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## THE RULE OF LAW, DEMOCRACY AND GOOD GOVERNANCE IN NIGERIA

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**ABSTRACT:** *The objective of this paper is to find out the extent democracy and the rule of law has influenced good governance in Nigeria. The Political Economy approach, based on the Marxian concept of the dialectical materialism of the society, is adopted as the framework of analysis. Secondary data, generated through documents reading, were used for the analysis. Our findings indicate that in principle, democracy and the rule of law are elaborately provided in Nigeria, but in practice, good governance still eludes the country. Corruption, poverty, ignorance, diseases, inflation, declining productivity, maladministration, dictatorship, ethnicity and other primordial factors, as well as prevalent social vices are the road mines to good governance in Nigeria. Equitable distribution of resources, provision of qualitative education, economic restructuring of the society, freedom of the press and political reforms, among other recommendations, are fundamental for the enthronement of functional democracy and the rule of law for good governance in Nigeria.*

**KEYWORDS:** Democracy, rule of law, accountability, transparency and good governance

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### INTRODUCTION

These three concepts, namely, the rule of law, democracy and good governance are so interrelated that one is tempted to liken their relationship to that of Siamese twins. Their relationship is so intricately linked that, sometimes, one wonders where one stops and the other begins. Democracy, the rule of law and good governance are the key elements that are imperative for the existence of what Plato, in his Republic, described as an “ideal state”. Though Plato later admitted in the Statesman the difficulty of having an ideal or a perfect state. It is generally believed today that every state, no matter how crude, primitive or authoritarian, is saddled with the problems of the rule of law, democracy and good governance. Democracy provides a conducive and stimulating environment for the rule of law to thrive, while the rule of law sustains democracy. Good governance, on the other hand, promotes and strengthens both democracy and the rule of law in every modern society.

The gap-in knowledge is that the rule of law, democracy and good governance may be provided in principle in a state, but in practice it is a different ball game. The objective of this paper, therefore, is to x-ray this triumvirate relationship in Nigeria, as well as find out whether the constitutional provisions are in tandem with the realities in the country.

## **Democracy**

There is no consensus among scholars on the exact definition of democracy. The Athenians of the ancient Greece defined democracy as the government of the people by the people for the people. This simply means the government people freely put up to serve them without any discrimination on the basis of social status.

Euripides, a Greek philosopher long before Plato, shared the above view when he described a democratic state as one governed by people's representatives and for the many who have neither property nor birth (Sabine and Thorson 1973:66).

Plato, another Greek philosopher, had a similar view of democracy when he defined a democratic state in his book, the Republic, as a state governed by the philosopher kings, who neither marry nor have personal property, but live together in the barracks (that is, equivalent to government house today) and enunciate policies for the general welfare of the people. However, Plato, in his second and third books, the Statesman and the Laws, respectively modified his definition when he defined democracy as the government of the people in which law is supreme, ruler and subjects' alike being subject to it.

For Rousseau, democracy is the government of the people for the general will of the people. To provide the general will of the people, government must give liberty under the law, must create a system of public education by which children are accustomed to regard their individuality only in its relation to the body of the state, Rousseau argues (Sabine and Thorson 1973:538).

In what he described as democratic centralism, Lenin (1983) defines democracy as the government of the peasants and the proletariats, which subordinates the minority to the majority through a strong party structure that cedes its decision making power to higher party bodies. Under this democratic centralism, argues Lenin, no opposition, criticisms and demand for personal liberty are brooked from the people. Despite the seemingly divergent views on democracy, there are some basic principles that are common to them. These include supremacy of the law, equality of all citizens before the law, personal liberty, general will of the people, equitable distribution of resources in the society and equal opportunity for all citizens, among others.

For the purpose of this paper, democracy is the government put in place by the people, which upholds the spirit of social contract between the state and the people, ensures equitable distribution of the state resources and equal opportunity for all its citizens, and whose operations are based on the rule of law.

On attainment of independence on October 1, 1960 the post independent government of Nigeria adopted a democratic rule, which was interrupted by military interregnum from 1966 through 1979. The country was returned to civil rule in 1979, which lasted till December 31, 1983 when the military struck again and sacked major democratic structures and institutions. Democratic rule was restored in the country on May 29, 1999, and, since then democracy has been on experimentation in Nigeria. Ogundiya [2010] has argued that the return of the country to electoral democracy in 1999 has not made any significant impact on the economy and general wellbeing of the people because of the manipulating nature and character of the national elite.

The Rule of Law

The rule of law presupposes the supremacy of law in the state. This means that law, and nothing else, counts in the society, as everything, everybody is subject to the same law. Both the ruler and the ruled, or the ruler and the subjects, are not only subject to the rule of law, but are also equal before the law.

The rule of law promotes and protects the liberty, freedom and the gamut of the fundamental human rights of the citizens. Writing on individual freedom, Rousseau notes that though the social contract gives the body politic absolute power over all its citizens, the sovereign cannot impose on its subjects any fetters that are useless to the community. He remarks further thus:

We can see from this that the sovereign power, absolute, sacred, and inviolable as it does not and cannot exceed the limits of general conventions and that every man may dispose at will of such goods and liberty as these conventions leave him.

Rousseau's concept of absolute power is even controversial. Both Hobbes and Locke have argued that the power granted to the sovereign, that is the state, is limited and not absolute. However, our concern here is that whether absolute or not, individual liberties and freedom are guaranteed in a democratic state where the rule of law is supreme.

The Secretary General of the United Nations [2013] defines the rule of law as a principle of governance in which all persons, institutions and entities 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 the decision making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.

Similarly, the 1959 International Commission of Jurists Delhi Declaration states that the rule of law implies certain rights and freedom, independent judiciary, social, economic and cultural conditions conducive to human dignity [Wikipedia, 2013].

The rule of law thrives in a state when there is a separation of powers among the main organs of government, namely, the legislature, the executives and the judiciary, so that the powers of law making, execution and adjudication are not concentrated in one person or a group of persons.

Absolute power, argues Lord Acton, corrupts absolutely. To avoid tyranny and oppression of the citizens, he argues, the rule of law should equally embody the separation of powers, so that each organ or arms of government shall be a check on the excesses of the other arms. It is on this premise that democracy can thrive in a state.

Kelly [2013] shares the above view when he explains that the framers of the American constitution applied the concept of separation of powers when they decided that the three branches of government: executive, legislative and judicial should be distinct and have checks and balances on each other, so that no one branch can gain absolute power or abuse the power they are given.

A functional separation of powers will guarantee checks and balances among the executives, the legislature and the judiciary, making sure that none of the organs appropriates the powers of the

other organs. In countries, such as, Nigeria where this functional separation of powers is lacking, checks and balances will be difficult, hence authoritarianism may be the order of the day. Under this condition, promotion and protection of the fundamental human rights of the citizens will be difficult.

### **Good Governance**

Governance is the act of governing. It relates to decisions that define expectation, grant power, or verify performance. It consists of either a separate process or part of decision making or leadership processes. In modern nation-states, these processes and systems are typically administered by a government [Wiki Project, 2009].

Good governance is a difficult concept, as it is not always easy to define. It is amenable to different definitions depending on the perception of the person. Wikipedia [2013] sees good governance as an indeterminate term used in international development literature to describe how public institutions conduct public affairs and manage public resources. However, when we remember that the modern state is a human creation, according to the social contract theorists, namely, John Locke, Thomas Hobbes and Jean Jacques Rousseau, one can hazard on what constitutes good governance.

Generally, the social contract theory, believes that the terrible, violent, unsecured and unpredictable state of nature compelled men to come together, under a social contract, and surrendered their rights to security of personal lives and property of the state. The state is expected to protect the personal lives and property of the citizens, as well as their general welfare. The state, as an amorphous entity, cedes this power to a smaller and proactive agency called the government. Good governance, therefore, includes the processes and products of the government towards the fulfillment of the social contract it has with the people.

Specifically, good governance involves: enthronement of a democratic government, which guarantees equal participation of all citizens in governance; provision, promotion and sustenance of the rule of law; provision and protection of the constitution; promotion and protection of the fundamental human rights of the citizens; provision and sustenance of the freedom of the press; availability of a transparent, accountable and participatory governance at all levels of government; regular, free and fair elections; as well as provision of basic amenities, such as, portable water, electricity, qualitative education, healthcare delivery, good roads, among others. Triumvirate of Democracy, the rule of Law and Good Governance.

As stated in the introduction of this paper, the relationship among democracy, the rule of law and good governance in any society is so intricate and organic that it is better described as a triumvirate. They are also interdependent that none can survive without the others. Their relationship is akin to what exists among road, car and fuel. The rule of law is the road, on which democracy, that is car, plies, while fuel, that is good governance, sustains the car (democracy).

The rule of law guarantees personal liberty, freedom and the gamut of fundamental human rights. It provides the conditions on which government functions, including the qualifications of people who can hold public offices. The law stipulates the type, nature and scope of government, as well

as the nature of relationship among the organs of government. It provides equal opportunities for all citizens and makes provisions on how the personal freedom and liberties of the people will be promoted and protected.

Writing on personal liberty, freedom and equality of individuals as the essential elements of the rule of law, Laski (1982) argues thus: A state built upon the condition essential to the full development of our faculties will confer freedom upon its citizens. It will release their individuality. It will enable them to contribute their peculiar and intimate experience to the common stock. It will offer security that the decisions of the government are built upon the widest knowledge open to its members. It will prevent that frustration of creative impulse which destroys the special character of men.

For the rule to be supreme the three organs of government should be independent of one another for proper checks and balances to be in place. The judiciary must be vibrant and fearless, otherwise the executive excesses may go scout free. Democracy will remain an article of faith if the law is not supreme. The constitution guarantees the fundamental human rights, such as right to life, right to dignity of human person, right to personal liberty, right to fair hearing, right to private family life, right to freedom of religion, right to vote and be voted for in elections, right to freedom of expression, among others, yet if the law is not supreme the citizens will not enjoy these rights.

Democracy provides all these rights but if the people cannot enjoy them, and then it is not democracy. If people cannot freely elect their representatives in government, as well as control the government, then that government is not democratic. If people are disenfranchised for no genuine reasons and prevented from active participation in the electoral process, then its product is not democratic.

Good governance sustains democracy, which guarantees the fundamental human rights, including freedom of the press. The media are the purveyor of information on both the rule of law and democracy. The mass media inform, educate, entertain and sensitize people on government and private activities as they affect the public, as well as draw the attention of the people to events, environmental issues and other important matters that have consequences on the citizens.

Lasswell (1968) notes that man usually looks forward to something to watch and learn over his environment, as well as report on inventions, opportunities, discoveries, decisions, dangers, social change, trade and commerce, conflicts and conflicts resolution, among other phenomena that have public consequences. The mass media set the agenda on public discourse, monitor government policies, decisions and programmes, expose the ills of the society and mobilize public opinion towards a particular desired direction. This is the basis of democracy, which is guaranteed only by the rule of law in any society.

In the worlds of Schramm (1963):

The structure of communication reflects the structure and development of any society. The size of the communication, the volume of the communication, the direction of communication, the objective of the communication, the development of the communication, the role of the communication, to the society – the ownership of the instrument of communication the audience of the communication, the transfer of the individual communication roles, the stretching out and multiplicity of the society, the facilities and the purposeful use and/or misuse of communication – the content of the communication network at any given time reflects the value pattern of the society it serves.

Emphasizing the role of the mass media in safeguarding democracy and promoting the rule of law for the ultimate objective of upholding good governance in any society, Thomas Jefferson, a former president of US summarizes thus:

“... since the basis of democracy was opinion of the people, the very first objective was to keep that right. If it were left for me to decide whether we should have a government without the mass media or the mass media without the government, I should not hesitate a moment to chose the latter”.

The summary of this triumvirate relationship is that democracy can only exist in a state where there is the rule of law, otherwise the latter[rule of law] will remain an article of faith without democracy, while good governance sustains both of them with the mass media as their reinforcing element for durability and sustainability.

### **The Nigerian Experience**

Since Nigeria's political independence on October 1, 1960 successive regimes have canvassed for the government based on the principles of the rule of law and democracy. Nigeria has elaborate provisions on the rule of law and democracy for the ultimate existence of good governance. For example, in the opening paragraph of the 1979 Nigerian Constitution, as consolidated in the 1999 Constitution, it is clearly stated thus:

“We the people of the Federal Republic of Nigeria have firmly adopted this document for the purpose of promoting the good government and welfare of all persons in our country on the principles of freedom, equality and justice, and for the purpose of consolidating the unity of our people”.

Sec (1) of both the 1979 and the 1999 constitutions provides that this “constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria”. The constitution makes elaborate provisions for the promotion and protection of the fundamental human rights as contains in sections 33, 34,35,36,37,38,39,40,41,42,43,44 and 45 among others.

Similarly, the constitution, under its fundamental objectives and directive principles, makes elaborate provisions on government obligations to the people as contains in sections 13 through 21. Section 22 of the 1999 Constitution specially provides that “the press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives

contained in this chapter and uphold the responsibility and accountability of the government to the people”.

There are also elaborate provisions on the citizenship, separation of powers and other conditions that guarantee the rule of law in the state. Nigeria is also a signatory to various international conventions, charters and treaties that promote and sustain the fundamental human rights and other elements of the rule of law. It is, therefore, safe to infer that the rule of law is supreme in Nigeria, at least, in theory.

Sec. (2) forbids any persons or group of persons to take control of the government of Nigeria or any part thereof, except in accordance with the provisions of this constitution, which include representative government based on elective principles. There are elections for the three levels of government in Nigeria today. The judiciary, through the various courts and tribunals, has tried to uphold the fundamental human rights.

The judiciary has pronounced some landmark cases which include:

- Federal government withholding of over N18b monthly allocation due to Lagos state local governments under the Obasanjo regime.
- The National Assembly extension of councilors/chairman tenure from three to four years.
- The on-shore/off-shore dichotomy.
- The Peter Obi, Andy Ubah Saga in Anambra State.

The summary of the above issues is that democracy is at work in Nigeria. Nigeria and other African countries are signatories to international conventions and treaties, apart from having elaborate provisions on democracy and the rule of law, yet good governance has been a scarce commodity for most of them. However, there are some limitations on democracy in Nigeria.

These include:

- Economic inequality, which has practically denied a large percentage of Nigerians access to government. Poverty, hunger, unemployment, among other economic predicaments, have limited people's participation in government in Nigeria.
- Ignorance and high level of illiteracy among the people have prevented a large percentage of Africans from benefiting from democratic principles.
- Many years of military rule has delayed the development of the legislature, thereby subordinating it to the executive. For example, it is still vivid to us how the Federal Executive, under the leadership of Chief Olusegun Obasanjo, muzzled down the legislature in Nigeria.

Generally, the successive regimes in Nigeria have ample provisions for democracy and the rule of the law, but good governance has been elusive. The existence of multiparty system has become a permanent feature of Nigerian democracy. The fundamental human rights, including freedom of the Press are elaborately provided in the constitution. This largely accounts for low score or outright negative index of Nigeria and other African democracies in the benchmark of good governance as corruption, election irregularities, poverty, unemployment, maladministration, gagging of the press, muzzling down of political opponents, emerging one

party state, declining per capita income and gross national product, GNP, among other negative signals.

Rousseau, who equates democracy with the general will of the people, has argued that inequitable distribution of wealth in any society is counterproductive to good governance. He has argued that democracy will only thrive if the government provides for the material welfare of the people, as well as remove gross inequality in the distribution of wealth in the society [Sabine and Thorson: 1985]

Most African economies, including Nigeria are off tangent to the Millennium Development Goals, MDGs. They [African economies] top the index table of corruption in the world as attested by the findings of the Transparency International. Karl Marx has argued that those who control the means of production, distribution and exchange in every state equally control the political power with which they reinforce and sustain their hold on the economy. Chinweizu [1981] shares the above view when he argues that before handing over to the post independent African leaders, the former colonial masters carefully selected those who were sympathetic to the interests of the departing colonial masters and foisted them over the rest as the leaders. These leaders, he argues, are accountable to their paid masters; hence good governance may remain a scarce commodity to them.

For the mass media, they have been active in promoting and sustaining both the rule of law and democracy in Nigeria. The Nigerian journalists have been fearless, consistent and forthright in exposing the ills of both the government and the society. The media fought gallantly against the following:

- The Federal government (NPN] deportation of Alhaji Mandara in 1981.
  - The June 12, 1993 presidential elections, the incarceration of Chief M.K.O. Abiola, NADECO, by the Abacha administration.
  - Midnight impeachments of Peter Obi of Anambra, Ladoja of Oyo, Joshua Dariye of Plateau, among others.
  - The obnoxious third term elongation (live coverage of legislative debates by AIT and other media, not necessarily the senators, killed and buried the third term dream or agenda of the Obasanjo regime.
  - The controversial April 14 and 21, 2007 governorship and presidential elections among others.
- Despite the laudable role of the media in upholding the rule of law and democracy for good governance in Nigeria, there are some problems that still limit their aspiration of excellence. These include but not limit to:
- Economic predicament which has deprived a large percentage of Nigerians access to media information on democracy, rule of law and good governance to few privileged people in the state capitals and other major cities in Africa.
  - The various laws limiting information gathering and processing in Nigeria may include, but not limited to following:

- i. Seditious Publication Act (1958 Criminal Code; 1963 Penal Code Laws of northern Nigeria).
- ii. Official Secret Act of 1962 and its Amendment Act of 1962.

iii. Protection of Public Officers Against False Accusation

iv. Newspaper (Amendment Act) Act of 1964.

v. Obscene Publications Act of 1961, among others.

Today, corruption, ethnicity and ethnocentrism, maladministration, ignorance, poverty, high rate of illiteracy, inflation and other economic predicaments have combined as militating problems against democracy, rule of law and good governance in Nigeria particularly despite elaborate constitutional provisions for remarkable progress. This means that mere constitutional provisions for democracy, rule of law and freedom of the press have not guaranteed remarkable good governance in Nigeria. This is a great challenge to scholars and practitioners of Nigerian democracy.

### **The Way Forward**

To promote democracy, the rule of law and good governance in Nigeria the following measures will be taken:

- National economic restructuring to ensure equitable distribution of resources in the various countries.
- Provision of quality and functional education to improve the literacy level of the citizenry.
- To promote regular, free, fair and credible elections in Nigeria in order to elect credible and patriotic citizens into national government, as well as encourage participatory democracy.
- Restructuring of the judicial systems in order to improve the checks and balances of the organs of government.
- Embark on electoral and bureaucratic reforms for improved service delivery.
- Mass mobilization, value orientation and ethical rebirth of the citizenry.

### **CONCLUSION**

The rule of law, democracy and good governance are the major features of any civilized society today. The governance of any state where any of them is lacking often degenerates to dictatorship and authoritarianism. The rule of law provides the general framework for good governance. Democracy floats on the rule of law, while the good governance promotes and sustains both of them. Nigeria is governed by the rule of law and democratic principles despite some present limitations. Good governance is the destination of both democracy and the rule of the law. The media have worked hard to sustain both the rule of law and democracy despite some structural and institutional problems. Many years of civil rule, no doubt, assisted to frustrate the functional triumvirate of the rule of law, democracy and the media for improved good governance in Nigeria. Except an immediate overhaul of the structural, economic, legal, educational, administrative and other bureaucratic impediments is done the rule of law and democracy may remain an article of faith, as good governance shall continue to be elusive in Nigeria.

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