

The Rule of Law, Democracy and Competing Paradigms of National Development: Locating the Nexus

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ABSTRACT: National development remains clearly elusive in some regions of the world. And democracy is frequently proposed as the catalyst of development for such locations. This presupposes that development was stunted by the dearth of democracy in these environments. At the heart of the undemocratic tendencies in the affected nation states is the phenomenon of strongmen in government. These genres of leaders usually detest the notion of the Rule of Law, as the very bedrock of development. They candidly although, project national interest as the superior paradigm of progress in these nations, giving rise to the scenario of competing models of national development for such places. This paper is a contribution to the reconciliation of the conflicting issues. Its premises are derived from the disciplines of law, political science and development studies. The work is framed on the experiences of the Nigerian nation state in West Africa.

KEYWORDS: rule of law, democracy, national interest, national development

Introduction

The 58th Annual National Conference of the Nigerian Bar Association (NBA) held at the nation's International Conference Centre in Abuja, Nigeria from the 26th to the 30th day of August 2018. The conference was inaugurated by the President of Nigeria, Muhammadu Buhari. Addressing the gathering, President Buhari declared that the Rule of Law must be subject to the supremacy of the nation's security and national interest. And according to the Nigerian leader, where national security and public interest were threatened or there seemed to be a likelihood of their being threatened, the individual rights of citizens must take second place to the greater good of society, as the Rule of Law must be subject to the primacy of the nation's security and national interest (Olagunju, 2018; Okakwu, 2018; Nnochiri, 2018).

In addition, general elections were conducted in Nigeria in the first quarter of 2019 (February-March, 2019). But on the 25th day of January, 2019, President Buhari suspended the Chief Justice of Nigeria (CJN), Walter Onnoghen, from office and swore in an acting CJN. Mr Buhari said he removed Mr Onnoghen based on an order of the Code of Conduct Tribunal, dated January 23, 2019. The suspended CJN had been on trial at this Tribunal for false declaration of assets on assumption of office, this being part of the statutory requirements for high profile positions in the Nigerian public sector (Tukur 2019). Noncompliance or false declaration is interpretable as corruption. But a section of the Nigerian public was of the view that the president acted illegally and unconstitutionally. They cite the provisions of Section 292 of the Nigerian Constitution, which guarantees security of tenure for judicial officers, especially the CJN. By this provision of the constitution, the CJN cannot be suspended or removed from office without the recommendation of the National Judicial Council (NJC) and the 2/3 concurring approval of the country's Senate (Ogunye 2019).

The other section hails the action of the President, contending that it is premised on a valid and subsisting order of the CCT, which has not been set aside, and which is incumbent on the President to enforce. This section of opinion believes that the action of the President addresses the substance of the allegation of corrupt practices against the CJN, the tackling of which is being frustrated by the resort to technicalities and procedural niceties of law, a

slavish adherence to the labyrinth of the due process of law, and treading of the laborious path of the rule of law (Ogunye 2019).

Ogunye's notion of treading the laborious path of the Rule of Law is underscored in this paper. So, treading the path of the Rule of Law is laborious? Probably amounting to the wasting of national time? The contending issues in this Nigerian scenario thus touch fundamentally upon the Rule of Law – the constitutionality of suspending the Chief Justice of the Federation, against the background of the President's earlier pronouncements on his willingness to disregard the Rule of Law. The critical issues touch upon democracy (electoral democracy), and the contestations and constitutionalism arising therefrom. Hence, Presidential elections in Nigeria are often finally concluded at the nation's Supreme Court, when the losers take their loss to the highest court in the country for arbitration. The Court has however never decided against the already declared winner. President Buhari had unsuccessfully taken his losses to this court in the past when he bided for the highest office in Nigeria. The opposition now accused the incumbent President Buhari, of not trusting the suspended CJN enough (to veer the ruling of the court in his favour) in the likely event of the 2019 presidential election-outcome, being contested at this highest judicial level.

But the most critical issue in today's Nigeria is national development (Lawal and Oluwatoyin 2011; Ekundayo 2015; Nzekwe 2018). Ekundayo (2015, 10) emphasizes:

A country is classified as developed if it is able to provide qualitative life for her citizenry. Unfortunately, Nigeria in the last fifty four years and above has been battling with the problems of development, in spite of huge human material and natural resources at her disposal.

National development has accordingly remained clearly elusive in Nigeria. But is democracy serving as the highly desired catalyst? Are the tendencies of the current Nigerian leaders akin to what strongmen in government do, particularly over their notions of the Rule of Law in a democracy? Despite their disagreeable interpretations of the Rule of Law, are these leaders still describable as patriots? Given the scenario of competing paradigms of national development entailed by the Rule of Law definitions of these leaders, and the opposition in this specific country, what is the way out? This paper thus arrives at the concept of location of the nexus among the research variables of the Rule of Law, democracy and national development. Some sections of the contribution are inevitably normative.

Conceptual Clarifications

The Rule of Law

UN (2008, 3) posits:

The rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.

Tamanaha (2007, 3) simply suggests that the rule of law, at its core, requires that government officials and citizens are bound by and act consistent with the law. And whereas this Tamanaha's position seems quite uncomplicated for theoretical elegance, it still stands for a common baseline that all of the other competing characterizations of the rule of law possess in common. Tamanaha (2012, 232) however

acknowledges that this universally popular notion is elusive—seemingly hard to pin down. As evidenced by the failure to arrive at a precise definition, the rule of law is a complicated theory (Yu and Guernsey 2009, 1). Waldron (2002, 140) states that both in its origin and in its application to early-modern and modern political institutions, the content and implications of the Rule of Law have been uncertain and controversial. Waldron also opines that the Rule-of-Law heritage is riddled with antinomies (Waldron 2002, 144). The Rule of Law accordingly begins to look like an essentially contested concept (Waldron, 2002; Gallie, 1956). Klein, Kiranda and Bafaki (2011, 20) further highlight:

The rule of law is the principle that the law should rule in the sense that it establishes a framework to which all conduct and behaviour conform, applying equally to all the members of society, be they private citizens or government officials. It means that no individual, whether president or private citizen, stands above the law.

But the foremost exponent of the concept / principle of the Rule of Law was A.V. Dicey who formulated it into a principle of the British constitution. Dicey did not create this phrase, but he brought it into currency, and was responsible for further elaborations on the principle. By the Rule of Law, Dicey refers to the absence of arbitrary or discretionary power on the part of government; 2) every man is subject to the ordinary law of the land administered by ordinary and usual tribunals; 3) the general principles of law, the common law rules of the constitution, in contradistinction to the civil law countries of Europe, are the consequences of rights of the subjects, not their source. To illuminate this difference, he contrasts the rule of law with the French idea of *droit administratif*, which he translates as administrative law (Michener 1982, xx). Dicey (1982, 115) also characterizes the Rule of Law as the predominance of the legal spirit. And in this paper, the Rule of Law implies supremacy of the law (Dicey 1982, 107).

Democracy

Democracy also has a plurality of definitions. It is fully an essentially contested concept. Gallie (1956) actually identified democracy as one of such fundamentally disputed conceptions. We find groups of people disagreeing about the proper use of these concepts – the essentially contested concepts. And when the different uses of these terms are examined, and the characteristic arguments in which they figure are tabled, it is soon seen that there is no one clearly definable general use of any of them which can be set up as the correct or standard use (Gallie 1956, 168). For Hollyer, Rosendorff and Vreeland (2011, 1193) therefore, democracy is a regime in which the executive and the legislature are both filled by “contested elections.” Where contestation implies that multiple parties compete, the incumbents have some probability of losing the elections, and all parties comply with the results.

Altundal (2015, 11-12) believes that the ideal definition of democracy will include horizontal accountability as an attribute, where horizontal accountability, on the other hand, is a check and balance mechanism across a network of relatively autonomous powers (Altundal, 2015; O’Donell, 1994). Dalton, Sin and Jou (2007, 153) identify freedom and liberty as central principles of democracy. They had earlier suggested that these three broad alternatives - institutions and procedures, freedom and liberties, and social benefits - constitute the primary substantive choices in defining democracy (Dalton, Sin and Jou 2007, 145).

According to Dahlberg, Axelsson and Holmberg (2017, 3) the concept of democracy can mean different things in different contexts; it can refer to an abstract ideal, a political procedure, a set of political outcomes, or a specific regime. And while some scholars emphasize the procedural and institutional aspects that need to be present in a democracy, most theoretical definitions of democracy also include references to the values and principles associated with democracy (Dahlberg, Axelsson and Holmberg 2017, 3). Democracy is a system of government that guarantees freedom and liberties for the people, where strong institutions and effective procedures lead to the provision of social benefits in abundance. Furthermore, democracy is of various variants, with the

important issue in each variation being the avoidance of the personification of government by strongmen or cabals. The people-factor accordingly constitutes the essence of democracy.

National Development

Defining national development entails an understanding of what is development? Development is perhaps the third in the series of the essentially contested concepts in this work. But the paper will not go into the embedded debates. Development is denoted in this study as freedom (Sen, 1999). In his notable contribution to development-theorization, Sen suggested that (economic) development implies a set of interrelated freedoms which include political freedoms (freedom from oppression, etc.), freedom of opportunity and freedom from abject poverty. To Sen therefore development can be seen as a process of expanding the real freedoms that people enjoy. Sen (1999, 3) further maintains that development requires the removal of major sources of unfreedom: poverty as well as tyranny, poor economic opportunities as well as systemic social deprivation, neglect of public facilities as well as intolerance or overactivity of repressive states. The reference to freedom of course does not imply license. Chambers (1997) had accordingly earlier proposed responsible well-being as a central concept for a development agenda. The generic availability of freedoms and responsible well-being, arising from the removal of major sources of unfreedoms in a nation state signifies national development.

Between the Rule of Law and Democracy

A central element of the rule of law in a democracy is equality before the law. The rule of law protects fundamental political, social, and economic rights and defends the citizen from the threats of tyranny and lawlessness. Democratic governments exercise authority by way of the law and are themselves subject to the law's constraints (Klein, Kiranda and Bafaki 2011, 20). In these Rule of Law-democracy matrixes, Ringhand (2004, 116) considers it important to reduce the power of judges to define democracy, thereby permitting greater and more varied experimentation with democratic schemes and creating more space for "we the people" to participate in defining the democracy in which we live. Schmitter and Karl (1991, 114) then argues:

...democracy does not consist of a single unique set of institutions. There are many types of democracy, and their diverse practices produce a similarly varied set of effects. The specific form democracy takes is contingent upon a county's socioeconomic conditions as well as its entrenched state structures and policy practices.

Will these contingencies upon a county's socioeconomic conditions as well as its entrenched state structures and policy practices warrant deviations from commonsensical notions of the Rule of Law, in order to achieve development? The expectation, since Nigeria's independence in 1960, argues Ordu (2019):

Has been that the giant of Africa would emerge as a dominant world player and join its global peers. Many had hoped that by the 21st century, reform-minded leaders would have built and sustained the institutions of governance, diversified the economy, created jobs for the burgeoning and youthful population, and reduced abject poverty. That expectation was spectacularly dashed.

According to Ordu (2019):

Today, of the 420 million people living in extreme poverty in Africa, 89 million live in Nigeria, almost half of the country's total population. Indeed, while poverty rates have declined across much of the continent, rapid population growth and low economic performance have conspired to wreak havoc on living standards, making Nigeria the country with largest share of extreme poverty. With projections as the world's third largest country by 2050, poverty in Nigeria will continue to worsen unless expeditious actions are taken.

In other words, Nigeria is in dire need of national development. There are immense socioeconomic challenges in the country as the entrenched state structures and policy practices remain ostensibly democratic. Will it be plausible to assume that a duly elected leader of this same country is engaging in anti-Rule of Law practices for the mere sake of strongmanism? The paper in the interim turns to the linkages between democracy and development.

Democracy and Development: What are the Linkages?

The net effect of democracy on growth (development) is uncertain (Barro 1999, 158). One classic example to support the point that democracy and development are not necessarily dependent on each other is China. Hence, despite being perceived as one of the least democratic nations on earth, this Asian state has in the last few decades managed to experience tremendous economic progress, at a speedier rate than most democratic countries in the world. Another indication that the link between democracy and development is weak is a growing situation of authoritarian states which increasingly show that they could be categorized as economically developed, while evading pressures to relax their political controls. Besides China therefore, East Asian countries such as India and Singapore belong to this category, as these countries manage to perform remarkably better than democracies in the Western divide of the world (Sikuka, 2017).

While the evidence in the scholarly literature is mixed and inconclusive, there is little disagreement that over time democracy and development are mutually reinforcing (Tommasoli 2013, 7). Lawal and Olukayode (2012) conclude that democracy is an ingredient of development. But what is the reality on ground in the Nigerian state? This country returned to the path of democracy in 1999 after long periods of military government interruptions in the peoples' developmental aspirations. Military intervention (leadership by strongmen) which led to occasional suspension of democracy was actually part of what stunted development in Nigeria. But it is already twenty years of democracy in post-military Nigeria. But in 2018 (after nineteen years of democracy) the giant of Africa was declared by the American-based Brookings Institution as the country with the highest number of people in extreme poverty and the de facto poverty capital of the world (Ugwu 2018).

According to the Brookings Institution report, Nigeria became the frontrunner in the global poverty race because as at the end of May 2018, the Institution's trajectories suggested that Nigeria had about 87 million people in extreme poverty, compared with India's 73 million. What was more, extreme poverty in Nigeria was growing by six people every minute, while poverty in India continued to fall (Ugwu 2018). Ugwu still highlights that the natural temptation was to gloss over this report because it relayed an obvious truth. The most basic fact about Nigeria being that it was a rich country choking her dirt-poor majority to death as the wretchedness of the Nigerian poor was ubiquitous and palpable. From Ugwu (2018) we further extract the following:

But there is something eye-catching about the report. It is the alarm that Nigeria is now without equal in terms of exponential poverty. The Brookings report highlights the niche of Nigeria's retrogressive progress. Africa's most populous nation is aggressively developing in the hardship department. She is effectively threatening to achieve universal poverty coverage! The ranking of Nigeria as the current world champion of extreme poverty is a backhanded compliment to a wealthy nation that has made her citizens guinea pigs of a home-grown formula for mass pauperization. We ought to stop and contemplate this feat of Nigeria beating the world in the democratization of poverty.

Finally from Ugwu (2018):

We should be shocked that our country trumped other nations in citizen impoverishment. It's appalling that our new claim to fame is our reproachful status as the poverty capital of the world. Nigeria's climb to the top of the poverty league epitomizes the paradox of a wealthy

nation living the contradiction of explosive poverty. Yet, it is more than that. Nigeria's current place on the poverty table reflects the country's earnest aspiration to be the foremost shithole of the earth. Nigeria boasts of no vision of a more dignified profile in the comity of nations. All Nigeria seems to pursue is to be an exemplary basket case.

The truth argues Adejumobi (2000, 6) is that there are missing links or gaps between democracy and development, which have to be addressed before the former, can achieve the latter. What are these missing gaps all about? These missing gaps are identified in this paper as bordering on leadership attitudes. The allusion here is to the type of leadership that focuses on people, in place of concentrating on laws and concepts, principles and procedures.

Locating the Nexus

The communiqué of the lawyers' conference in Abuja Nigeria, of course, completely rejected the presidential statement subordinating the Rule of Law to national interest (Olagunju, 2018). The lawyers restated that The Rule of Law was central to a democracy and any national interest concerns by the government (any government) must be managed within the perimeters and parameters of the Rule of Law. According to Dicey (1982, 120-121):

The Rule of Law has three meanings, or may be regarded from three different points of view. It means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government... It means, again, equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary Law Courts... The "rule of law," lastly, may be used as a formula for expressing the fact that the constitution is not the source but the consequence of the rights of individuals as defined and enforced by the Courts ... thus the constitution is the result of the ordinary law of the land.

The focus of the Rule of Law (the essence of the rule of law) is therefore not on The Law but on the rights of individuals. In the viewpoints of Yu and Guernsey (2009, 1):

The Rule of Law does not have a precise definition, and its meaning can vary between different nations and legal traditions. But it can be understood generally as a legal-political regime under which the law restrains the government by promoting certain liberties and creating order and predictability regarding how a country functions. In the most basic sense, the Rule of Law is a system that attempts to protect the rights of citizens from arbitrary and abusive use of government power.

What really matters, explains Tamanaha (2012, 247) is the role law plays within the broader government and society on issues of importance to the people, whether the legal system on the whole, or in particular instances, is a positive force for the good, or not. The Rule of Law remains a multi-faceted concept (Berg and Desai 2013, 9). But among its facets is that it remains a precondition for national development. Berg and Desai (2013, 8) highlight that the Final Report of the UN Commission on Legal Empowerment of the Poor (2008) asserts that the Rule of Law is not a mere adornment to development, but a vital source of progress, as it creates an environment in which the full spectrum of human creativity can flourish, and prosperity can be built. The Rule of Law is accordingly for the enabling of human creativity.

On the other hand, despite all the goodies and treats of democracy, as a system of government, it has its own inadequacies. For instance, democracy is not a guarantee of economic and administrative efficiency in a country. Democracies also do not promise orderly conducts, governability, stability and consensual relations in a polity (Schmitter and Karl 1991). But citizen participation is paramount for the success of democracy. And if the decision making process

excludes the masses, one cannot talk of a democracy (Klein, Kiranda and Bafaki 2011, 11). Thus, even in its triteness, democracy remains the government of the people, by the people and for the people (Lincoln 1863). Also, democracies fall into two basic categories, i.e. direct/participatory and representative democracy (Klein, Kiranda and Bafaki 2011, 4). And each of these possibilities of democracy has the rights and interests of the citizens at its center. The linkage (the nexus) in the Rule of Law, democracy, and national development variables of this study is therefore, "service to the people." Under this paradigm of development, law ceases to be conceived, interpreted and implemented in its abstractions but in the context of the freedom it portends for the citizens. The more of such freedoms that are available in a nation state, the more nationally developed the location is adjudged.

Conclusion(s)

The Rule of Law is actually propounded and propagated in the ultimate interest of the citizens, not for law in abstraction. Even in its triteness, democracy remains the government for the people. Development implies the abundance of freedom (as contrasted with license) for the people. National political leadership must accordingly focus on the people, and in so doing provide linkages among the Rule of Law, democracy and national development in their polities. Under the paper's Nigerian illustration, national development remains elusive and democracy does not seem to be serving as the highly desired catalyst of development. Even at that, the Rule of Law perceptions and pronouncements of the current Nigerian leaders do not out rightly portray them more as strongmen in politics, than patriots. But the leaders must focus more on the people-factor in this Rule of Law, democracy and national development debate.

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