

POLITICAL SCIENCE: *An Introductory Reading*

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CHAPTER 7

CONSTITUTION AND CONSTITUTIONALISM

Cletus O, Amadi, PhD.

This chapter discusses the meaning of constitution and constitutionalism. It also examines the sources of the Nigerian constitution, types and importance of the constitution.

The Concept of Constitution

It is instructive to note that constitution as a concept elicits divergent views as expressed below:

- (a) Some see "Constitution" in terms of the institutional organisation of the political system;
- (b) Others see "Constitution" in terms of a mechanism for the restraint of the power-holders in the political system;
- (c) While others still see "Constitution" as a specially written document which outlines the principles and basic political institutions by which a state is governed.
- (d) A.O.Ojo (1973), defined constitution as a document having a special legal sanctity which sets out the framework and the principal functions of the organs of a state and declares the principles governing the operations of the organs.

In this work, we shall therefore define constitution as a set of fundamental principles or established precedents according to which a state or other organisations is governed. These principles and rules may be written in a single document or in several legal documents such as the British constitution.

Constitutions concern different levels of organisations, from sovereign states to companies and unincorporated associations. Rules that establish and regulate international organisations are also known as constitutions or the charter of such a body. Some constitutions, especially codified constitutions, also act as limiters of state power, by establishing lines which a state's rulers cannot cross. States across the world, for instance, Japan, India, Canada, Nigeria and Germany have

constitutions. Also, non-governmental organisations and civic groups have constitutions.

In its ideal form, a constitution emanates from the consent and will of the people whom it governs. Besides establishing the institutions of government and the manner in which they function toward each other and toward the people. A constitution may also set forth the rights of the individual and a government's responsibility to honour those rights.

Constitutions, whether written or unwritten, typically function as an evolving body of legal custom and opinion. Their evolution generally involves changes in judicial interpretation or in themselves, the latter usually through a process called amendment. Amendment of a constitution is usually designed to be a difficult process in order to give the constitution greater stability. On the other hand, if a constitution is extremely difficult to amend, it might be too inflexible to survive over time. The ongoing evolutionary nature of constitutions explains why England may be described as having a constitution even though it does not have a single written document that is designated as such. England's constitution instead resides in a body of legal custom and tradition that regulates the relationship among the monarchy, the legislature (Parliament), the judicial system, and the common law. Although England's constitution is, in a sense, unwritten because it does not originate in a single document, many written laws have been instrumental in its creation, and England in fact has one of the oldest traditions of constitutionalism.

In the United States, individual state constitutions must conform to the basic principles of the U.S. Constitution – they may not violate rights or standards that it establishes. However, states are free to grant rights that are not defined in the U.S. Constitution, as long as doing so does not interfere with other rights that are drawn from it. For this reason, groups or individuals who seek to file constitutional claims in a court are increasingly examining state constitutions for settlement of their grievances.

Definition of Constitutionalism

Constitutionalism is a political philosophy based on the idea that government authority is derived from the people and should be limited by a constitution that clearly expresses what the government can and can't do. It's the idea that the state is not free to do anything it wants,

but is bound by laws which limit its authority. Constitutionalism has a vibrant history among the English people, and that tradition has been passed on to other nations, most notably to Americans even though most countries of the world including Nigeria now embrace it.

It can also be said that the practice of adhering to the dictates of a constitution is constitutionalism.

Difference between Constitution and Constitutionalism

The basic difference between constitution and constitutionalism is that the constitution concerns itself with the document and its contents, whereas constitutionalism concerns itself with the practice of all that is written in the constitution without sentiments.

Sources of the Nigerian Constitution

1. Conventions:

These are rules of practice that have been accepted because of their long usage e.g. family/ traditional marriage rights, land title, deeds, etc.

2. Common law:

These are laws based on people's customs and beliefs which the courts also recognise e.g. masquerading, some local festivities, etc.

3. Historical Documents:

These are documents containing historical records of people and their traditions, e.g. The Magna Carta of 1215, Bill of Rights of 1689, Equality Franchise of 1928, etc.

4. Judicial Precedents:

These are laws emanating from previous court judgments, usually from the superior courts. They can also be called case laws.

5. Act of the Legislature:

These are laws made by the state and national assemblies.

6. Works of eminent scholars and jurists such as Thomas Hobbes, John Locke, Karl Marx, etc.

Types of Constitution

There are different types of constitution. Each state adopts a constitution to suit its purposes depending on the socio-political factors prevailing among its people. Constitutions can be classified by various criteria: the three basic criteria for classifying constitutions are:-

- *by the form in which the constitution is presented i.e. whether it is written or unwritten.*

- by its mode of operation i.e whether rigid or flexible.
- by the type of political system which it institutes.

Written Constitution: Written constitutions are written legal documents from which reference can be made at any given point in time. They usually exist in instances where there is greater emphasis on man-made laws and natural laws unlike the unwritten constitution, e.g the Westminster type where the parliament enjoys greater prominence in the enactment of laws. It also exists in instances where countries adopt the Federalist or Confederalist political systems which emphasise a bicameral legislative council.

i. **Unwritten Constitution:** It is a constitution where the principles and rules are not written in a single document but seen in several documents. The laws of the land are documented and they exist in treaties, charters, judicial precedents, commentaries of historians and legal luminaries, customs and conventions of the people. In this situation, emphasis is usually placed on adopting traditional norms and belief which had existed over many years as the guiding rule in law-making.

iii. **Rigid Constitution:** Rigid constitutions are those which cannot be easily amended. In situations where there is a need to amend the constitution, they require the consent of the various groups of people making up the state. Examples of such rigid constitutions are those of India, Canada, Australia and the 1999 Constitution of the Federal Republic of Nigeria. Such constitutions need the consent of the legislature at the national and state levels to effect an amendment.

iv. **Flexible Constitution:** These are constitutions which can be easily amended by the legislature of a national government. Such constitutions are usually found in countries practising the unitary system of government. In this case, the unwritten type of constitution exists. They can readily undergo different stages of amendments and counter-amendments as the need arises.

v. **Confederal Constitution:** In this type of constitution, a provision is made for greater powers to be conferred on the component units rather than the centre. In other words, the central government exists on the benevolence of the component

units and acts only as an administrative unit for cohesion and coordination of interregional relationships. General Aguiyi-Ironsi tried to institute this form of government when he was the military Head of State of Nigeria in 1966.

- vi. **Unitary Constitution:** A unitary Constitution depicts a system in which power revolves on the centre and the component units are entirely dependent on it for sustenance. It is the opposite of the confederal constitution and there is unanimity of approval; all activities of the component units must be approved by the centre, otherwise the centre reserves the right to nullify the actions of the component units. Mainly found in military dictatorship and autocratic regimes.
- vii. **Federal Constitution:** In the federal constitutions, there is a compromise situation in which there exists a consensual agreement between the centre and the component units in a union where the latter divest themselves of some of their powers and confer some on the former for the betterment of its people. In this form of arrangement, the centre is not entirely superior to the component parts because they retain a measure of autonomy. Indeed, both the centre and the component units derive their powers from the constitution. The marked difference between the unitary and the federal constitution is very apparent in this regard. However, in situations where conflicts arise between the centre and the component units, the laws of the centre usually subsist, e.g. America, Nigeria, etc.

The importance of the Constitution

Constitutions are very necessary for the survival of any government organisation, or country. This is because, without it, the society can become anarchic as it is in the state of nature. Below are some of the major reasons why the constitution is important in a country:

1. **Ensure Law and Order:**

The constitution of a country contains the set of laws that are used to govern a country. Within the constitution there are provisions that state how people in the country should behave and what happens if someone breaks the laws. These laws therefore empower the authorities to maintain law and order. Through

constitution, the citizens know what constitutes a crime and the penalties associated with such crime(s).

Makes the Government Accountable:

Constitutions make governments accountable to the people. The constitution of a country explicitly states that the government of the day is accountable to the people. It therefore keeps the government on its toes because the people can hold it accountable.

Sets Out the Rights of the People of the Country:

The constitution sets out the rights of every citizen of the country. Without the constitution, citizens will not know their rights and these rights can be easily trampled upon. But when the people know their rights, they can fight for it and ensure they get it. The constitution therefore is a very important tool that helps prevent human rights abuse.

Contains the National Goals:

The constitution also contains the list of the national goals. This is very important for every nation because it helps nations to be on the right track. For example, the constitutions of many countries have the national goal of strengthening democracy in the country and improving the economy of the country.

Lays Out the Basic Structures of Governance:

The primary function of a constitution is to lay out the basic structure of the government according to which the people are to be governed. It is the constitution of a country, which establishes the three main organs of the government, namely, the legislature, executive and judiciary.

Power Allocation and Division:

The constitution of a country not only defines the powers allotted to each of the three main organs of government, but also significantly makes a clear demarcation of the responsibilities assigned to each of them. It effectively regulates the relationship between these organs as well as the relationship between the government and its people.

7. **Superior to Other Laws:**
The country's constitution stands superior to all the laws framed within the territorial precincts of the concerned constitution. As such, no other law supersedes it.
8. **Checks the Abuse of Powers:**
The constitution does not simply provide a recipe for efficient government, but also deals with limitations on power. Since power corrupts and absolute power corrupts absolutely, constitution is established to restrict the abuse of power by those who conduct governmental functions.
9. **Lays Bare the National Goals:** The constitution of a particular country lays down the national goals which form the basic edifice on which the nation rests upon. For instance, the constitution of India has inscribed in it the primary facets of the nation which are democracy, socialism, secularism and national integration.
10. **Determining the Rights and Duties of Citizens:**
A constitution, besides determining the rights of the citizens of the concerned nation, also makes a provision for the duties that the citizens require to adhere to as well.