

Effect of Democracy and the Rule of Law in Nigeria, 1999-2007

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Abstract

The study conceptualized the effect of democracy and the rule of law in Nigeria. The study focused on the rule of law and democratic consolidation in Nigeria. Generally, it also discovered that Nigeria has been at a crossroad on how to enthrone on ending and populist democratic culture that will inculcate in the people participatory democratic culture. It also finds out that the leadership is indeed at a crossroad on how to institutionalize the rule of law in Nigeria. Therein, the paper recommended that, rule of law is cardinal to societal development and should be enforce in nation. It is not only enhance orderly behavior but imbues confidence on the people and as well guarantees constructive and collective participation of the people in the onerous task of nation building. It also recommended that principle of equality should be enforced and the government must be made to be proactive in the enforcement of the law of the land.

Keywords: Democracy, Rule of law, Nigeria

Introduction

Democracy as enunciated by the Ancient Greeks means “demos cratos”. This literally means. “peoples’ power”. This naturally or in its pure and undiluted form abstracts from mob rule or monarchy. Basically, it means participatory and consultative governance: governance characterized by popular rule where the views of all relevant people in the society or polity are articulated, harmonized and hence form the plank for collective decision-making, implementation and political action. Most countries across the universe are increasingly embracing these democratic ideals through the democratization process. Indeed many countries are into their second or third round of multi-party elections, however several of these are still in the grip of authoritarian rule and autocratic tendencies persist in many of the new democracies. Clearly, the trajectories of this wave of democracy in Africa have been quite complex and uneven.

Nigeria, like most developing economies, is engrossed in the absorbing search for populist and accountable political order. After passing through several decades of military dictatorship, successive political leaderships have been grappling with the onerous task of enthroning a just, participatory and egalitarian political order where the citizens shall be free to maximize their fullest potentials. However, the leadership appears to be losing the battle as multi-headed electoral vices characterize the electoral process; and poverty and ethno-regional conflicts equally characterize the national life. Moreover, social vices such as corruption, kidnapping, violent crimes, religious violence and misrule as well as domestic terrorism and other forms of fraudulent practices are now the norm.

The task facing the political leadership in post-military Nigeria is how to redress the raging vices and subsequently redirect the course of national development unto the path of effective social engineering rooted in good governance and the rule of law. In this study therefore, we shall assess the interplay of democracy and the rule of law in Nigeria under President Olusegun Obasanjo with a view to outlining possible and plausible strategies to place the Country unto the trajectory of sustainable development; industry and the rule of law.

An Overview Democracy Explained

The term democracy is fundamentally associated with popular rule; rule by the people; collective decision-making and implementation; consultative and dialogue-based rule; rule by the majority etc. From the foregoing, it appears that scholars are united in their appreciation of the fundamental ideals and substance of democratic practices; however, their appreciation of what constitute “the people” is multifaceted. In fact, for some political office holders, the very idea of peoples’ power means nothing but mob rule. As was stated by Tinubu (2009:2), some specified schools of thought argue tenaciously that giving power to the people tantamounts to a dictatorship of the ignorant masses over the more enlightened and better educated political elite. Tinubu decried the situation where democracy itself has become “a site of homeric intellectual battles” and equally observed that despite the notorious difficulties in capturing the essence of democracy, scholars have been engaged in certain strategies for defining in dynamic motion; that is, viewing democracy itself as it unfolds in actual reality and as a function of several other societal contradictions. The most successful of these is the concept of polyarchy as enunciated by Dahl, (1971). This is not a mode of governance but a sustained attempt to situate the democratic process with an overarching architecture of several key features.

Beetham (as cited in Tinubu, 2009:2) notes that, these features constitute of the clustering of practice

among which include:

- i. Freedom of speech
- ii. Freedom of Association
- iii. The supremacy of the will of the people
- iv. Regular elections
- v. Accountability and transparency

Under the above schema, a Country is described as democratic if it combines most of the features; semi-democratic, if it combines some of them; and non-democratic if most or virtually all these features are missing in the polity.

By democracy we refer to “a form of government organized in accordance with the principles of popular sovereignty, political equality, popular consultation, and majority rule” (Ranney, 1975: 221). This extracts from the foremost definition given by Abraham Lincoln, the former President of the United States of America (1809: 65). According to him, democracy refers to the “government of the people, for the people, and by the people”. Thus the “people” not only institute the government but participate in major decisions affecting their lives and state of being. Hence the people are the subject and object of democracy, the **raison d’etre** of governance. This definition derives from the classical Greek notion of democracy which had as its key feature, the direct and immediate participation of the citizens in the deliberation and decisions on public matters in the citizen’s assembly. We shall return to etymological conception of the concept of citizen, in our subsequent discussion.

Meanwhile, explaining democracy from only the perceptive prism of governance, and the distribution of power within a given socio-cultural and political milieu tantamount to glossing over the foundational and perhaps the critical pillars of the concept.

As correctly noted by Obasanjo and Mabogunje (eds.) (1992:1):

The concept of democracy should be examined from two points of view, that is, ideology and as politics. Democracy, as ideology, is the philosophy of governance which sets a high premium on the basic freedom or fundamental human rights of the citizens, the rule of law, right to property, the free flow of information and the right of choice between alternative political positions. On the other hand, democracy as politics is concerned with the institutions and procedures of governance. These institutions and processes of governance that they elicit tend to foster consensus whilst simultaneously promoting and sustaining respect for the ideology of democracy.

Based on the foregoing, they defined democracy as, “a way and system of governance whether in an organized setting or otherwise, based on the following essential elements:

- i. Right of choice
- ii. Freedom from ignorance and want
- iii. Empowerment and capability
- iv. Respect for the rule of law and equality before the law
- v. Promotion and defense of human rights
- vi. Creation of appropriate political machinery
- vii. Sustained political communication to create trust and confidence amongst leaders and the populace
- viii. Accountability of the leadership to the follower ship
- ix. Decentralization of political power and authority
- x. Periodic and orderly succession through secret ballot.

Therefore, for democracy as a system of government to have firm root, it must derive from democracy as ideology. The ideological content naturally gives focus and orientation to the former. The basic problem of democracy as a system of conducting governance (rooted on the thinking and feelings of the “people”) is that if such system lack ideological content, it will assume the character and feature bestowed by desperate politicians. This explains why democratic practices in some African States largely serve the interest of few economic notables who appropriate the structures and institutions of the state and use same to commit acts of criminality in governance and bestial prebendalism.

Meanwhile, democracy as a concept or a form of government has its root in the 5th century B.C in Athens. It is made up of two Greek words; demos which means people and krastos, meaning rule by the people. While direct democracy was practiced in the old Greek City State, the burgeoning population of various nations-state necessitated the adoption of indirect democracy. In direct democracy every male citizen belonged to an assembly that meets throughout the year to discuss “peoples affairs”. In indirect democracy, minorities are elected to represent the majority or the masses. It is technically called representative democracy.

One pertinent point to decipher from the foregoing is that democracy moves in a spectrum-like object. It is culture and societal specific. It is primarily a rule by the people (depending on how the given polity perceives the term people). It is citizen-based and directed towards enhancing the basic principles enunciated above. The

analysis made above fundamentally point to the fact that democracy is dynamic and attained through the processes of democratization. Modern political democracy is a system of government in which rulers are held accountable for their actions in the public realm by citizens, acting indirectly, through the competition and cooperation of their elected representatives.

There are three models of democracy. The first is the direct or participatory democracy, in which citizens are involved in governance directly, as in ancient Greece. The second model is the liberal or representative democracy. This model views democracy as a system of rules embracing elected officials who undertake to represent the interest and views of citizens within the framework of 'rule of law'.

The third model is the 'Marxist tradition' which is also sometimes referred to as 'peoples' democracy'. The Marxist theory of democracy seeks to extend equality of all citizens from the political to the social and economic spheres of life. At the economic level, this is achieved by allowing equality in the ownership of the means of production through the nationalization of major enterprises.

Equality in the social sphere was achieved through the institutionalization of right to education, pension, medical services, employment, insurance, mother and child care, etc. Liberal or representative democracy has emerged as the dominant model of democracy. It is usually what people mean when they now speak of democracy.

Another commonly accepted image of democracy identifies it with "majority rule". Any governing body that makes decisions by combining the votes of more than half of those eligible and present is said to be democratic, whether that majority emerges within an electorate, a parliament, a committee, a City-Council, or a party caucus for exceptional purposes. For example in amending the constitution or expelling a member, more than 50 percent may be required, but a few would deny that democracy must involve some means of aggregating the equal preferences of individuals. In order for democracy to thrive specific procedural norms must be followed and civil right must be respected. Thus any policy that fails to impose such restrictions upon it, that fails to follow the 'rule of law' with regard to its own procedures, should not be considered democratic.

Dahl (1971) notes that, in what he calls "procedural minimal conditions," must be present for modern political democracy to exist. These include:

- i. Control over government decisions about policies is constitutionally vested in elected officials.
- ii. Periodic free and fair elections devoid of coercion.
- iii. Electoral franchise. that is the right to vote and be voted ic
- iv. Freedom of expression
- v. Freedom of association
- vi. The polity must be self-governing
- vii. Legitimate authority must be exercised by those popularly elected into public offices.

The basic elements of democracy, as enunciated by Anifowose & Enemu (1999), include:

- i. Freedom of choice of candidate and programme
- ii. Freedom from ignorance and need (wants)
- iii. Empowerment and capability
- iv. Promotion, defense and enhancement of fundamental rights of man.

Democracy consists of the following principles:

- i. Periodic, free and fair election
- ii. Political competition and participatory mode
- iii. Universal and adult suffrage
- iv. Separation of power with checks and balances.
- v. Truly representative government
- vi. Constitutionalism and
- vii. Independence of the judiciary.

For the survival of democracy in a society, the citizen must embrace certain habits, ethics, and behaviour which include:

- i. Obedience to and respect for the constitution by all and sundry.
- ii. A democratic spirit - tolerance of opposition to avoid political coercion, gross electoral malpractice, censorship of the press and undermining of the freedom of association.
- iii. A libertarian temper and tradition freedom to live as chosen and freedom to do things without interference by men in government.
- iv. A spirit of patriotism - they should be committed to the welfare of the people.
- v. A sense of civil duty (responsibility, i.e. respect and regard for the rule of law).

Rule of Law Explained

The rule of law is rule based on laws of the country as contained in the constitution. It is therefore the best of the possible and practical process of the government. Little wonder Aristotle (14th century BC) opined that "the rule

of law is preferable to that of any individual (Nnoli, 2003).

The rule of law according to Dicey (1885) is bequeathed with what he referred to as three discernable facets or principles as follow:

1. **Supremacy of the Law:** The law is basically or absolutely supreme or predominant over both the rulers and the ruled. This is implied in that idea of Aristotle (14th century B.C: that the law is “the arrangement of offices in a state, especially the highest official; that a man will thus be punished for a breach of the law but he cannot be punished for nothing else”. This means that governmental powers must be exercised in accordance with the laws of the land and this is a call for rule of law.
2. **Equality of all before the Law:** This means that all classes of men in a society are subjected equally to the ordinary law of the land, administered by the ordinary law of the land, administered by the ordinary law courts. This implies that all citizens, irrespective of sex, occupation, rank or status, are subject to the ordinary law of the country, without discrimination. This also implies that government officials - federal, state or local governments, involved in any form of breach of law are punished accordingly.
3. **Inherent and Inalienable Rights of Citizens:** The rights of individuals are inherent in them and are not alienable. Therefore, the citizens’ fundamental rights must be enshrined in the Constitution.

The right to equality before the law, or equal protection of the law as it is often phrased, is fundamental to any just and democratic society. Whether rich or poor, ethnic majority or religious minority, politically of the state or opponent- all entitled to equal protection before the law. The democratic state cannot guarantee that life will treat everyone equally, and it has no responsibility to do so. However, under no circumstances should the state impose additional inequalities, it should be required to deal evenly with its entire people.

No one is above the law, which is after all, the creation of people, not something imposed upon them. The citizens of democracy submit to the law because they recognize that, however, indirectly, they are submitting themselves as makers of the law. When laws are established by the people who then have to obey them, both law and democracy are said to have been served.

The idea of the rule of law in Nigeria did not start with the government led by President Olusegun Obasanjo. It however, became an idea capable of unreserved constitution enforcement with the putting in place of the Third Republic on the 29th May, 1999. Meanwhile the rule of law was guaranteed in the third Republic following the promulgation and coming into effect of the 1999 Constitution from 29th May, 1999.

The importance of the 1999 constitution and following the legal teeth given to it by section 320 of the 1999 Constitution that it should “come into force on 29th May 1999 it become a referral or full legal document for the government of Nigeria and therefore the basis for determining the legality or constitutionality of any act of government. Indeed this was the position which can be found in Section 1(1) of the 1999 Constitution, which provides that “this Constitution is supreme and its provision shall have binding force over all authorities and persons throughout the Federal Republic of Nigeria. Also section 1 (3) of the Constitution further assures the supremacy of the 1999 Constitution in the governance of the country. It provides that “if any other law is inconsistent with the provision of the Constitution, this Constitution shall prevail, and that other law shall, to the extent must stand above every other laws in the country, which is not contained in the statute. This therefore implies that the constitution is a necessary foundation for the rule of law.

The rule of law has been recognized as a concept of great constitutional importance. It is an antidote against tyranny. It is a yardstick for the determination of the validity, legality or acceptance of any governmental action. These are five basic factors to be considered in discussing the idea of the rule of law:

- i. That government should be conducted within the framework of recognize rules and principles which restrict discretionary power.
- ii. That disputes as the legality of governmental actions are to be decided by judges who are wholly independent of the executive.
- iii. That law should be even-handed between the government and the citizens such that there would be no unnecessary privileges and exemptions from law.
- iv. That no one should be punished except for a legally - defined crime or offense.

Impediments to the Rule of Law

Among several impediments to the rule of law are the following:

- i. **Ignorance of the Law:** The citizens suffer untold deprivation arising from being ignorant of the law.
- ii. **Existence of class society and class interest:** Nigeria is a society characterized by various classes. These classes range from the elites or the bourgeoisie to the proletariats or the working class. The elites or bourgeoisie constitute the minority. Each class tries to protect its own interest. Logically, the proletariats are subordinated to the elites who govern. This kind of arrangement perverts justice in the society as the idea of the rule of law, in terms of equality of all before the law will equally be subordinated to the elites who govern. This kind of arrangement perverts justice in the society as the idea of rule of law. in terms of equality of all before the law, will equally be subordinate to the elites.

- iii. **Red Tapism:** This constitutes a threat to rule of law. It is embraced in the maxim that “justice delayed is justice denied”. This implies that in a society such as Nigeria, not everybody is equal before the law, when a serious crime is committed by an economic notables; some judicial officers are compelled to compromise the judicial process and hence frustrate the weaker party until finally justice is denied.
- iv. **High Cost of Litigation:** In societies where cost of seeking redress in courts is too high, the rule of law is undermined or subverted. Also where legal aid does not exist in a society, court facilities are not available to the poor in that society.
- v. **Censorship of the Press:** Where the freedom of the press is denied, the rule of law is bound to fail. This is because the press is regarded as the last hope of the common man because they champion the courses of the ordinary citizens.

Democracy System of Government and the Rule of Law

Democracy and rule of law are closely related in the sense that in a democratic system of government, the people rule through their elected representatives. It is this same people who give themselves the constitution of the country where democracy is practiced. One aspect of the constitution is the rule of law, as opposed to the rule of the person, for instance, the people in a democracy determines the pattern of election of representatives into public offices. A disfranchised voter (i.e. a voter whose vote was not counted) during the process of election could conceivably challenge the election result, either against the voting method or the method of counting the votes.

Democracy is a necessary foundation for the rule of law and also sets the limits to the rule of law. When a reasonable people agree on some general rule, that rule should be made sacrosanct even if it is not a written law. When reasonable people differ on certain general point, it is the limit of the rule of law. In theory, the way to resolve this reasonable process is with majority rule, not by non-elected judges who are not democratically accountable. However, there is also a limit to democracy. One may say is the people. This is because the people can fix the procedure emanate. What if something unexpected happens? Well, one may say that it should be resolved in his democratic way, but the problem is that for every unexpected problem, there are thousands of subsequent unexpected problem, and reasonable people could always differ on how the unexpected problems should be solved. As such, it is not feasible to have general vote on every problem that would surface. As such, there are two ways to resolve emergency and contentious problems in a democracy with the rule of law. The first is to let the representatives of the people (the legislature) decide; and the second is to let the court decide. No matter who decides, the contested issue will necessarily be decided in a political fashion. Indeed, reasonable people differ on these issues. It is no longer strictly logical process: it is also a process of ideological battle. This process lies on the large gray border between democracies (peoples’ will are interpreted legislators, or the rule of personal and the rule of law (“pre-fixed rules as interpreted by judges”). Obviously, it can be seen that democracy and rule of law are coterminous.

The desire to have a popular government that is reflective of popular will (democratic rule of person), on the one hand, and the desire to have order, stability and justice (the rule of law) on the other, can sometimes conflict with one another. In order to know what the popular will is, it is important to have an accurate count of each voter’s vote. However, if there were no rules regarding how to count, when and how to recount can be requested and granted. How to conduct a recount, when all counting and recounting procedure must meet, then democracy would not work because there would not be order, stability or predictability.

In a democracy with the rule of law, certain politicians cannot be given the opportunity to use “popular will” as an excuse to invalidate prefixed rules and to ask for the retroactive application of a new rule. Rules can change according to generally accepted procedures (such as through democratic procedure), but new rules can only be applied prospectively, not retroactively, otherwise democracy will not work.

Another way to view the relationship between democracy and the rule of law cannot work without sticking to prefixed rules (i.e. the rule of law), how to make rule binding. Obviously, voters or legislators cannot bind their own will; they can always throw away old rules and make new rules through democratic processes. This creates the danger of ex-post facto law is that the voters or legislations may adopt rules after the fact and apply them retroactively. The only way to make rule binding and to prevent the problem of ex-post facto law; the voter or legislators may adopt rules after fact and apply them retroactively. Once certain rules have been established through generally accepted procedures (such as through democratic procedures), the courts will make sure that these rules are binding on peoples’ behaviour, until a valid new rule is adopted through certain generally accepted procedures in this sense, the court is a disinterested enforcer of rules, and the rule of law (i.e. sticking to pre-fixed rules) is possible only when an independent and disintegrated court has a generally accepted power to enforce establishment rules in a democracy, there is need for a final arbiter on question of law. The courts’ decision is final not because it is always the “right” decision, but because we are willing to accept it as the final decision.

From all observations, it could be noted that Nigeria, under Obasanjo’s regime was anything but democratic

and did not observe the principle of the rule of law to its letters. In fact the administration held due process of the law more in the breach.

Due Process of Law

Anifowose and Enemuoh (1999) noted that, in every society, those who administer the criminal justice system hold power with the potential for abuse and tyranny. In the name of the state, individuals have been imprisoned, had their property seized, and been tortured, exiled and executed without legal justification, and often without any formal charges ever being brought. No democratic society can tolerate such abuses. Every state must have the power to maintain order and punish criminal acts, but the rules procedures by which the state enforces its laws must be public and explicit, not secret, arbitrary, or subject to political manipulation by the state.

The due process of law implies and comprehends the administration of law equally applicable to all under established rules which do not violate fundamental principle of private rights and in a component tribunal possessing jurisdiction of the cause and proceeding upon justice.

Due process of law implies the rights of the person affected thereby to be present before the tribunal which pronounce judgment upon the question of life, liberty or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have right of controvert, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due to process of law.

Aside from all else, 'due process' means fundamental fairness and substantial justice. The President breached the due process for instance; awarded contracts for capital projects of the National Assembly running into billions of Nigeria without due process in December 1999, seven months into his first tenure, President Obasanjo paid a construction company, Julius Berger ₦11 billion when the amount was not in the approved supplementary budget for that year. He issued a warrant for the release of the money on 8th December 1999.

Essential Requirements for Due Process of Law in a Democracy

- i. No one's home can be broken into, or searched by the police without a court order showing that there is good cause for such a search. The midnight knock of the secret police has no place in a democracy.
- ii. No person shall be held under arrest without explicit, written charges that specify the alleged violation. Not only are persons entitled to know the exact nature of the charge against them, they also must be released immediately, under the doctrine known as habeas corpus, if the court finds that the charge is without justification, or the arrest is invalid.
- iii. Persons charged with crimes should not be held for protracted periods in prison. They are entitled to a speedy and public trial and to confront and question their accusers.
- iv. The authorities are required to grant bail or conditional release to the accused pending trial if there is little likelihood that the suspect will flee or commit other crimes.

Conclusion

The study has explored the interface between the rule of law and democratic consolidation in Nigeria. As a fledgling democracy, Nigeria has been at a crossroad on how to enthrone an enduring and populist democratic culture that will inculcate in the people participatory democratic culture. The leadership is indeed at a crossroad on how to institutionalize the rule of law. More than ever the rule of violence prevails as "might is right" remains the national norm. The people are largely differentiated and dissociated from government as few economic notables bestride the political landscape like colossus.

This was particularly the case under the leadership of President Olusegun Obasanjo where arbitrariness was glorified and rule of law flagrantly abused. The situation degenerated to a point where normlessness and blatant disrespect to judicial rulings was celebrated. Indeed no Country develops in a situation of anarchy and arbitrariness. The rule of law is cardinal to societal development. It not only enhances orderly behaviour but imbues confidence on the people and as well guarantees constructive and collective participation of the people in the onerous task of nation building.

Perhaps a good starting point towards building an egalitarian Country based on the rule of law and good governance is to remove the immunity clause enjoyed by the Executive arm of Government and then make political offices less attractive. Principle of equality should be enforced and the governed must be made to be more proactive in the enforcement of the law of the land. Democracy must be built on rule of law and all forms of arbitrariness should be sanctioned. Again the separation of power principle among arms of government should be reinvigorated and enforced so that checks and balances will prevail. In fact if the prevailing decimation of the principle of rule of law is allowed to continue the Country may slide into anarchy and war of all against all.

Recommendations

Based on the study, the following recommendations were made.

1. The separation of power principle among arms of government should be reinvigorated and enforce so that checks and balance will prevail.
2. Rule of law not only enhance orderly behavior but imbues confidence on the people and as well guarantees constructive and collective participation of the people in the onerous task of nation building.

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