

EVALUATING DEMOCRACY AND RULE OF LAW IN CONTEMPORARY NIGERIAN SOCIETY

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Abstract

This paper seeks to explore the concept and practice of Democracy and Rule of Law in concrete existential Nigeria society. Democracy is seen as essential and complementary to Rule of Law providing checks on its implementation. The paper observes that democracy and rule of Law have been defined in various ways. But often, it is conceived as the government organized according to the principles of popular participation in the choice of leaders, guarantee of individual liberties, and governance according to the rule of law. It concludes with the assertion that Rule of Law is one of the strong elements required for the maintenance of a stable Nigerian society.

INTRODUCTION

The euphoria about the spread of democracy following dramatic political events of the mid-eighties and early nineties-the overthrow of authoritarian military regimes in countries of Latin America, the dismantling of the apartheid regime in South Africa and the fall of the communist system and the Berlin wall, is over. Democracy has proven more difficult to achieve than many assumed. The initial steps toward democracy with the organisation of competitive elections, as undertaken in many countries proved not to be enough to deliver on the high expectations among people for an improvement in their lives. But then, what exactly is democracy? What has been Nigeria's experience of democracy and the Rule of Law? These are some of the questions we shall examine in this paper.

CONCEPTUAL CLARIFICATIONS

Democracy

The word Democracy has its origin in the Greek word *demokratia* which in itself is an amalgam of two concepts i.e *demos* meaning, the people and *kratia* meaning, rule. In its simplest literal meaning therefore, democracy may be defined as the ‘rule by the people.’¹ As a form of government, it connotes a system where the will of the majority holds sway whilst giving the minority the liberty to express itself.² Democracy is generally used in contrast with rule by the few i. e Oligarchy/Aristocracy and with rule by a single person which is tyranny or autocracy.²

Today, the word democracy is often used to refer to liberal democracy as distinct from such other variants as Consensus Democracy, Deliberative Democracy, Direct Democracy, Sortition Democracy and the like³. Liberal Democracy is a representative democracy with free and fair elections, along with the protection of minorities, the rule of law, separation of powers and protection of liberties of speech, assembly, religion and property.⁴

Right through its ancient origin in Greece where the word is interchangeably used with the Isonomia, through to the middle ages where systems involving elections and assemblies were held albeit involving only minority of the population, up till the 20th and 21st century, democracy has taken on different shapes and toga and has become the universal standard form of human society.⁵ It is even being

speculated that the popularity and acceptability of Democracy that is Liberal democracy may continue in the future to the point where global democracy including global voting will become a common place.⁶ Whatever the variant, an indisputable assertion is that democracy, to the extent that it involves the will of the majority of the population, remains the best form of government.⁷

Democracy does not come by itself and cannot be imported from abroad, let alone be implanted by military means. It has to grow from within countries by gradually institutionalizing and constructing political processes and spreading the universal values that are intrinsic to democracy. Values such as respect for diversity and pluralism, tolerance, justice, freedom, human rights, and non-violence are universal core values that are embedded in the rich cultural diversity around the globe.

In this regard, Kofi Annan maintained:

...democracy is a universal right that does not belong to any country or region, and that participatory governance, based on the will of the people, is the best path to freedom, growth and development.⁸

Transforming these values into the practice of democratic governance takes time, which is in short supply because of people's high expectations for democratic government to deliver. Yet, to quote Koffi Annan once more 'no nation is born a democracy'.⁹ It requires effort and time to build, while it requires permanent maintenance as well. To manage the process of democracy building and the expectations of people, government need to ensure a 'social contract' with their people that provide those governments the legitimacy to govern.

The advancement for democracy is not only essential goal in its own right, but it is also linked;

- To peace building by practising the resolution of conflicts non-violently
- To economic growth and development, through government that invests in human capital because it is accountable to its people and
- To the consolidation of all human rights through the application of the rule of law and social justice¹⁰

Rule of Law

Rule of Law is the principle that governmental authority is legitimately exercised only in accordance with written, publicly disclosed laws, adopted and enforced in accordance with established procedure.¹¹ The Rule of Law is a cornerstone of contemporary constitutional democracy as was underscored by its role in cementing the recent traditions from authoritarian or totalitarian regimes to constitutional democracy in Eastern Europe and elsewhere¹²

Albert Venn Dicey in his Law of the Constitution, identified three components which form the Rule of Law, These are:

The absolute supremacy or predominance of regular laws as opposed to the influence of arbitrary power. Equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary courts, and the law is a consequence of the rights of individuals as defined and enforced by the courts.¹³

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. The

Rule of law has been recognized as a concept of great constitutional importance. It is a panacea against tyranny. It is a yardstick for the determination of the validity, legality or acceptance of any governmental action.

The concept of Rule of law has been expanded beyond the classic formulation provided by Dicey. The doctrine is now recognised to include:

- i. The Supremacy of the law including judicial decisions over all persons and authorities in a state,
- ii. The Supremacy of the constitution,
- iii. The independence of the judiciary,
- iv. The right to personal liberty, and
- v. Observance of democratic practices including; The Freedom of the press, thought, association and regular, free and fair elections as the bases for assuming power in government.¹⁴

Thomas Paine, in his *Common Sense*, captured the import and essence of the rule of law when he wrote ‘... the world may know that in so far as we approve of monarchy, that in America the law is king. For as in absolute governments the king is law, so in free countries, the law ought to be king and there ought to be no other.’¹⁵

Discernible from the foregoing efforts to capture the essence of the rule of law is that the concept is generally accepted as a guard against despotism and benchmark for the enforcement of limitations on the powers of government. The Universal Declaration of Human Rights adopted in 1948 stated thus; ‘it is essential if man is not to be compelled to have recourse, as a last resort to rebellion against

tyranny and oppression, that Human Rights be protected by the Rule of Law.¹⁶

This implies that the Rule of Law exists to moderate societal activities to safeguard individual freedoms and liberties by protecting citizens from oppressive and repressive actions either by government or individuals and helps to establish an acceptable standard of human activities. In sum, it may be stated that the rule of law stipulates that government be instituted and limited in its power according to the law and that it be devoted to the preservation of the liberties of individual citizens, all of whom are deemed equal before the law.

RELATIONSHIP OF THE CONCEPTS

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. There cannot be true democracy, liberal or otherwise, without the observation of the rule of law. Democracy is a necessary foundation for the rule of law and also sets the limits to the rule of law. Indeed a democratic society is hinged on the law that distinguishes a government from dictatorship and gives it the claim to a democratic character.

As earlier posited, democracy presupposes the existence of clear separation of powers and the observance of the rule of law among other established indices. Thus, in a situation where all governmental powers are fused in one person or organ who makes the laws, implements the

laws and interprets the laws; or where one organ such as the Executive rides roughshod over the other organs, refusing to yield to ground, then the very antithesis of democracy clearly exists.

The adoption and practice of basic principles of the rule of law are clear barometers for any democracy. The awful consequences of breakdown of the rule of law in dictatorships, makes its importance self evident. In democratic societies, deviations from the principles of the rule of law, such as slavery and systematic discrimination or the unequal treatment of women historically, serve as powerful arguments for the fulfilment of those principles.¹⁷

A NECESSARY ACCOMPANIMENT TO DEMOCRACY

In democracies, the use of arbitrary power is considered anathema to the rule of law. Fundamentally, constitutional limits on power, a key feature of democracy, requires adherence to the rule of law, indeed, the rule of law could be defined as subjugation of state power to a country's constitution and laws, established or adopted through popular consent.¹⁸ This is the meaning of the commonly cited phrase 'a government of laws, not men' made famous by John Adams, the second president of the United States. Under such a system, law should be supreme to the capricious authority of any individual.¹⁹ The rule of law is the supreme check on political power used against people's rights. Without the regulation of state power by a system of laws, procedures, and courts, democracy could not survive.

Although the rule of law protects the majority from arbitrary power and tyranny, it should also protect the minority both from arbitrary power and the ‘tyranny of the majority.’²⁰ Without the rule of law, there is likely to be either a dictatorship or mob rule. Some revolutionary thinkers have extolled mob rule as the highest form of political and social justice²¹. In reality, however, mob rule has meant violence and political chaos, which are the very same conditions that often give rise to dictatorship, the exercise of arbitrary power, and the denial of individual rights.

CONTEMPORARY NIGERIAN EXPERIENCE

1914 when the Northern and the Southern regions attained self-governance from the British colonialists could be fingered as the beginning of Nigeria’s journey to democracy. The self-governing status that was attained at least, on the surface, heralded a government of Nigerians, by Nigerians and for Nigerians.

Today however, it is a matter of common knowledge that Democracy is yet to take a firm root in the country. This explains why politicians are quick to say Nigeria’s democracy is still ‘fledge’ ‘nascent’ ‘young’ and that it needs to be properly nurtured.²² This is quite true unless everyone behaves and plays according to the rules, it is doubtful if a mature, virile democracy and a free society envied by others would ever be built.

From 1960, when Nigeria became independent and began to hold elections, the country’s democracy has been interspersed with military dictatorship. Hardly had a democratically elected government been put in place, than one military coup or another is staged to upturn it. The

Military interventions end up lasting much longer than the ‘democratic’ processes they purportedly came in to correct. Besides, in the final analysis, it is a matter for conjecture whether these ‘corrective’ interventions were actually better than the truncated processes.²³ Time and space will not permit an adventure into discussions in this regard on this occasion but the point must be made, that Nigeria’s democratic experience has not since independence been a smooth sail.

It should be noted that even for the few times that democracy has been enthroned in the country, it has always been as a result of deep and intense struggle by the citizens, at colossal cost in terms of lives and resources. It is therefore always a matter of public joy and jubilation each time a dictatorship is replaced by democracy.

A visible fall out of the incessant interruption of the country’s democratic experiences is the military mentality of the political class, who whilst pretending to be democrats are nothing but autocrats and dictators whose only claim to democracy is the fact that ‘selections’ were held one way or the other to bring them in. I have employed the use of ‘selections’ here because for the most part, what we regard as elections in Nigeria are actually selections, conducted in the most blatantly undemocratic fashions, where assassinations, rigging, thuggery, banditry, intimidation and harassment and other electoral malpractices are given free reign. Discretion being the better part of valour, what usually obtains in most cases is that broad spectrum of the population avoid the electoral

process like a plague, resulting in the imposition of the will of a few over the vast majority.

As if to justify the aberration that Nigeria's democratic culture represents, the politicians, themselves are so quick to add to the existing democratic lexicon by coining words such as 'home grown' 'guided' etc to describe the peculiar variant of democracy as practised in Nigeria. The choice of these rhetorics in qualifying our democracy underscored the fact that democracy in Nigeria is not what it is globally understood to mean.²⁴

If this is the position of our democracy, then the story cannot be different for the all important Rule of Law. To be sure, it is the absence of adherence to Rule of Law that gives vent to the identified aberrations in our democracy. Where there is a reign or rule of Law, the usual cutting of corners and the attendant chaos, confusion and violence that have characterized our democratic experience will be nonexistent. In other words, where each organ of government or government official is prepared to keep within the roles specially created for it by law and not indulge itself in usurping the functions of other organs or officials, then there will be peace or little room for conflict

At present, one hopes that the attitude changes fast, there is a big flux in the polity. Contrary to Dicey's exposition on the Rule of Law, what we have in the country is: Absolute supremacy or predominance of the influence of arbitrary power as opposed to the regular laws. An attempt

to subject different classes of the population to different laws administered not by the ordinary courts but by a few powerful individuals. A subjugation of the rights of individuals to the whims of individuals or bodies who attempt to take the place of courts in the enforcement and interpretation of laws.²⁵

Now, we are witnesses to instances of some of the disturbing events in Nigeria in recent times from which the above conclusions become inevitable. The skirmishes in oil producing areas culminating in the Abuja deal, crisis in several parts of the country, the Boko Haram saga, Bomb blasts, the 6 single term agenda, labour strikes, National Minimum wage palaver, might- is- right posture among leaders and the ethnic composition of Nigeria are issues that require national discourse for our present democracy. We who seek to build democracy must not be bound by the false assertion that the rule of the law is democratic. The evaluation of history teaches us that our powerful legal system is a massive fortress against popular sovereignty. One of our most important tasks is to revisit the fundamental questions that were resolved by undemocratic means in the past.

For now however, it can safely be said that these developments are bad omen for the survival of our democracy and the sustenance of the Rule of Law. As we stumble on, the Judiciary as the citizens last line of defence, will certainly continue to be called upon to give direction, and from the no nonsense attitude of the judiciary in rent times, especially since the assumption of office of their Lordships, the Honourable Justice Kutigi

(Rtd) and his successor Justice Katsina Alu (GCON) (Rtd) as former Chief Justices of Nigeria, there is hope that at the end of this dark tunnel, light abounds. In this light, the words of Gerold F. Ford become relevant, ‘my fellow Americans, our long national nightmare is over. Our constitution works. Our great republic is a government of laws and not of men. Here the people rule.’

This declaration encapsulates the real essence of democracy and the Rule of Law and it is hoped that now, Nigerians will be given the opportunity to truly rule. Democracy is an attitude. As the saying goes, attitude as opposed to aptitude determines altitude. Where we go in the future will be determined by our attitude.

CONCLUSION

We have attempted to examine the concepts, Democracy, Rule of Law and explored the interface between the rule of Law and democratic consolidation in Nigeria. As a nascent 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. Democratic governance is based on the will of the people and it is the form of governance best suited to allowing all people to live in dignity and freedom. Democracy requires a rule of law framework in order to govern the interaction and coexistence of all citizens. In fact, if the prevailing decimation of the principle of rule of law is allowed to continue the country may slide into anarchy and that will make the whole place ‘nasty and brutish.’

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