrine.

This leads us to juxtapose justice and peace. There is a legal maxim known as 'clearing from the roots' – *senatio in radice*. If any unwanted material, herb, shrub or weed is to be really eliminated, it has to be cleared from the roots. If this is not done, definitely it will sprout again. Clearing from the roots is a sort of deterrence which prevents the weed from sprouting and thereby spreading. Peace does not serve as deterrence. It can be seen as a reinforcement. People can advertently commit crimes and come later to preach and plead peace. This can be exploited by Mr A., Mr B. and Mr C and thus goes cyclical. It abets instead of abating. Justice on the other hand serves more of a deterrence. This is in comparison with peace. Justice soothes the victim more than peace. Peace camouflages injustice in most cases. The victim of injustice under the aegis of peace will have haunting experience which can be traumatic. It is like a volcano waiting to erupt, in most cases, especially where the victim is cajoled or even 'coerced' into the peace deal. This is felt more in individual cases than in community or collective cases. Justice soothes the victim despite the loss. This is the reason injustice is a dangerous vice which can devastate an individual. It equally haunts both individuals and communities. It is not farfetched that the perpetual crisis in the Middle East (especially the Israeli-Palestinian crisis) is because of injustice. How many peace deals and treaties have the globe witnessed in the area? The crisis erupts frequently. The Israeli-Palestinian crisis needs to be cleared from the roots. Restorative justice needs to be applied in the matter. Restorative justice, just like other types of justice, soothes victims more than peace. Justice is a better form of deterrence compared to peace. Going for peace while keeping a blind eye to deterrence is a temporary relief or victory. Certain social ills are better cleared from the roots and nipped in the bud than creating room for its infestation.

The bottom line here is that flagging peace to cover injustice which can be prevented, deterred and nipped in the bud is like putting the cart before the horse. Humanity should organize the systems of relationships in a manner that the right things should be the priority. Rooms should not be created and promoted to perpetuate harm on others. Intentionally

creating lacunae for perpetuating harm, as in the case of the doctrine of completed act, is not justifiable.

We can equally glean at the scenario from the Kantian categorical imperative. Who likes to be robbed and assaulted intentionally to achieve a selfish end and later the culprit, while still holding a firm grip of the selfish gains and proceeds appropriated, will come to preach peace to the victim after achieving his or her inordinate ambitions? Who would like to have such as a universal principle of relationships? How would the world be like if this is not deterred and is allowed to be operational?

There is need to save the weak from the dictatorship of the wealthy, strong and powerful. With the circulation of elites being part of life, if the doctrine is allowed to be applied successfully, there is no end and rest for the weak. There is no permanent weak, there is no permanent wealthy, there is no permanent strong. The world cannot continue to be on a spiral and recycling of survival of the fittest.

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