

## Nigeria's Constitutional Development and Constitutionalism

**Ibrahim Matazu Suleiman** **Abstract**

*Department of Political Science and  
Public Administration,  
Umaru Musa Yar'adua University,  
Katsina*

**Article DOI:**

10.48028/iiprds/ssljprds.v9.i1.02

**Keywords:**

Legislation,  
Constitution,  
Constitutionalism  
and Decree.

*Corresponding Author:*

Ibrahim Matazu Suleiman

This paper scrutinises against the background of the various experiences and attempts made at constitutional development in Nigeria. The approach adopted is historical, from the legislation process of 1861 of Lagos colony to 1914 as the period of national formation to 1999 constitution, including the unique features of each constitution. The method of data collection is textual where secondary sources were utilized while the frame of reference is 'Liberal Constitutional Theory'. Further, the historical era was categorised into colonial or pre-independence and post-independence, the post-independence period was further subcategorised between the parliament and military constitutions. The paper argued that all the constitutions were not reflecting the peoples' interests, because they were either formed by foreigners, political elites or military junta, who always prioritise their own interests. This is why they lacked popularity and constitutionalism was not realised. More, their ideal is vested in the Western liberal model not the indigenous mores and ethos. The paper is divided into five parts; the first part gave the general background that comprises the introduction, clarification of concepts and theoretical framework. The second part discussed the origin of the polity. Third is the historical development of the constitution within two categories before independence and after, including the role of military and the final segment is the conclusion and recommendation; where it recommends that, popular participation in constitutional review and constitution making should be encouraged through the involving democratic-minded citizens and democracy inclined civil societies. And that, there should be an absolute independence of the judiciary and other commissions like electoral commission, anti-corruption commission and human right commission from the executive arm.

## **Background to the Study**

In order to realise good governance of any polity, peaceful coexistence among its citizens both individuals and groups, the role of constitution as a legal framework within which policies and laws are fashioned is momentous. This can be guaranteed through a neutral, unbiased and dispassionate establishment that prescribes the rights of individuals and groups and not merely spell out the rights but guarantee the rights, curb the excesses and castigate the transgressors. This begets steadiness and stability, progress and development of nations. In the case of Nigeria there were series of transformations to produce orthodox constitution for the populace. Hence, Nigeria's constitutional development can be categorised into two epochs; pre-independence epoch, which covers six constitutional instruments (1914, 1922, 1946, 1951, 1954 and 1960) and the post-independence constitutional epochs, encompassing three instruments (1963, 1979 and 1999). While each successive pre-independence constitutional instrument was enacted through an order-in-council of the British monarch, their post-independence counterparts were enacted in two ways; an Act of parliament (1963 Constitution) and military decree (1979 and 1999).

Despite the entire endeavor for five decades of independence, the atmosphere is still unhinged, potholed and rickety. Within the fifty years about thirty years were spent under military rule which dangled and swung the constitution while the remaining years of the civilian rule was not a consecutive. It was emitted in to first, second and third republics which were all crumpled. Currently, we are under baffled and befuddled fourth republic that despite having the constitution we still suffer ethnic crises, geopolitical conflicts and political indecisiveness. Why is this quandary? What quality of our constitution and the constitutionalism? On this note these questions will be delved vis-à-vis Nigeria, by means of content analysis, literature will be exhumed regarding constitutional development process in Nigeria from secondary sources.

## **Research Methodology**

Looking at the subject of this research and the perspective (historical) adopted the research type should be qualitative. Therefore, the methods of data collection are mainly readings from archives and other texts that include books, journals, internet sources and so forth. The data collected was analysed by means of primary and secondary analysis under themes emerged from the data (inductive approach). Further, 'Analytical themes' are developed due to their cohesiveness to open interpretations and then 'open coding' was used, which involves assigning labels to text sections that relate to a particular thematic idea. In this retrospect abbreviations were assigned representing the themes. All the data coded was put under the themes that fit for the discussion. Finally, interpretation of the data organised depends much on the researcher's inference and the theoretical suppositions.

## **Theoretical Frame Work**

### **Liberal Constitutional Theory**

The philosophy of liberalism is rooted in the Enlightenment with its emphasis on the rights-bearing individual (Strauss, 1999). According to the Stanford Encyclopedia of philosophy (2001), the framers were followers of John Locke, and their liberal constitutionalism

depended on rationality to posit a sphere of individual liberty, guaranteed by property rights with a fixed government constituted by majority consent expressed in regular elections participated in by an enfranchised citizenry (Baker, 2004). Assenting that law is a naturally inexorable and it must conform with the certain objective moral standard based on the nature of man and the dictate of reason, meant to command by the sovereign (s) which is backed by sanction for disobedience, such as to serve as an instrument for social engineering via reconciliation and resolution of conflicts (Garba, 2001). The theory stresses that there should be:

- i. Constitutional government, rooted in liberal political ideas.
- ii. The government defends the individual's right to life and property, and to freedom of religion and speech.
- iii. In order to secure these rights, constitutional architects emphasized checks on the power of each branch of government, impartial courts, and equality under the law.

This is in contrast to the Marxian view which is known to economic approach to law that describes constitution as a mere instrument of exploitation employed by the capitalist class against the masses (Garba, 2011). In support of this, Beared exposes that,

*“Constitution is a device which structured government ... to facilitate the retention of wealth to a small minority group of men concerned with their immediate property interest”* (Beared in Macey, 1987).

### **Conceptual Discourse**

Constitution has been variously defined, depending on the pattern of the particular Constitution the proponent of a particular definition is exposed to. According to Hogg (1977), the term 'Constitution' may be used in a narrower or wider sense:

In the narrow sense, it refers to those rules embodied in a basic Constitutional document, such as in the United States of America, India or Nigeria. In the wider sense, it includes all – important rules which establish, empower and regulate the principles of government, some rules not contained in the basic document, and some non-justifiable rules, such as in the case of United Kingdom. Woosely defines constitution as a collection of principles according to which the power of the government, rights of the governed and the relations between the two are adjusted (Woosely, in Mahajan, 2008).

Black's Law Dictionary defines the term “Constitution” as:

The organic and fundamental law of a nation or State, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government and regulating, distributing and limiting the functions of its different departments, prescribing the extent and manner of the exercise of sovereign powers; A charter of government deriving its whole authority from the governed. The written instrument agreed upon by the people of Union (e.g. US Constitution) or of a particular State, as the absolute rule of action and decision for all departments ... and officers of the government in respect to all the points covered by it, which must control until it shall be changed by the authority which established it, and in opposition to which any act or ordinance of such department or officer is null and void.

All these proffered definitions admit a primary function of a constitution which is the division of powers between arms and levels of government, their various functions, powers and the guaranteed fundamental rights. Analogous to this is supremacy of the Constitution. Section 1 of the 1999 Constitution declares the Constitution as being supreme and its provisions shall prevail over every other law. It affirms that, "This Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria." In the next item it is declared that "The Federal Republic of Nigeria shall not be governed, nor shall any persons or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution." And it explicitly concluded saying, "If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void (constitution of the Federal Republic of Nigeria, 1999).

It is also ostensible to note that constitution is a means to an end, it could not be static, and it has to be amended with the passage of time. Normally, the methods adopted in adjusting or developing constitution are; conventions and conferences, constitutional amendments through legislative acts as well as referendum (Mahajan, 2008). Meanwhile, Constitutional development here refers to the serial and gradual advancement been inculcated in to the doctrine, contained with the directive principles that guide the behavior of both the rulers and ruled in a society.

Constitutionalism according to Stanford Encyclopedia of philosophy (2001) and Borchardt (2010) is the idea often associated with the political theories of John Locke and the founders of the American republic, that government can and should be legally limited in its powers, and that its authority or legitimacy depends on its observing these limitations. Igbuzur (2011) conceives constitutionalism as the adherence to the spirit of the constitution. It upholds the supremacy of the constitution and requires that government officials must obey and operate within the framework of the law. Thus, the noun 'constitutionalism' simply means adherence to the principles laid down in the Constitution. It means adherence to constitutional procedures and provisions for both the government and the governed.

Although constitutionalism has been widely embraced round the world, it is by no means without its hecklers. Especially to those constitutions that not only create and regulate the offices of government but also allege to protect abstract rights of political morality. The Stanford Encyclopedia of philosophy categorised the critics in to two; the '*hard critics*' who assert that such apparently rights-protective constitutions cannot effectively and legitimately serve to protect individuals against the oppressive forces of governments. On the contrary, they only serve to mask legal and political practice in a false cloak of legitimacy. The second category is '*democratic critics*' who are not so utterly dismissive of rights-protecting constitutions. Rather, their main concern is to challenge the role that democratically unaccountable judges typically play in the interpretation and application of such constitutions.

The noun legislation refers to the actual law enacted by a legislative body at the national, state, or local level, or the act or process of making or enacting the law (vocabulary.com, 2017). Instantaneously, legislation can be promulgated as a decree which is a style of governance allowing quick, unchallenged creation of law by a single person or group, and is used predominantly by dictators, absolute monarchs and military rulers (meriam-webster.com, 2017).

## **Constitution Making in Nigeria and Extent of Constitutionalism (1914-1999)**

### **Origin of the Constitution**

The geo-political entity called Nigeria began as a British colony immediately after the annexation of Lagos in 1861. 1906 marked the time of history in Nigerian politics when the Lagos colonies were merged with the Niger coast protectorates of southern Nigeria. Followed by the amalgamation of the southern and northern protectorates in 1914 a council of 36 was established including six unofficial Nigerians (Momoh, 2000). Hear from governor Lugard:

His majesty the king has decided that from today (3rd Jan. 1914, 9am) all the country from the sea to near the desert in the north, and from the French country in the west to the German Kameruns in the East, shall be one single country under Governor-General, so that there may be no jealousy or rivalry between the North and the South, and all may co-operate together for the advancement of peace and prosperity...I trust that under the new method of Government Nigeria will increase in prosperity and wealth, and its people in happiness (Lugard in Akomolede, 2001).

Prior to the period of this amalgamation Nigeria composited autonomous societies and each had their own peculiar system of judicial and political practices. At least, the people had say in their collective aspirations and destinations. The advent of the colonial rule with its hegemonic vestiges tired the people with the common constitutional provisions. Ever since then Nigerians lost the fundamental right to actively participate in making laws governing their lives. James (2000) posits that, the primary motive of colonising Africa was purely economic which resulted to an undue persuasion for signing treaties and even the usage of physical assault. This was the mode and manner in which the constitution has emerged.

### **Colonial Phase (1914-1959)**

Series of Constitutions were experimented under this phase. These constitutions varied only in terms of the composition of the representatives in the legislative council. Gupta (2014) argued that, the constitutional development under colonial rule was the outcome of the agitation of Nationalists for indigenous representation, significant power at all central levels and imposition of limited franchise under the Clifford constitution, coupled with intense pressure for having a self and independent government. Additionally, Igbuzur asserted that nationalist was the driving force for constitutional reform in colonial Nigeria (Igbuzur, 2001).

The 1914 constitution was a mere legislation for Lagos colony with a council of 36 members that did not have the real autonomy for real legislation; it was just an advisory council. The governor was not bound to comply with the advices. Therefore, the first constitution for the

amalgamated Nigeria was Clifford Constitution of 1922. This constitution was a brainchild of Sir Hugh Clifford. In a bid to bring uniformity in the territories of colonial Nigeria, the constitution amalgamated the Legislative Council meant for the Colony of Lagos with the Nigerian Council, and membership of the council expanded to 46 (Akomolede, 2001). However, this was a curtailed effort as Northern Nigeria was still not represented in the council. The Legislative Council was given law making responsibilities for the Colony of Lagos and the southern provinces. The constitution introduced elective principle and four members were to be elected (three from Lagos the administrative and commercial capital and one from Calabar a big commercial centre (Gufta, 2014). Members of the Legislative Council possessed the power to propose any ordinance bill except such Ordinance on finance which was the prerogative of the Governor. Nevertheless, the Governor had veto power and was empowered to disapprove any law passed by the Legislative Council. He could execute whatever he wished without the consent of the council. There was also absence of independent judiciary, separation of power and rule of law. To justify this governor Richard (1946) claimed that there was an absence of any group from which he could obtain African views (Coleman, 1958). As a result of the nationalist repression from the Clifford constitution, on March 6, 1945 Arthur Richards presented to the legislative council his proposal for an amended constitution which was realized in 1946.

The Richard Constitution defined Nigeria, for the first time, in terms of regions: Northern, Western and Eastern regions. Under this constitution there was a legislative council for the whole country governor served as a president, the council consist of 16 official and 28 unofficials, 4 of them elected and 24 nominated and created a regional council for the west and east it was unicameral while the north had a bicameral system of house of chiefs and house of assembly. Nonetheless, before enacting the constitution the governor didn't consult Nigerians and this also makes it half-baked (Gufta, 2014).

The next was the Macpherson's, on 9<sup>th</sup> January, 1950 the constitution was drafted and became operative after one year, a national conference was held to discuss the draft the 1951 Macpherson Constitution came into being after an unprecedented process of consultation with the peoples of Nigeria. It is obvious that no other constitution so widely reached out to the people than the Macpherson constitution of 1951 (lawnigeria.com, 20017). Instructively, meetings and consultations leading down to its making were held at 5 levels – Village, District, Divisional, and Provincial and Regional levels – before the national conference. The regional conferences were held at Ibadan, Enugu and Kaduna, respectively and produced a general consensus in favour of a federal system of government with a few differences as to its format. The constitution provided a Central Legislature, and a Central Executive Council (House of Representatives) consist of a president and six ex-officio members, 136 representatives elected from the regional houses and six special members appointed by the governor for representing communities less or inadequately represented also regional executive and regional legislature were provided (lawnigeria.com, 2017). Also west became a bicameral like north but central legislation override the regional at any rate on the same vein Governor Macpherson's constitution vested the central legislature with unlimited power, as it could legislate on any matter including those on which the regions had power to legislate (Dare and

Oyewole, 1987). the central legislative members (ministers) being selected from among the regional legislatures made them too loyal to their regions and the politics of regionalism erupted in the house that instigate inter-regional conflict that led to conference for the leaders of various parties in London 1953 and Lagos in 1954. Consequently, another constitution was initiated by Oliver Lyttleton.

The Lyttleton Constitution of 1954, among others, made regional governments independent of the central government in respect of subjects and legislative powers allocated to them. It also established a unicameral legislature for the federal government and each of the 3 regional governments. In addition, Lagos was taken out of the control of any regional government and made the Federal Capital Territory; regional public services were established for each of the 3 regions; the judiciary was reorganised so as to establish regional judiciaries while autonomy was granted to the Southern Cameroons which was up till that time part of a larger Nigeria and Northern Cameroons (lawnigeria.com, 2017). Specifically, for the first time, Ministers were given specific portfolios. Thus, the Lyttleton Constitution could best be described as the transition instrument towards Nigeria's independence in 1960 under a federal structure with democratically elected federal and regional legislature (Gufta, 2014).

#### **Post-Colonial Era (1960-1999)**

In the process of granting independence, colonialist was seriously interested in leaving certain legacies which help them in maintaining the status quo. Consequently, the independence constitution of 1959 retained most of the provisions of the Lyttleton constitution which perpetuated serious agitation for change. The Constitution (independence constitution) which provided for a parliamentary system of government, with the three regional governments (Northern, Eastern and Western Regions), a bicameral legislative framework at the federal (Senate and House of Representatives) and regional levels (House of Assembly and House of Chiefs) with the legislative powers of government delineated into three lists; exclusive, concurrent and residual. The parliamentary system premeditated under the constitution recognised the British monarch as the Head of State with powers to appoint a resident agent (the Governor-General) to exercise executive powers on her behalf while a Prime Minister elected by the Federal parliament acted as the Head of the Federal Executive Council. This culminated to a constitutional conference held in Lagos from 25<sup>th</sup> to 26<sup>th</sup>, July 1963 where Nigerian political leaders resolved that, Nigeria should become a Federal Republic, which was passed on 19<sup>th</sup> September 1963 (Igbuzur, 2001). Thus, the key features of the 1963 Constitution were the establishment of Nigeria's First republic under a parliamentary system of government by replacing the Governor-General appointed by the British monarch with a President elected directly by members of the Nigerian federal legislature. In addition, in place of the Privy Council, the Federal Supreme Court became designated as the final appellate judicial authority over any person or matter in Nigeria.

Looking at the extent of constitutionalism, Ojo (1985) substantiates that, the Westminster model of government failed to accommodate the grievances of Nigerians due to the abdication of responsibility by the executive and its inability to abide by the rules of the game. Onifawose and Akinboye (1989) corroborate that “*all available apparatus were employed by*

*the power elites against their opponent.*” Ake argued that, after the independence there was a contradiction, as the new rulers tried to use the only tool they have (i.e., political power) to create an economic base in order to consolidate their political power” (Ake, 1981). As a result, there was no rule of law and constitutionalism jeopardised.

### **Military and Constitution Making in Nigeria (1979-1999)**

It is unfortunate that despite the military arbitrariness to constitution, the Nigerian constitution could not be disengaged from the military. With the collapse of the first republic, Nigeria witnessed thirteen years of military rule. In 1979 new constitution was promulgated which led to the inception of the second republic.

The 1979 constitution of the second republic was quite different from the one of first republic. Some of the essential contents were: it opted for presidential rather than parliament system of government, under which the president and state governors will be elected together with their deputies. Constitution was made to be supreme, in which powers were delineated and spitted between and among various tiers of government so as to strengthen the federal structure of the federation (Ishaq, 2008). The constitution was drafted by 49 members out of fifty and finally the draft was reviewed and amended by the Armed Forces Military Council that issued a decree enacting the 1979 constitution (Ishaq, 2008).

In analysing the extent of constitutionalism under the second republic, it is evident that the constitution was subjected to debate by Supreme Military Council for first scrutiny (James, 2000). The second republic was affected by the left legacies of authoritarian and arbitrary practices of 13-year military legacies which manifested in the form of political repression, abuse of executive power and non-compliance to the rule of law (Idea, 2000). In Kaduna state assembly National Party of Nigeria (NPN) members with the majority in the house ended up impeaching the executive governor in June 1981 without conforming to section 174 (2) of the constitution. The attempt to revoke the television channel allocated to Lagos state by the Federal government were all abused of the constitution (Ojo, 1985).

Even though During Babangida's 1989 and Abacha's 1994 military regimes there were some impotent attempts for constitutional reconstructions, they ended up as mere stage shows. The conclusive one in our discourse is the 1999 constitution of Abdussalam Abubakar.

The Supreme Military Council of 26 officers promulgated another constitution into law under General Abdulsalam Abubakars' military administration which successfully ushered in the Fourth Republic on the 29<sup>th</sup> of May, 1999. Nevertheless, as the constitution lacks the necessary prerequisite of consultation and popular representation, being enacted by only 26 Nigerians and imposed on Nigerians just like its predecessors. As a result, constitutionalism is cast off. Further, the language of the constitution also is criticized as a masculine if not militaristic and the composition is highly ambiguous with legal jargons. Thus, many pundits see it as a just legal document that inflicts a unitary system of rule.

### **Conclusion**

The process of constitution making in Nigerian history has been far from popular. It is always tended to be dominated and dictated by foreigners, military officers and political elites.

Characteristically, the final outcome is subject to the final amendments by the highest governing authority of a given time in question. This made the constitution less relevant to the people and failed to serve consolidation of democracy. There is no rule of law due to rooting extreme power to the executives like vesting power to president with authority of appointing judicial chief and paying their wages. As a liberal democratic state, Nigeria still needs to have a constitution that will dispose of the stains of colonialism and symbolise the real features of Nigerians and reflect their wishes as independent citizens. Hence, the constitutionalism would be comprehended.

### **Recommendations**

Conclusively, this paper recommends certain measures to be taken for Nigeria to be more constitutionally developed and enhance the attribute of constitutionalism:

1. Popular participation in constitutional review and constitution making should be encouraged through the involving democratic-minded citizens and democracy inclined civil societies.
2. Real independence of the judiciary from executive and other commissions like electoral commission, anti-corruption commission and human right commission.
3. Constitutional provisions should be explicitly stated. i.e the powers provided to the various arms of government and prevention of unnecessary interference.
4. To make a constitutional government a reality, it is strongly advised that the monopoly over the press, radio broadcasting and the television should be shared with the private citizens for public enlightenment.

### **Reference**

Ake, C. (1981). *A political of Africa*, Daybis limited, Ibadan

Akomolede, I. T. (2001). Good governance, rule of law and constitutionalism in Nigeria, In *European Journal of Business and Social Sciences*, 1 (6), 69 – 85, September 2012. Retrieved from <http://www.ejbss.com/recent.aspx>. Accessed on 4th July, 2017

Borchardt, K. D. (2010). *The ABC of European Union law*. E.U. publication office, Luxemburg. *Black law dictionary*, retrieved from [www.blacklawdictionary.com](http://www.blacklawdictionary.com) Accessed on 8<sup>th</sup> July, 2017

Coleman, J. S. (1958). *Nigeria: Background to nationalism*, University of California Press.

Dare, L. & Oyewole, A. (1987). *A' level text book of government*, Onibonoje Press ltd, Ibadan

Baker, E. T. (2004). *Constitutional theory in a Nutshell: William & Mary Bill of Rights Journal* Volume 13 | Issue 1 Article 3, Retrieved from <http://scholarship.law.wm.edu/wmborj> on 7th July 2017

Garba, A. (2001). *The Nigerian legal system*. In Mohammed A.R (ed.) *Readings in general studies. foundation on Nigerian culture*, Bayero University, Kano.

- Gufta, R. K. (2014). *Nigeria- constitutional developments, political economy, Judiciary and representation*. Institute of Lifelong Learning, University of Delhi.
- Hogg, P. (1977). Constitutional law of Canada. In *European Journal of Business and Social Sciences*, 1, (6), 69 – 85, September 2012, Retrieved from <http://www.ejbss.com/recent.aspx>. Accessed on 5<sup>th</sup>, July, 2017
- Ishaq, A. A. (2008). *Nigerian government and politics*, Royal Gate Publishers.
- Igbuzur, O. (2001). *Strategy towards a people's constitution*. In Bagudu, N. and Dakas, D. (eds.). *The right to be different: perspectives on minority rights, the cultural middle belt and constitutionalism in Nigeria*. League for Human Right, Jos.
- James, A. B. (2000). Constitutionalism and Democracy in Nigeria. In out M.M et al. (ed.). *Proceedings for democracy in Nigeria*. Issues Communications Ltd, Kaduna.
- Mahajan, V. D. (2008). *Political theory*. Rajedraravindra (PVT) limited, New Delhi
- Momoh, A. (2000). *The history and politics of constitution making in Nigeria (1922-1999)*. Committee for the defense of human rights. Lagos
- Macey, J. R. (1987). Competing economic views of the constitution, Retrieved from [www.digitalcomms.law.yake.edu/fss\\_papers/1732](http://www.digitalcomms.law.yake.edu/fss_papers/1732). On 17<sup>th</sup> August, 2011  
Meriam-websterdictionary.com. Retrieved on 8<sup>th</sup> July, 2017
- Nigeria: Constitution development history, Retrieved from [www.lawnigeria.com](http://www.lawnigeria.com) on 5<sup>th</sup> July, 2017
- Ojo, J. D. (1985). *The development of the executive Under the Nigerian Constitution (1960-1981)*.
- Strauss, D. A. (1999). What is constitutional theory? *California Law Review* 87, Article 3. 1999  
Retrieved from <http://scholarship.law.berkeley.edu/californialawreview>. Accessed on 9<sup>th</sup> July, 2017
- Stanford Encyclopedia of philosophy (2012). *First published Wed Jan 10, 2001; substantive revision Tue Sep 11*, retrieved from [www.google.com](http://www.google.com) accessed on 5<sup>th</sup>, July, 2017  
University Press, Ibadan
- Thomas, E. B. (2017). Constitutional theory in a nutshell, *William & Mary Bill Rights Journal* 13 (3) (2004). Retrieved from <http://scholarship.law.wm.edu/wmborj/vol13/iss1/3> on 7<sup>th</sup> July,

Verbatim report of Sir F. (2017). *Lugard's inaugural speech as Nigerian Amalgamator and Governor General (administration and progress in Nigeria 1914)*. Source: Mohammed U.: 2013, 438. Retrieved from google.com on 5<sup>th</sup> July