

Constitutionalism and Citizenship: A Philosophical Appraisal of the Nigerian Situation

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ABSTRACT

Constitutionalism is a form of political thought and action that seeks to prevent tyranny and guarantees the liberty and rights of individuals on which free society depends. It is based on the idea that government can and should be limited in its powers, and that its authority depends on enforcing these limitations. The value of constitutionalism lies in the fact that it gives meaning to the relationship between the state and the citizens and this invariably brings about the much needed social order. Thus, the foundation of a sustainable social order in any society is based on the cordial relationship between the state and the citizens as established by the constitution. While constitution serves as the basis upon which daily activities of governance of a people must be based. It depends for its existence and functionality on the citizens. It is intended to provide guidance to the governors and the governed in order to avoid excesses, lawlessness and instability, and to ensure orderliness, good governance and national development. The constitution should be generally understood and accepted by the people. But we discovered that is not the true practical reflection of the essence of the constitution in Nigeria. There is gross impunity and total disregard to the principles and dictates of the constitution. There is a claim that the constitution of Nigeria does not truly emanate from the people, and that has been responsible for disharmony and instability, but we discovered in this work that Nigerians lack the spirit that makes things work. Nigeria cannot lay a valid claim to practicing democracy without a true democratic constitution. Also, Nigeria cannot lay claim to true democratic constitution that will unite the citizen with the state without resulting to the spirit that makes thing work. While conceptual analysis was used to clarify key concepts like constitution, citizens and governance, the reconstructive method was used to establish constitutionalism and the advantage of a true people-oriented constitution which is urgently needed in Nigeria to right the numerous wrongs plaguing politics and governance in the country.

Keywords: Constitution, Constitutionalism, Citizens, Democratic, Development, Governance.

INTRODUCTION

Constitution is a fundamental system of law, written or unwritten, of a sovereign state. According to JubrilBala Mohammed; a constitution, being the fundamental system of the law in any sovereign state,... ..provides definition for the citizenship an institution; prescribes rights, responsibilities, obligations and duties, distributes, secures and limits authority and powers, aggregates and articulates aspirations and interests and; outlines procedures for actions, and interactions and; sanctions default (Jubril, 2000:16).

Constitution fixes the limits and defines the relations of the legislative, judicial, and executive powers of the state, thus setting up the basis for government. Also, it provides

guarantees of rights of citizens in a sovereign state or nation. By defining the relationship between individuals and the state, a constitution is targeted at establishing the broad rights of the citizenry of the modern state. However, within the state, a constitution defines the principle of the state, as well as the procedure which law making is to follow and by which laws are made. As mentioned above, a constitution can be written (codified) or unwritten (uncodified). Nigeria, Canada and the United States are examples of countries that have written constitutions. The United Kingdom has an unwritten constitution, embodying various documents and customs defining the relationship of the Crown, the Parliament, and the courts with people. With specific reference to unwritten constitutions – these are usually

products of “evolution” of laws and conventions over centuries. An unwritten constitution includes written sources, such as the acts of parliament and, unwritten sources, such as constitutional conventions, observation of precedents, royal prerogatives, custom and tradition (Aristotle, 1977).

It is the constitution that can provide and secure a framework for democracy, decentralization and deregulation and for the development of the country that their interest are protected by the highest authority in the land. Being difficult to amend, it gives security and reassurance to the minority in the community. If the constitution is written, it also provides a basis for national identity. It is expected that such fundamental laws must be clear in their objectives, and be in tune with the needs, aspirations and spirit of the country.

Constitutionalism, on its own is portrayed as the ideal that every state strives to achieve. Constitutionalism is a form of political thought and action that seeks to prevent tyranny and guarantees the liberty and rights of individuals on which free society depends (Reynolds, 1993:79-95). It is based on the idea that government can and should be limited in its powers, and that its authority depends on enforcing these limitations. The term is often bandied about as a must for good governance and used alongside terms such as democracy and human rights. Habasonda views constitutionalism as a method of limiting political abuse; it ensures that the powers of the state are constrained and that the state cannot act capriciously (Habasonda, 2010). Fombad provides a similar exposition of constitutionalism, focusing on limiting the power of the state, but adds more explicitly the idea of protecting the individual (Fombad, 2005). Fusaro also sees constitutionalism as a process which is continually developing. Importantly, he sees Africa as contributing to this development (Fusaro, 2010).

However, constitutionalism recognizes the need for government with powers but at the same time stresses that limitations be placed on the powers. It envisages checks and balances by restraining the powers of governmental organs by not making them uncontrolled and arbitrary. Constitutionalism comes from political philosophy and takes the position that a government, in order to be legitimate, must have legal limits on its powers. Thus, the government’s authority ends up depending upon

actually staying within those limits. A government which goes beyond its limits loses its authority and legitimacy.

However, a political system whether it has a formal constitution or not, will reflect the principles of constitutionalism only when its powers and institutions are limited to the terms of the constitution which reflect the foundational principles of commission and trusteeship. In this regard, the constitution takes on the role of “higher law”. The fact that a political system has a constitution, even if it is a formally written document does not mean that it meets the standard of constitutionalism. Under the standard of constitutionalism, governments must themselves be bound by rules. To implement this standard, a constitution that reflects the principles of constitutionalism will serve as a higher law. This higher law establishes and limits government in order to protect individual rights in the society.

So, the value of constitutionalism lies in the fact that it gives meaning to the relationship between the state and the citizens and this invariably brings about the much needed social order. Thus, the foundation of a sustainable social order in any society is based on the cordial relationship between the state and the citizens as established by the constitution. When the enabling environment is visible, there will be an efficient social contract. Mueller recognizes the significant function of the constitution when he describes it as “a form of social contract among citizens defining the rules within which the society functions” (Ihonvbere, 2000). A further look reveals that social contract is transactional. It provides a situation, where people are more tolerant of one another to live happily. It is a transformational agreement built on trust, providing a place where citizens can become fully human by having an identity that is rooted in respect for others. In this regard, any constitution that creates a disconnection between the state and the citizens, making it increasingly difficult for the citizens to rely on the state, such society becomes the arena of various conflicts.

Obviously, any feeling of alienation cannot command the commitment of the people to the state, as individuals or groups are likely to be concerned about what will promote their interest rather than what will frustrate them. Therefore, any government that meets the requirement of constitutionalism is expected to meet the need of the citizens. This implies that it is a

contradiction to think of a constitution without the citizens that will be governed and organized by it. This is so because a constitution contains the terms of the social contract by which the state comes into existence, binds and governs all citizens including the governor and the governed without whom the constitution is defective and meaningless. In this work, we are interrogating constitutionalism and citizenship: a philosophical appraisal of the Nigerian situation. The work looks into the reasons why many Nigerians are having the feeling of alienation and the constitution become meaningless to them.

The Citizen and the Nigerian Constitution

The constitution of a country is the supreme law, the foundation of all laws and order in that country. It overrides any other law which might be inconsistent with it. It is not an abstract entity; it does not exist for its own sake, but for the sake of the people. The constitution should be generally understood and accepted by the people. It needs to be put through a process of popularization, with a view to generate public interest in it and an attitude that everybody has a stake in it and that it is the common property of all. The constitution embodies the responsibilities of the leaders without ignoring the rights and duties of the citizens. The constitution of the federal republic of Nigeria is supposed to provide an indispensable reference point for the country's national life. The constitution highlights such ideals as loyalty, honesty and fidelity which are the characteristics of good citizens. The constitution recognizes that the people have a place in governance when it reads in section 14(2)(a) that "sovereignty belongs to the people of Nigeria" from who government, through the constitution derives all its powers and authority. It goes further to state in the same section (14) that the Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice.

Section (17) holds that the state's social order is founded on ideals of freedom, equality and justice where every citizen shall have equality of rights, obligations and opportunities before the law. Furthermore section (35) guarantees freedom of thought, freedom of conscience and freedom of association. These constitutional ideals have frequently been ignored, both the leaders and the people have tended to do only what brings them or their interest groups the greatest advantage. These situations show that political ideals are not operational in Nigeria.

To start with, constitutions supposed to enjoy legitimacy. Legitimacy in our context means "the people"; it means that since the state is a creation of the people by means of a constitution; the people should therefore be directly involved through referendum or by a constituent assembly elected specifically for the purpose of the making of the constitution and giving it is "law" upon its restriction by the people to be governed by it. A constitution is supposed to enjoy legitimacy, involving the people in the process of its making. Its form and contents are subjected to public discussion. Whatever body is charged with the role of drafting constitutional proposals or even its amendments, should invite views from the public both in the form of articles in newspapers, journals; and of memoranda to the constitutional commission. The idea of a constitution is that there should be a continuous public discussion of it up to the time of final enactment. Only then can a constitution have reality for, and become the property of the people whose affairs it is to govern; only so can it hope to win their confidence and, perhaps eventually, the respect and loyalty as well.

Legitimacy is also seen as "the capacity of the political system to engender and maintain the belief that the existing political institutions are the most appropriate ones for society" (Lipset, 1963) is central to the survival of liberal democracy. According to Nwosu (1976), legitimacy is the prerogative of the people to grant or withdraw legitimacy from government, this depends on the citizens whether they are satisfied with the government performance or not. Once a sitting government knows that it can be voted out of power within the framework of periodic elections, it strive to pursue the socio-economic and political interests of the electorates who may switch allegiance to opposition parties if such government fails to meet their expectations. In Africa, most governments' begin their term with very high level of public acceptance and subsequently due to policy failure they lose peoples' acceptance which ultimately de-legitimizes their regime but in Nigeria where there is predominance of the absence of free and fair elections most leaders do not depend on the votes of the electorate to win elections, this brings up the question of legitimacy. The party in government often lack legitimacy in Nigeria, since they are not people's choice; they rule by fiat. They often came in through back doors and may not need peoples will before taking action in as much

they satisfy their craving the larger population remain at their mercy.

When the ruling government lacks legitimacy, no matter the contents of the constitution it will not work, the effect of this is that the state has failed and the citizen had to seek social fulfillments outside it (Uroh, C. O. 1998). And when this happens, the moral bond that ties the citizens to the state which is the real basis upon which the state could justify its control over the citizens has slackened. That is the reason why many people would have to secure their social fulfillment within their primordial groupings especially among their kinsmen and women. There is no doubt that one ethnic would not benefit from this arrangement than the other. Other ethnic groups that were not so placed or that were not represented in the scheme of things felt alienated from the State and consequently the State becomes an arena of ethnic conflict; social relationship can no longer generate “important common goals, interests and values in terms of which a sense of neighborliness can be developed among them and national identity forged” (Oladipo, O. 1998). In a situation of complete disregard for state authority or lack of confidence in the state, there used to be an expression of hostility and violence between and among the beneficial and those that are not benefited in the scheme of things. This type of hostility and violence is not good enough for the sustainability of a democratic society in Nigeria.

The issue of immunity is another area of contention. Section 308 of the Nigerian constitution of 1999 provides immunity for some elected office holders in the country, notably the governors and their deputies and the president and the Vice President. Black’s Law Dictionary (1979) defines immunity as an exemption from a duty, liability or service of process, especially such an exemption granted to a public official.

Exemption, as from serving in an office, or performing duties which the law generally requires other citizens to perform e.g. exemption from paying taxes, freedom or exemption from penalty, burden or duty.

It goes further thus: ‘An immunity is a defense to tort liability which is conferred upon an entire group or class of persons or entities under circumstances where considerations of public policy are thought to require special protection for the person, activity or entity in question at

the expense of those injured by its tortuous acts ...’ (Black’s Law Dictionary, 1979)

However, the overall effect of Section 308 of the 1999 Constitution is that the elected officers mentioned in Subsection (3) of the section are protected from arrest, prosecution, imprisonment, civil and criminal proceedings while their tenure lasts. And if there has been a case standing against any of them before being elected into office, such a case shall terminate or at least be put in abeyance during the continuation of their tenure in office.

A sitting state Governor of Nigeria or the President, during the subsistence of his term of office, must have a free hand to act boldly and courageously for public good. In doing so, such Governor or President would not be hindered by fear for self, for repercussion of actions embarked upon, for general public interest of a state or for national interests clearly defined. All legitimate actions undertaken during the pendency of term of office by a Governor or President must therefore be foreclosed from personal legal liability, hence the concept of immunity.

Immunity from prosecution is subject to abuses; just as every other law or rule is subject to abuse and adulteration by persons with such disposition to manipulate and corrupt laws and rules for their personal benefit, instead of public benefit. It is the case, therefore, that a governor or president, desirous of subverting public interests and public good for evil and personal gain, could engage in actions that serve personal or parochial interests, which of course amounts to perversions of public and national interest. At the same time, such governor may seek to cloak himself in immunity from prosecution for actions undertaken as a public official. It is a well-known fact that corruption and abuse of power by past and present members of the executive and other arms of government have retarded development and progress in our country.

On the one hand, immunity from prosecution allows freedom of action by those beneficially protected with such immunity protections; conversely, immunity - when abused - could quickly become instruments of impunity of actions and impunity of outcomes, especially in the hands of public officials who seek to formulate and impose fraudulent public policies on Nigerian citizens. Immunity from prosecution could become a dangerous tool in

the hands of those who possess a perverse sense of law, ethics, and decency.

Corrupt political leaders will of course make efforts to see that the immunity clause is retained in the Constitution. That is the cloak under which they have hidden for years perpetrating their crimes against the Nigerian people, sneering at and insulting our laws and institutions and collective intelligence. The Immunity Clause is a license for stealing, killing and maiming. The constitutional drafting committee meant well when section 308 was added to the 1999 constitution of Nigeria. But they did not know that the provision contained therein would be abused and used to the disadvantage of the people by the VIPs. It appears the immunity clause in the Constitution has outlived its uses and needs to be removed.

Citizens who have become worried by the abuse of the clause have postulated that it should have no place in the constitution and its removal will not in any way affect governance negatively. They are always quick to point out that there was no immunity in the First and Second Republics and there were no distractions then. It was even pointed out that there were no frivolous cases in court then. They also argued that the removal of the clause would help to keep the leaders in check. Moreover, the distraction if any that would arise cannot be compared to the grandiose looting that is being perpetrated as a result of the immunity being enjoyed, especially by Governors. The earlier the corrupt politicians are stripped of immunity against prosecution the better. In a country ridden by corruption, embezzlement, lack of accountability and outright looting, the presence of an immunity clause in the Constitution is like building a shield or military bunker for rogues.

The Nigerian Constitution was prepared by people most of whom were actuated by self-interest and personal ambition. They knew they would run for office, and if they won or rigged their way in, they planned to loot the treasury; so it was in their interest to install for their own protection immunity from prosecution. Today the same ilk of people, with the same species of interest and ambition, dominate the Nigerian political sphere. The removal of this clause will act as a deterrent, no matter how small this effect will be, to others with the aim and intent of going into politics or government to make money. In most cases, a lot of die-hard politicians, who do not have any means of income, except politics, will not be able to make

their way into office by crooked means. It is not surprising that not satisfied after eight years as Governors, some of them, under the pretext of still wanting to serve Nigeria, are now Senators or Ministers.

Majority of Nigerians want this clause removed. Many of us believe that its removal will bring a great measure of sanity to governance and will prevent these office-holders from seeing themselves as above the law and as mini-gods, who can do and undo, playing with millions of human lives. It will prevent crooks, who have been convicted for all kinds of offences in foreign countries and in Nigeria from even nearing a ballot box to contest. Removals of the immunity clause will also mean that executives will not be able to instigate violence and murder against political opponents. Right now, we know that several state governors are behind militancy, thuggery and murder, and if the immunity clause is removed, even if they are not directly involved in these crimes, they can be hauled in by association.

Again the issue of equality before the law in Nigerian constitution is a contradiction to true political practice in Nigeria. Section 17(2)(a) of the constitution of Nigeria 1999 loudly proclaims the equality of all Nigerian when it reads; "every citizen shall have equality of rights, obligations and opportunities before the law". It goes on to state the right of fair hearing and right to freedom from discrimination in sections 36 and 42 respectively. These sections boldly state with some timbre that equality before the law is well-grounded in the Nigerian polity.

However, that is only as far as it goes. For it is one thing for the law to make a proclamation but quite a different thing to effectuate such a provision. In Nigeria, aside from instances of unequal treatment, especially in relation, for example, to gender in the work-place, inheritance and discrimination of the girl-child, the criminal justice system, vices considerable selection procedures and so on. Thus, Akinola Aguda is right when he writes in his work: The Common Man and the Common Law that equality before the law in the Nigerian constitution is a myth used by the political class and the lawyers to give cold comfort to the "common man" so that our political class can have a peace of mind.

The elite have always been crucial to the survival or truncation of democracy and constitutionalism in Nigeria, though they have chosen most often to do the latter. Their

influence has also been overarching in Nigeria's chequered political history, and they are not known for their support for democracy and constitutionalism. However, they have been the major beneficiary of the gains of democracy and constitutional governance in Nigeria. Failed attempts at democratization in the First, Second and Third Republics is squarely the result of the failure of the governing elite to deliver the 'dividends of democracy' and also the breakdown of consensus amongst them. In the countdown to the present democratic epoch, the elite, made up of mostly retired and serving military men and their cronies in the civil society left very few people in doubt that the new civilian government would be government of the elite, by the elite and for the elite. Citizens were deliberately prevented from actively participating in the process that led to the evolution of the 1999 constitution and the emergence of a new democratic government, thus making the transition to be viewed as a 'pacted affair' involving some arrangements for power transfer negotiated by cartels of elite group interests, that were social based, ethnic or both and characterized by tampering and manipulation by the coalition of state institutions and entrenched elitist interests. Several scholars have written about how popular groups and civil society organizations were prevented from making input into the processes of the transition, especially through the Constitution Debate Coordinating Committee (CDCC) headed by Justice NikiTobF. To be sure, the CDCC never tried, and was not encouraged to directly engage the well organized opposition such as National Democratic Coalitions (NADECO) United Action for Democracy (DAD), Joint Action Committee of Nigeria (JACON), Campaign for Democracy (CD) and other similar organised constituencies such as students, labour, the human rights community and women organisations.

Furthermore, unethical conducts or acts of indiscipline are the most important problem confronting Nigeria as a country. The citizens know the laws, they know what the constitution says, but their act of indiscipline in them forced them to often disregard rules and regulations in the country. This act of indiscipline has eaten deep to the fabrics of the society. Efforts have been made by the succeeding government to wage war against the acts of indiscipline but failed. What can we do to generate widely shared moral repugnance against acts of indiscipline?

This is the million-dollar question that still bedevils policy makers across the board. Fortunes in public funds have been spent experimenting with structures, programs and processes that could deliver the holy grail of moral renewal. These structures and programs have been at times built at the expense of obscuring the very content they were meant to promote. All this has arguably stemmed from the absence of a few vital ingredients necessary for moral regeneration to occur, including serious intolerance against corruption.

More so, in an ideal society, leaders are expected to be role model. But the problem with Nigeria has remained the issue of bad leadership. Our leaders lack discipline and the citizen are following suit. Nigeria leaders have always been very poor or weak and very corrupt. Leaders' attitude towards indiscipline is more or less encouraging them to do more, hero worshiping and lack of accountability has remained the emblem of Nigeria leaders. Scholars blame this on long period of military rule but with the advent of civilian rule the act of indiscipline still remain the same.

Motivation is a force driving people to do things, it is a drive which is variously linked with wages, instinct, purposes, goods, desires, wants, needs, and action behind every behaviour is a motive, therefore all behaviour to motivate, it is looked at as an involvement of the physiological and social aspect of human beings. Basically, motivation means an individual needs, desire and concepts that cause him or her to act in a particular manner, our interest in motivation is basically with respect to work, it is driven towards achieving certain objectives in an organization and sometimes regarded as a tool which may be in form of financial incentive such as provision of housing scheme for staff, health scheme, recreation center and end of the year bonus, promotion. Nigerians are not motivated in their work places; there are no government sectors that are adequately founded. Even the private enterprises are not finding it easy. When peoples are not adequately motivated, law is meaningless. What is constitution to a hungry man? When government failed to give attention to motivational system, it will not contribute to the improvement in productivity. Hence, lack of motivation of all types in any work organizations is a cause of acts of indiscipline which will lead to disobedience to the constitution of the country.

CONCLUSION

Scholars may claim that Nigeria constitution is not a people oriented constitution because it was given or forced on the country by the military government, but we should not forget that, there have been several moves for amendment at the national assembly to re-write the wrong and improve on the constitution since 1999. In my own submission, the problem is not solely on the constitution but on we Nigerians. Nigerians lack the spirit that makes things work. Though we have rigid and written constitution, which is one of the best constitutions in the world which encompasses constitution with constitutionalism but our resolve not to make thing work make the country remain as it is. There are many countries today with unwritten constitution and they are doing fine because they resolve to have a commitment to make thing works and it works. Nigeria cannot lay a valid claim to practicing democracy without a true democratic constitution. Also, Nigeria cannot lay claim to true democratic constitution that will unite the citizen with the state without resolving to the spirit that makes thing work. A true people-oriented constitution is, thus, urgently needed in Nigeria to right the numerous wrongs plaguing politics and governance in the country.

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