
A Psychological Perspective to the Rule of Law in Nigeria and Implications for Foreign Direct Investment

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Abstract

Democracy involves submission to the will of majority. It is a pact that keeps ‘countrymen’ in the single body politic and is between free men, not between rulers and the ruled. It is in this context that the rule of law becomes the norm. However, Nigerian laws are deliberately punctuated with loopholes so as to serve the interest of successive ruling elites. The social cognitive theory explains the path-ways through which leaders in government perpetrate their guided dictatorship in the name of democracy, as well as why the leadership elite may never surrender to popular democracy as anticipated by the social contract theory; hence corruption among these elites has made most citizens very poor. This scenario engenders distrust, alienation, a sense of deprivation and frustration among the citizens, and culminates in lack of group cohesion, unrest and insecurity as many citizens flout the laws to survive. Thus the investment atmosphere becomes adversely affected.

Keywords: Psychology; Law; Democracy; FDI.

INTRODUCTION

Successive administrations in Nigeria since independence have had to cope with different forms of crises. Although the 1979, 1999 and 2007 handovers were done in atmosphere of relative calm, the rest of the regimes were ousted through coups. Among the most disturbing problems are insurgency, religious and ethnic clashes, strikes and militancy. Corruption, abuse of public office and criminalization of the state according to (Okoye, 2007) has resulted to a state of backwardness, decayed infrastructure and general under development.

In response to the foregoing, the immediate past president drew a 7 point agenda, aimed at restoring ‘sanity’ and moving Nigeria to the status of developed country in due course. The cardinal point in President Yar’aduah’s agenda was the enforcement of the rule of law, by which he hoped to get Nigerians to eschew non normative behaviours, in the belief that this would foster peace, unity, a conducive atmosphere for foreign investment, reduced corruption, and fast tract national development. President Goodluck Jonathan has continued to from where his predecessor stopped, working on the agenda to restore discipline and reduce corruption to the barest possible level.

It is this hope that stirred up the issue of whether the enforcement of rule of law in Nigeria as it is today is appropriate or feasible from the psychological perspective, given the conditions precedent and the demands of democracy.

‘Demands of Democracy’

One of the theories that provide fundamental understanding of democracy is the social contract theory of the origin of state. Proponents of this theory like Thomas Hobbes and John Locke, imply that although the state of nature was a state of perfect freedom, it necessarily predisposed to violence and wars as means of acquisition and control of factors of production, so stronger persons or groups enslaved the weaker ones, and the maxims of: survival of the fittest, and might is right could be palpated. This state of affairs brought forth the expediency for proper organization of the unfolding complex socio-economic order. Accordingly, men agreed among themselves in a compact so that every one in the state of nature consented to give up his rights to govern and protect himself on the condition that others do the same, and consequently to limit his freedom by a common law. In this regard, Nwoko (2006) drawing from Locke, asserts that “social contract is the

pact, which men freely consent to in order to enter into a political society to avoid the inconveniences of the state of nature. By so doing, they form a single body politic- a common wealth, by which the people put themselves under a political power. This does not mean that they will forgo their liberty and live under servitude. It means that they forego their legislative and executive powers. That is, they forgo the right of correction and punishment, which they had in the state of nature, and hand over to *common legislative power for common good*. In this way, the people together would preserve their lives, freedom and property, that is, the rights of all according to natural law, which could suffer from aggressors who introduce state of war. It involves submission to the will of majority. “The pact that keeps them in the single body politic is between free men, not between rulers and the ruled” pg 85. It is in this context that the rule of law becomes the norm.

Rule of law in a society implies that all members of the society without exception accept the authority of the law. It is a concept that presupposes that the contents of the law have been consented to by members of the society, that the laws are objectivistic, not relativistic; hence they are to be treated as sacrosanct.

Rule of law should be an integral component of democracy which connotes equal participation, and is often interchanged with fair play in social and public life. In politics, democracy is a system of state administration in which all citizens can vote to select their leaders. Democracy also stands for fair play and equal treatment of all members of an organization- or community, and their rights to take part in decision making. The most popular definition of democracy is the government of the people by the people and for the people. It is a system of state administration where all citizens have equal stake, majority opinion represents the decision of the people, and holders of political (administrative) offices hold such offices in trust for the people (Okoye, 1993). This implies that in a truly democratic setting, government officials are servants of the people because power belongs to the people.

This ideal situation is not true in many states; rather, the elites of the society hijack power from the people, make laws and manipulate these laws to suit their purposes. They determine what system of government their states would operate, determine how to relate with other nations and nationalities, as well as chose how to interpret the laws as circumstances present (Iaski, 1982).

THE NIGERIAN SITUATION.

Nigeria is surely not one of the ideal states according to the social contract theory. She is a contrivance of the British colonialists (in 1914). They also laid the foundation for the constitution of the Federal Republic, and the criminal code. It is the unfolding confusion emanating from ‘top – down’ processing of governmental activities that Igun (2006) described when he opined of Nigeria that: “the state is weak and ineffective due to its inability to institutionalize itself and claim loyalty and obedience outside the use of force, it is in the words of Callaghy a “lame Leviathan” (p4). Lame leviathan possesses enormous institutional structures, which do not function, or function only negatively, therefore lack capability to translate into legitimate obedience commanding structures. Igun further argued that the reality of the existence of the state in Nigeria is that of a deformed, institutionalized entity that needs to be established functionally, adding that only a functionally established Nigerian state can form the context for the efficient and effective development for Nigerians.

The effect of this functional malady is captured by Obasanjo (2000) who asserts that Nigerian society has degenerated into a kleptomaniac culture, where every one entrusted with any funds public or corporate; any one but a few, steals at every stage of the way from paper chips, through ghost worker proceeds and contract stealing, to outright plundering of national resources, and a state where each new law is deliberately punctuated with loopholes that makes it possible for people to circumvent it. Okoye(2000 & 2007), indicted the political culture (political orientation

and attitude towards the role of self in the system). He asserted that the character of political representation is largely influenced by the prevailing culture, thus office holders do so in the context of their perception of politics in the society. According to him, the prevailing political culture in Nigeria highlights politics and top government appointments as business ventures and avenues to deal with perceived obstacles to the achievement of selfish ends; therefore it would appear utopian expecting many political office holders to be truly people-oriented (and fair minded) in accordance with their oaths of office.

It is believed that the foundational departure could be traced to the making of the constitution of the federal republic which dates back to the colonial constitution of Sir Hugh Clifford 1922. Successively were:

the Richards constitution of 1945, Mcpherson's constitution of 1951, the Lytletons constitution of 1954, the independence constitution of 1963, the various decrees promulgated by the military regimes, the 1979 constitution and the 1999 constitution. Granted that each of the constitutions made attempt to address one domestic need or the other, none of them was freely subscribed to as envisaged by the social contract theory. This is further complicated by observations by Anyadubalu (2008), that the last time Nigerian laws were compiled into a statute book called the laws of the federation was in 1990. This is notwithstanding the fact that most of the decrees promulgated by the military regimes had been incorporated into the laws as acts of the National Assembly, as well as the several bills passed in course of the democratic regimes which are only read about on the pages of the newspapers. Anyadubalu argued that in a country where the books that contain the laws are not easily available, where a legal practitioner of up to 14 years at the bar do not have the laws of the federation in his/her chambers but is expected to cite these laws and show them to the judge in defense of his clients, since ignorance of the law is not to be an excuse, justice of matter expects that availability of the laws should be a condition precedent.

The point being argued is that those fundamental expectations which should be in place in accordance with the social contract theory (including free and fair elections) before the state can claim authority and institutionalize itself without the use of force are visibly absent in Nigeria, and this has adverse psychological effects.

Theoretical Background

The social cognitive theory offers explanation of how and why the situation has continued to be as it is – majority of the people have not been truly involved in the democratic process. Basically the theory takes an intermediate course, incorporating both internal and external factors in the understanding of behaviour. Theorists of this persuasion argue that the debate on whether behaviour is more strongly influenced by personal factors or by the person's environment is basically a meaningless one, instead, according to the social cognitive principle of reciprocal determinism (Bandura, 1977), the person, his/her behaviour, and the environment all influence one another in a pattern of two-way casual links.

Certain concepts are basic to this broad theory. Rotter (1954), explains that the likelihood that humans will engage in a particular behaviour in a given situation is influenced by two factors: expectancy and reinforcement value. Expectancy is the perception of how likely it is that certain consequences will occur if one engages in a particular behaviour within a specific situation. Reinforcement value is basically how much one desires or dreads the outcome that the behaviour is expected to produce. Thus, this approach makes use of reinforcement: a central behaviourists concept but views its effects within a cognitive framework that emphasizes how people think about their behaviour and its expected outcomes (Pesser and Smith, 2001).

The social learning paradigm and self – efficacy are two concepts that are quite germane to the whole body of the social cognitive theory. Bandura (1991), analytically studied aggression, moral Behaviour and behavioural self control, and was able to demonstrate the wide applicability of this

social cognitive theory to major human actions and reactions. Furthermore, Bandura (1997), posits that a key factor in how people behave (regulate their lives) is their sense of self –efficacy, their beliefs concerning their ability to perform the desirable behaviour and achieve set goals. People who are high in self –efficacy belief possess confidence in their abilities to do what it takes to overcome obstacles and achieve their goals. This belief is determined by results of previous performances, observational learning, verbal persuasion and emotional arousal.

From the foregoing, it is deductible that human behaviours especially in social context (public life) is guided by the persons beliefs about what he/she is likely to benefit or loose juxtaposed with his/her assessment of how possible it is for him/her to do it. It follows that a person's interpretation of a 'law' (especially where discretionary opening exists) is governed not by objectivity all the time but by the interpreter's perception of the possible consequences to self and to in- group members, and to what extent he/she feels competent to defend 'irrational' self serving interpretations.

In like manner, people who make laws (especially where they select themselves) use the laws to protect themselves and perfect advantages in favour of 'self' and in –group members and to consolidate and perpetuate their control over the factors of production within the area of jurisdiction. Social learning and modeling provide the 'doableness' of such behaviours, therefore the near unending handing down of skewed norms (in favour of the privileged class) from generation to another (Obi-Nwosu, 2007).

Psychological Effects

It could be perceived that since the constitution of the federal republic of Nigeria was developed by the political elites as against the majority of Nigerians as demanded by the social contract theory, the law is skewed in favour of the elites as implied by Obasanjo (2000). This is the prelude to social injustice and frustration which are experienced by most Nigerians whose interests are not protected in the law.

According to Myers (2007), frustration of expectations fueled by rising awareness of legislation and civil rights often lead to unrest. Frustration arises from the gap between expectations and attainments both at the level of the individual and group. Thus, when 'the law' gives undue advantage to some citizens, it willy-nilly increases deprivation on others, which tantamount to out - right deprivation on many citizens, and relative deprivation at the level of the labour force. Such relative deprivation has been identified as the major reason why happiness tends to be lower and crime rates higher in communities and nations with large income inequality/disparity (Hagarty, 2000). Therefore majority of Nigerians are not truly happy and this is an explanation for the wave of crime in the country.

Another psychological effect is on group cohesion. Viewing a country as a group, it follows that non adherence to democratic processes engenders a sense of alienation among citizens (between the leaders and the people). It makes the 'ordinary' citizen less keen to play by the rules (except by coercion), after all group members usually feel more satisfied and adhere to norms when they participate in taking decisions, when they perceive that their voices were heard and considered during decision (and law) making (Myers, 2007). Democratic practices motivate group members (in this case citizens) to abide by the rules (decisions) and by so doing improve on the cohesion in the country, thus fostering peace, unity and development.

Implication for foreign direct investment.

A major criterion for international assessment of the extent of security of investments is the extent of stability of democratic governance, which ensures that the three arms of government work in independent co-operation, so that the risk on investments possibly by corruption, insurgency, and criminal attacks become remote, and all citizens (including corporate citizens) have equal access to justice. The current state of the law in Nigeria fails to guarantee this as earlier explained. The

skewed nature of the law and the deliberately created loopholes encourage discrimination; engender distrust, hedge formation and a variety of internationally non-normative business behaviours among the citizens, thereby making the investment atmosphere questionable.

Conclusion

Nigeria is yet to become a democracy; an egalitarian society where every citizen is equally provided for and protected. This is because from the formulation stages, the laws were skewed to favour successive leadership cabals and protect their local and international interests and institutions. These laws were deliberately punctuated with loopholes to enhance easy manipulation and multiple interpretations, so that the same law can 'acquit a friend and convict a foe'.

The social cognitive theory explains the path-ways through which leaders in government perpetrate their guided dictatorship in the name of democracy, as well as explains why the leadership elite may never surrender to popular democracy as anticipated by the social contract theory. This scenario engenders distrust, alienation, a sense of deprivation and frustration among the citizens, and culminates in lack of group cohesion and unrest in the polity.

Indeed, the enforcement of the rule of law, where such laws: were forced on the people, and can be given more than one interpretation or application, is seen by the psychologist as the anti-thesis of democracy and is capable of eliciting adverse psychological states and behaviour among the populace, which in turn discourages foreign direct investment.

Recommendations

1. The proposed constitutional amendment should be commenced without further delay, and should be very carefully done so as to ensure that the voices of all segments and strata of the country are heard and considered.
2. There is urgency for psychological mental health hygiene to be imbibed by Nigerian leaders so as to enable them view and treat issues dispassionately all the time. This can be done if Nigerian Universities brace up to the challenge of producing responsible citizens, and faculties of social sciences become more responsive to their responsibilities of providing the framework for acceptable social standards for those in government, and the generality of the people. A good first step could be a compulsory psychological assessment of all persons seeking admission into Nigerian universities, the inculcation of psychological hygiene practices in all existing students, and psychological assessment of people aspiring for political offices.

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