

The Rule of Law in Nigeria: Myth or Reality?

Elijah Okon John

Department of Philosophy, University of Uyo

PMB. 1017 520003, Uyo, Akwa Ibom State, Nigeria

Tel: 234-802-832-2626 E-mail: el_johns5000@yahoo.com

Abstract

There is no doubt that the rule of law is unambiguously enshrined in the Nigerian Constitution. The only surprising thing to any competent individual is the blatant disrespect shown to this constitutional provision by Nigerian rulers who had openly sworn to uphold it. From the backdrop of several cases of unjustifiable arrests, unfair trials, executive lawlessness, suppression of free speech and undue domination of minorities, this paper attempts to defend the thesis that Nigerian rulers have become sybaritic in their conscious reduction of the concept of the rule of law to a mere constitutional myth and never a reality that it was intended to be.

Keywords: Rule of law, Legal positivism, Executive lawlessness, Democratic government, Absolute supremacy

1. Introduction

Law can be conceived as the express formulation of enforceable rules by the appropriate law-making body in a society, for the purpose of balancing and safe-guarding individual and the collective interests. Thomas Davitt (1959) defines law as a directive judgement formed by the law-making authority. According to McLean and McMillan (2003), law means the body of rules enforced by any sovereign state. But philosophically, can we accept any rule enforced by any state as a law? Or, is positive law the only type of law which exists? Must a rule, in order to be called a law, conform to certain universal principles or precepts? And lastly, what is the relationship between laws in the legal sense and scientific sense? In tackling the above posers, it must be observed that there are two great divides: the legal naturalists, on one hand and the legal positivists, on the other hand. In this paper, we shall not be concerned with the position of the legal naturalists. The reason for this position has a lot to do with the subjective requirements or reasoning of the natural law, which necessarily include appeals to the Absolute and other religious revelation and wild claims.

The grounds for rejecting natural laws are obvious: they are incompatible with legal objectivity. That is, they are not dependent on the actions of particular legislators, and, in most cases, are derivable from religious revelation. Thus, natural laws cannot be regarded as proper laws. According to legal positivism, only positive laws which basically form the rule of law exist. Laws are, therefore, made by legislators; they do not exist, awaiting discovery, before a law-making act takes place. Moralizing about what the law ought to be is thus a logically separate activity from discovering or deciding what the law is.

Legal positivism as a sound legal doctrine has continued to dominate the thinking about law since the time of William Blackstone in the eighteenth-century. From the nineteenth-century to date, great thinkers like John Austin, John Finnis, Nikolai Lenin and H. L. A. Hart have consistently and convincingly presented legal positivism as the paradigm of what should pass for law. The important thing to note about law whether from the perspective of the naturalists or positivists is that the law and legal structures exist to prevent one person from enjoying his liberty unchecked at the expense of the other person (Azikiwe, 1958). This assumption shall form the focus of this discussion.

2. The Rule of Law

In every society, the rule of law is very essential. But what is the rule of law? Onwanibe (1989) defines the rule of law as that aspect of law which envisages a political system where life is organized according to laws that guarantee a good degree of objectivity in dispensing justice, defending freedom, promoting peace and prosperity because law is a reasonable expression of integrity. If law is an obligatory rule of action prescribed by the supreme power of a state, then the rule of law means that every citizen shall not be exposed to the arbitrary desire of the ruler and that the exercise of the powers of government shall be conditioned by law. No one can be lawfully restrained or punished except for a definite breach of law established before the courts in ordinary legal manner (John, 1999). According to Garner (2004), the rule of law is defined as: 'a legal principle of general application sanctioned by the recognition of authorities, usually expressed in the form of maxim or logical proposition'.

Garner further states why it is called "rule", because in doubtful or unforeseen cases it is a guide or norm for any decision. The rule of law is sometimes seen as the supremacy of law. It provides that decisions be made by the

application of known principles or laws, without the intervention or discretion in their application. But before we examine the basic interpretations of the rule of law, it is necessary to note that the rule of law can be seen as the expression of the will of those who govern with or without the consent of the democratically constituted electorate (John, 2009:59). However, it is doubtful whether democracy can be obtained without the consent of the *demos*. For anything short of the consent of the masses, what would be operational will be mere authoritarianism. Thus, the rule of law implies that it is a democratic principle.

As a socio-political necessity, the rule of law is something necessitated in the contract of the society and government in view of equality or inequality of men. The concept of the rule of law also stipulates that all are equal in the eyes of the law except certain officials like Presidents and Governors who may be acting in their official capacity. This does not in any way mean that they should flout court rulings or show disrespect to the constitution. But it means that if sued, they may not be compelled to appear in the court personally. And in most cases, it is the institution or offices which they are superintending that would be sued. However with the establishment of International Court of Justice in The Hague, Presidents of different countries who are enjoying all kinds of immunity should be very cautious in their conduct, for they can still be tried in their personal capacities for whatever crime they committed against humanity during their tenure. The rule of law as was formulated by Dicey (1939) has three basic interpretations:

- 1) There is the absolute supremacy of regular laws as opposed to the influence of arbitrary power. That means, a man may be tried and punished for a breach of the law, but he cannot be punished for anything else;
- 2) The rule of law clearly stipulates common equality before the law of the land administered by the ordinary law courts. That can be interpreted to mean that no man, irrespective of his social or official position, is above the law. Everyone is duty-bound to obey the same law; and
- 3) The rule of law holds that the legal rights of the subjects are secured not by guaranteed rights proclaimed in a formal code but by the operation of the ordinary remedies of private law available against those who unlawfully interfere with his liberty of action, whether they are private or official citizens.

From Dicey's analysis, it is obvious that the concept of the rule of law clearly answers the query: does the state exist on its own right over and above the citizens' right? It is decipherable from the preceding discussion that the rule of law is an accepted common phenomenon both in view of natural and positive laws. According to John (2009), the rule of law is very necessary for justice to prevail in the society. This would involve the supremacy of the law over the whims and caprices either of the individual or the state. This rule further helps potential leaders to be instructed on the need to respect the law. The citizens on the other hand will take example from the leaders. But above all, it will enhance the sustenance of the democratic ideal. In his opinion, Falaiye (1993) submits that "the corollary of this will be stability, peace and good government" in democratic institutions. One more fact is that it is only when the courts are independent of the government, and thoroughly committed to enforcing the obedience of the government to the law of the land, can the rule of law be meaningful.

3. The Rule of Law and the Nigerian Experience

Nigerian government claims to be a democratic government under the rule of law. In principle, Nigeria subscribes to the application of known laws without intervention in their application. In the concept of the rule of law, the courts are expected to play some vital role in applying the law without respect for persons. Accordingly, judges are expected to be courageous, impartial, independent, just and be respecters of no persons no matter how highly exalted their positions in the society may be (Omorgbe, 2007). The major issue here is that without an independent judiciary with incorruptible judges the rule of law cannot be sustained. By the demands of the rule of law, the government and its officials are duty-bound to respect and obey the law in all its actions. This means every government must endeavour to minimize arbitrariness in its policies and use of power. Thus, government must be guided by the rule of law in the exercise of its powers. But in Nigeria, the rule of law is more or less a farcical concept. Nigeria is unable to obey set down rules and operate within the norms of a given establishment. In this case, obedience to court orders is a paramount measuring index of compliance with the rules of law in any society.

Often times, public servants in Nigeria, especially chief executives, behave and carry themselves about as if they are above the laws or are not subject to any authority. These happened more often in Nigeria during the military regimes and unfortunately even still persist during civilian regimes. Military regime in itself is naturally an aberration of the rule of law, because of its outright rejection of the rule of law. Civilian regimes in Nigeria have not fared better, either with respect to the rule of law. In fact, civilian administrators seem to surpass the military in their open disrespect to the rule of law. Obasanjo's administration in Nigeria was the worst when it comes to compliance with the rule of law. Obasanjo's regime was also an embodiment of executive lawlessness in Nigeria.

The feuds between the Lagos State Government and the Federal Government over the failure to remit funds allocation meant for Local Government Councils in Lagos are a typical example of executive lawlessness in Nigeria. According to Mbaba (2005), despite the judgement of the Supreme Court on the matter, the defaulting party, and in this case, Federal Government was still defiant, looking for reasons to justify its position including going back to court, as if to seek permission to continue in the disobedience. In many cases, a Nigerian ruler in brazen show of dictatorship, tries to use the vehicle of the law to advance his purpose and so enacts laws to silent everybody from criticizing him, or opposing his oppressive policies. Such laws even oust the jurisdiction of courts so that nobody, not even the court can question the ruler. Examples are many in Nigeria. Check for instance section 3 (3) of the Public Officers (Special Provisions) Act, Cap 381, Laws of the Federation of Nigeria, 1990 which provides *inter alia*:

No civil proceeding shall lie or be instituted in any court for or on account of, or in respect of any act, matter or thing done or purported to be done by any person under this Act and if any such proceedings have been or are instituted before, on or after the making of this Act, the proceedings shall abate, be discharged and made void.

This is wrong because nobody is above the law. Though such provisions as shown above still remain in our statute books today, but they are a sad reminder of executive lawlessness and a brazen attempt to use the laws to legitimize their oppression and suppression of the people. Most public officers in Nigeria have failed to understand that the laws, rules and regulations for public servants are designed to guide them in the discharge of their public duties. That means, no laws place them above the laws of the land.

For instance, when Obasanjo embarked on his 93rd trip abroad on June 10, 2002, *ThisDay Newspaper* gave a seminal editorial which classified his foreign trips not simply as unjustifiable, but frivolous. And the paper added that the trip in question was a mere exercise in total synchrony with his proclivity for frivolities. When other papers like the widely circulated *Mid-Day News* attempted an exposition on the secret behind his foreign trips on July 06, 2002, Obasanjo against all advice resorted to executive lawlessness - a crack down on journalists. He woefully failed to realize the constitutional procedure in a civil society.

Another way in which the rule of law is usually jettisoned by government in Nigeria is in the taking of arbitrary decisions and defying some set down rules. For example, there had been feuds between the Executive Arm of the Federal Government and the National Assembly over the implementation of the 2005 Appropriation Law. The National Assembly had complained that the Executive were unilaterally reviewing the budget without resort to the National Assembly. The bad blood generated and the negative effect thereof on the economy and polity would have been avoided if the Executive had remembered the law and complied with the procedure of reviewing the budget.

Illegal arrest, detentions, trials, banning of trade unions and popular organizations, harassment of civil rights campaigners; illegal proscriptions of media houses, extra-judicial killings as in Gbaramatu (in Delta State), Odi (in Bayelsa State), Zarki-Biam (in Benue State), secret trials like that of Henry Okah and other hostile acts against the citizenry perpetrated by Nigerian leaders have become a daily occurrence in every state of the Federation. By exhibiting these reprehensible attitudes, Nigeria has consciously reduced the concept of the rule of law to a mere myth. The fiat and manner in which the privileged ones go about trampling upon the rights of others and carelessly abusing the law of the land in every ramification have proved to the sceptics that the concept of the rule of law as enshrined in the constitution is a mirage. This sorry state of affairs shows that Nigeria is moving in the wrong direction. The concept of the rule of law is not yet a reality in Nigeria.

It is on record that open disrespect to court rulings and other constitutional provisions made the Nigerian Bar Association in March 2006 to embark on a two-day nation-wide industrial action in order to protest any continuous executive lawlessness championed by President Obasanjo (Onyekwere, 2006). Even President Yar'Adua on his part has not shown enough respect to the rule of law. Extra-judicial killings in some Niger Delta communities in May and June 2009 have shown that Yar'Adua has also failed to make the rule of law a reality in Nigeria. It is the position of this paper that except something drastic is done to remedy the already battered ambience of our legal and political situation, Nigeria may not easily get out of the woods. In other words, our reculant members of the Executive Arm of Government must begin to conduct themselves with decorum so as to show their respect to the rule of law.

Moreover, all anti-people and draconian laws must be repealed. This means, Nigerian legislators should view any act of disrespect to the rule of law by the executives as an impeachable offence. In the same token, stiff penalties like dismissal from service should be meted out to the recalcitrant members of the armed forces and the police force. Anything short of the above prescriptions, one cannot argue convincingly that the rule of law is not a passive concept in the constitution of Nigeria. In the mean time, the concept of the rule of law has remained what it has been – a mere myth and never a reality.

4. Conclusion

We have carefully discussed the untrammelled trespassing of the rule of law and, by extension, the judicial process by Nigerian leaders. We have equally viewed this as a serious issue since no nation that wants to be strategically important in the comity of nations would ever toy with some serious constitutional provisions like the rule of law. Therefore, this essay is a wake-up call for all and sundry to rise to the challenge of restoring dignity to the Nigerian nation by resisting any attempt to abuse the rule of law. We are saying this because the rule of law is one concept that is being put in place by enlightened societies for the purposes of peaceful coexistence and the conduciveness of every citizen, irrespective of his or her social, religious, military or political standing. Let us conclude this work by agreeing with Omoregbe (2007) that it is only when the rule of law becomes a reality, that individual citizens would enjoy personal liberty and equal treatment by the law, in an atmosphere of brotherhood. But it is still a truism that this kind of atmosphere is highly fictitious in Nigeria, at least for now.

References

- Azikiwe, N. (1958). *Renascent Africa*. London: Frank Cass Publishers. (Chapter 1).
- Davitt, Thomas E. (1959). *The Elements of Law*. Boston: Little Brown and Company. (Chapter 4).
- Dicey, A. V. (1939). *Introduction to the Study of the Law of the Constitution* (9th Edition). London: The Macmillan. (Chapter 2).
- Falaiye, O. A. (1993). Socialism in Africa: Problems, Prospects and Perspectives. *Imodoye: Journal of African Philosophy*. 1(2). 8-17.
- Garner, Bryan A. (2004). *Black's Law Dictionary* (8th Edition). St. Paul, Minnesota: West Publishers. Pp. 1359-1360.
- John, Elijah Okon. (2009). *Man and the State: Issues in Socio-political Philosophy*. Uyo: Afahaide and Sons Publishers. (Chapter 2).
- John, Elijah Okon. (1999). Social and Political Philosophy. In U. Etuk (Ed.). *Introduction to Philosophy and Logic*. Uyo: Afahaide and Sons Publishers. Pp. 52-61.
- Mbaba, Ita. (2005). *Leadership and the Rule of Law*. A Paper Presented at the 2nd Lecture Section of the Centre for Leadership Development and Conflict Resolution at Uyo, Akwa Ibom, Nigeria, May 15. pp. 1-15.
- McLean, Iain and McMillan, Alistair. (2003). *Oxford Concise Dictionary of Politics*. Oxford: Oxford University Press. Pp. 300-302.
- Omoregbe, Joseph. (2007). *Socio-political Philosophy and International Relations*. Lagos: Ikeja: Joja Educational Research and Publishers. (Chapter 9).
- Onwanibe, R. C. (1989). The Rule of Law and the Rule of Man in O. C. Eze (Ed.). *Society and the Rule of Law*. Owerri: Totan Publishers. Pp. 171-189.
- Onyekwere, Joseph. (2006). Lawyers in Mass Protest. In *Tell*. 43 (12). 28-29.