

Aristotle on Constitutionalism and Citizenship: A Critical Appraisal of the Nigerian Situation

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Abstract

There exists a relationship in the ideas of constitution and citizenship such that wherever people exist there is a constitution, which is supposed to originate from the people in order to be regarded by them as an authentic document that is meant to order their conducts and interactions. The constitution therefore 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. Aristotle examines constitution and citizenship and locates the importance of the former in the protection of the citizens' rights and the establishment of order, justice and harmony in society. Sadly, that is not the true practical reflection of the essence of the constitution of the Federal Republic of Nigeria. The constitution of Nigeria seems to protect and provide for only the privileged few. Gross impunity and total disregard to the principles and dictates of the constitution is the order of the day in the country. Based on the foregoing, this paper examines Aristotle's thesis on constitution and citizenship in comparison with what obtains in Nigeria. It argues that the constitution of Nigeria does not truly emanate from the people, and does not seem to provide and protect the ordinary citizens. This, the work gleans to be responsible for disharmony, instability and chequered national development. In the final analysis, the paper concludes that a true people-oriented constitution is urgently needed in Nigeria to right the numerous wrongs plaguing good governance and the development of the country.

Introduction

The ideal purpose for establishing government as an institution of the state is to secure the *common good* and happiness of the citizens. The citizens are, therefore, the reason for government and the object of governance. Every member of the society desires the good life and happiness. In fact, it is not just a natural urge in humans to be happy but it is equally natural for them to desire the good life, which alone affords genuine happiness. This good life and happiness, no doubt, cannot be achieved without legitimate regulation of the lives of members of the community or state so formed. Good governance and social justice are founded on the constitution. By constitution, Aristotle is referring to what he calls 'regime' which stands in contemporary times for forms of government. For Aristotle, the study of the best regime or constitution yields an indispensable theoretical model of what is practically attainable. This, in turn, can also help in the evaluation of existing regimes and bring about progress.

The existence of the constitution is indeed as old as human societies and government, such that they are inseparable ideas. This implies that whenever and wherever there is a government, constitution is bound to exist. Modern states, political societies, groups and associations,

organisations and even communities have a set of rules and laws known as the constitution, which stipulate how the state, society or organisation will be governed. This means that a well ordered and stable society is impossible without a constitution.

Aristotle posits that the constitution is the soul of the polis; the guiding formal principle by which the polis is organized and governed (*Politics* 1276b7-8). Hannah Arendt, who can best be described as an Aristotelian sees the constitution as an act of constituting as well as the law or rules of government that are ‘constituted’ (1973: 145). A constitution is a formal document having the force of law, by which a society organizes a government for itself, defines and limits its powers, and prescribes the relations of its various organs *inter se*, and with 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. John Adam thinks it thus:

A constitution is a standard, a pillar, and a bond when it is understood, approved and beloved. But without this intelligence and attachment, it might as well be a kite or balloon flying in the air (qtd. in Arendt 1973:146).

As the starting point of a country’s legal order (Nwabueze 1973: 5), the constitution is not an abstract entity and does not exist for its own sake, but for the sake of the citizens. Therefore, the best way to understand the essence and significance of the constitution is to look at the citizens. Let us now understand what Aristotle has to say on the relationship between the constitution and the citizens.

Aristotle on Constitution and Citizenship

As the rhetorician and orator Isocrates (436-338) asserts, “The soul of a polis is nothing other than its constitution” (cf. *Politics* 1276b7). Aristotle represents the basic problem of politics as a dispute over who in the polis has a just claim or right to be a citizen and over what rights the citizens should have. The proper aim of the polis is the happiness of its citizens, and the proper task of politics is to perfect them by providing them with a just political order embodied in the constitution and law. In order to establish and preserve such order, the politician or lawgiver must have a profound understanding of the nature of human beings who are to share in the polis and be governed by the constitution.

Aristotle argues further that the polity is its citizens; hence the constitution or regime has the responsibility to actually provide and protect its citizens. However, not all individuals in the polity are eligible to be called a citizen since not all people have the intellectual capacity to rule or participate in political activities. Therefore, in the best regime only few will actually be a citizen. Aristotle is therefore basically aristocratic! He considers one a citizen in terms of his eligibility for the offices of the state: “what effectively distinguishes the citizen from others is his participation in giving judgment and in holding office.” By office, Aristotle is not referring only to the political, judicial or administrative posts in the state, but every official post, including service on juries and the like. He adopts an approach to the conceptualization of citizenship that is radically different from its modern or contemporary understanding. For instance, in Nigeria one becomes a citizen either by birth, by naturalization, by registration, or by government concessions. But these are not acceptable in Aristotle’s conception, because slaves are born in the same country as freemen but that does not qualify them to be citizens. For him, there is more to citizenship than living in a particular place or sharing in economic activities or being ruled under the same laws. Instead, citizenship for him is a status that confers certain rights and privileges on an individual in terms of kinds of activity and

participation; it is the effective exercise of political rights. "The citizen in an unqualified sense is defined by no other thing so much as by sharing in decision and office" (*Nicomachean Ethics* 1275a22). He further says that "whoever is entitled to participate in an office involving deliberation or decision is, we can now say, a citizen in this city; and the city is the multitude of such persons that is adequate with a view to a self-sufficient life, to speak simply" (*Nicomachean Ethics* 1275b17).

In Aristotle's view, a true citizen is one who has the intelligence and the ability in ruling and being ruled in turn, (as it was the practice of the Athenian democracy where the minimum of citizen rights is the right to participate in the assembly and in the administration of justice). He is one who could live in harmony with the constitution. Aristotle regards the existence of diversity of interests among citizens in the polity as essential to the practice of citizenship, for it is through a balance of these interests that good governance will be achieved. A good citizen will possess the virtue or moral goodness that is required in realizing a selfless and cooperative civic life. According to Heater, Aristotle sees citizenship as a:

...bond forged by the intimacy of participation in public affairs. The bond was moreover a relationship which was guarded with some jealousy by those privileged to enjoy it. It was neither a right to be claimed nor a status to be conferred on anybody outside the established ranks of the class, no matter how wealthy such an outsider might be. Indeed, Greek citizenship depended not so much on rights which could be claimed as on responsibilities which had with pride to be shouldered (1990:4).

The fact that Aristotle considers it essential for citizens to sit in the assembly and in the law courts, led him to exclude the class of mechanics and artisans from citizenship because they do not have the necessary leisure, and manual toil 'de-liberalizes' the soul and makes it unfit for true virtue. He also stipulates that the young people and the old cannot be citizens, for one was immature and the other infirm. He does not regard women as citizens because, in his view, they lack the deliberative faculty and the leisure to understand the working of politics. The point we think Aristotle is making here is that citizenship confers participatory responsibility on the people. Effective participation of the citizens will ensure and enhance greater efficient capacity for productivity and sustainability. Whoever is a citizen must be actively involved in the overall development of the constitution and the political society.

A citizen is supposed to active in the community and not politically passive. The citizens have the prerogative to monitor the behaviour of public office holders; they can review and pass judgment on candidates for office and can do so directly, not through putative "experts or representatives". Following fulfilment of office, citizens' rights of review of performance are both explicit and extensive. There are explicit constitutional limits on the role of "government authorities".

Aristotle's political theory fostered maximum citizen participation, which is to say, maximum opportunity for citizens to exhibit the defining human trait of political action. He declares that "this is why only those persons who treat of particular events are engaged in politics, because they alone exhibit actions..." (*Politics* 1141b28-30). Aristotle advocates for responsible and effective moral education for the citizens. He considers such education as remedy for corruption and political instability. And it is the responsibility of the state and its governmental institution to provide and control such education. Let us now present a brief analysis of Aristotle's distinction between a good citizen and a good man.

In his analysis of citizenship, Aristotle posed a question as to whether or not the qualities of a good citizen are identical with those of a good man. The difficulty in answering this question lies in the fact that although as individuals they all work for the welfare of the state, their virtues are not

identical or uniform. They perform different functions. Aristotle, therefore, thinks that in a normal circumstance the virtues of a good man would be similar to those of a good ruler. His distinction between a good citizen and a good man lies in the fact that a good citizen literally means the sound citizen which connotes efficiency of function in civic duties, whereas a good man suggests goodness of character and internal disposition understood as a virtuous life. A good citizen (*spoudaios*) as distinct from a good man (*agathos*) is one who performs his civic duties distinctly, while the basic characteristic of a good man is the possession of wisdom. This is why a good man is a good ruler fit to rule because he is endowed with wisdom, an indispensable requirement for leadership. A leader must possess virtue and be sound in intelligence. By Aristotle's distinction, a good citizen may not be a good man, whereas a good man is potentially a good leader. He will not only preserve the lives of his subjects, but also transforms them as human beings in the proper sense. He would be devoid of prejudices and economic entanglements; he would be public-spirited and wise. Plato thinks in this line in *The Republic* when he records that:

Good men will not consent to govern for cash or honours. They do not want to be called mercenary for exacting a cash payment for the work of government, or thieves for making money on the side; and they will not work for honours, for they aren't ambitious...the worse penalty for refusal is to be governed by someone worse than themselves. That is what I think frightens honest men into accepting power, and they approach it not as if it were something desirable out of which they were going to do well, but as if it were something unavoidable which they cannot find anyone better or equally qualified to undertake. For in a city of good men there might well be as much competition to avoid power as there now is to get it, and it would be quite clear that the true ruler pursues his subjects' interest and not his own, constantly all wise men would prefer the benefit of this service at the hands of others rather than the labour of affording it to others themselves (1952:89-90).

A society that has disregard for knowledge and wisdom lays premium on wealth and material accomplishments. In such a society, politicians are admired and respected not for their wisdom and goodness, but for their ability to flatter the people and satisfy their basest desires and instincts. Such a society is sick. A sick society is one where wisdom, reason and temperance are subordinated to dictates of sensual appetite. As a sick person seeks the help of a physician or doctor for cure, so must such society seek the assistance of statesmen to govern it. Any thorough analysis of Aristotle's constitution would invariably extend to the analysis of the various forms of government.

Forms of Government and the Ideal State

Aristotle's discussion of the various types of constitution brings the division of government into those which aim at the common interest and those which aim at the interest of the rulers (*Politics* 1279a17-21). According to him, only governments that aim at the common interest are good and true; whereas those that advance only the interests of the rulers are bad or rather constitute the deviant forms. Aristotle recognizes that each of these forms of government has three sub-divisions, so that there are three good types of constitution and three wrong or imperfect forms of constitution (Copleston 1946:355). "To the right form kingship corresponds the deviation-form Tyranny, to Aristocracy Oligarchy, and to Polity Democracy..." (355). In assessing the various forms of government, Aristotle thinks that an aristocratic regime would have been the ideal regime since it is better than monarchy, but because it is too high an ideal and quite difficult to be realized, there is

need to adopt a mixed form of government- the 'polity'- a constitutional government in which every citizen governs and is also governed. Copleston puts it thus:

For him the ideal is that one man should so transcend all the other citizens individually and in the mass in respect of excellence that he would be the natural monarch and ruler. But in point of fact the perfect man does not appear, and, in general, pre-eminent heroes are found only among primitive peoples. This being so, aristocracy, i.e. the rule of many good men is better than monarchy (355).

In a clearer view, T.A. Sinclair writes:

Aristocracy is based not on numbers but on virtue; yet it is clearly a form of oligarchy, since the virtuous are always few. But Aristotle favoured 'polity' which is based on virtue and is therefore a kind of aristocracy, which is at the same time more democratic than oligarchic (1962:318).

Aristotle sees polity as essentially government by the middle class (Ross 1964:251). It is the fusion of oligarchy and democracy, but this fusion tends more towards democracy. It is the regime where everyone is in control. Aristotle writes: "Simply speaking, polity is a mixture of oligarchy and democracy" (*Politics*1293a32). There are several ways to mix oligarchy and democracy, but "The defining principle of a good mixture of democracy and oligarchy is that it should be possible for the same polity to be spoken of as either democracy or an oligarchy" (*Politics* 1294b14). The regime must be said to be either a democracy or oligarchy, and it will be preserved "...because none of the parts of the city generally would wish to have another regime" (*Politics* 1294b38).

Aristotle considers tyranny as monarchic rule of the master, oligarchy, the rule of the wealthy whereas democracy is the rule by the multitude. Elsewhere in the text, he defines democracy as government by a poor majority. He disapproves democracy, seeing its problem as having to do with the fact that it defines freedom badly, which leads to slavery. The defining principle of democracy is to claim justice as equality based on numbers rather than merit. According to him the ideal regime among the three is monarchy.

Aristotle approves kingship or monarchy as the best or ideal regime among the others; but feels that the monarch can turn despot and begin to act tyrannically or in capricious ways. Just as Lord Acton says "power corrupts but absolute power corrupts absolutely". In the Aristotelian polity "...the citizens at large administer the state for the common interest; the government is called by the generic name, a constitution" (Nwoke 1988:28). In the polity, power is concentrated in the offices. The power of those in office should be controlled by the law since good laws are supreme in the state. Aristotle establishes that polity is characterized by the principle of the mean as the virtuous. It is characterized by moderation and stands in between the very rich and the very poor. Just as Ross says "The characteristic of polity is that it takes account both of wealth and of free status in its distribution of office (259). Even in ethics, we learn that the happy life is the life of moderation. Therefore polity is not just the best constitution, but the best attainable constitution.

The fact that an ideal state is a product of the best form of government propels Aristotle to examine the conditions, characteristics and functions of the ideal state. According to him, the conditions for ideal state include those capacities for bringing about meaningful atmosphere favourable for human growth and overall societal development. Therefore, the essential characteristic of the ideal state is that of virtue. "If virtue is the most important of the individual, it must be the most important for the state, which is the whole of individuals. The life of virtue is the

best life” (Ross 264). Aristotle sees the feature of the ideal state to include population: implying that the state must be large enough to be self-sufficing but not so large as to render order and good governance impracticable. He argues that what constitutes an ideal state is not mere number, rather the capacity of the citizens to do the proper work of a city. The population of an ideal state must not be too great, lest things will go haphazard. The state in short must be capable of being seen at a single view (Ross 266).

Territory is the next feature of an ideal state, for which Aristotle recommends that the territorial extent of an ideal state must not be so small that a leisured life is impossible nor so large that luxury is encouraged. It should be hard of access to the enemy, easy of egress to the inhabitants; like the population, it should be capable of being taken in at a single view (Ross, 266).

Aristotle acknowledged the character moulding of the citizens as also a feature of an ideal state. He holds that the responsibility of character moulding rests upon the state. This, he believes will be achieved through moral education since the citizen will first and foremost be trained to be a good soldier, then a good ruler and magistrate. Education, he says, must begin with the body (since it develops earlier than the soul) for the sake of the soul and, the appetites for the sake of reasoning. Aristotle implies by this that unless the state is good and the system of its education is rational, healthy and moral, the citizens will not be good for the same things are good for both individuals and states. The moral and intellectual ideas of the individuals are reflected in the outlook and organization of the society.

On the function of the ideal state, Aristotle opines that it is nothing but the maintenance of peace, order and security of its members. He maintains that it is the protection of the members of the state and the territory from external invasion, the preservation of good life, welfare and justice. At this point, let us briefly examine the concept of democracy in consideration of Aristotle’s discontent for it. Let us also see whether democracy is actually synonymous to development. This is mainly as a result of the current popularity democracy wields as a form of government world over.

Aristotle and Democracy: A Reconciliation

Democracy, it might not be argued is the most popular institution or form of government in modern times. It is not a new form of government, but one that was known even to ancient Greek Philosophers. It originated from the attempts by the Greek City-state of Athens to reform, organize and manage its political community (polis) about two thousand five hundred years ago. This orderly and amazing reform gave rise to “a system of participatory democracy” in which the demos (people) participated actively in conducting the affairs of the polis. The contexts and pre-conditions for this were the economic and socio-political reforms introduced by Solon which tended to move the emphasis away from the household or family and towards the polis or community.

The term “democracy” is etymologically derived from the Greek words “demos” and “kratos”, the former meaning “the people” and the later “power”. Democracy therefore means “power of the people”. It is now regarded as a form of government in which the people rule themselves either directly or indirectly through their representatives. It is a political system in which the eligible people in a polity or society participates actively not only in determining the kind of people that govern them, but also in shaping the policy out-put of the government. This means that democracy anchors its authority on the express will of the people. Consent and participation of the governed are therefore essential in democracy, its understanding and practice.

Even within the Athenian context, democracy was purely participatory involving all legally defined citizens in that very small, self-regulating city-state and its surrounding territory. Only the freeborn male citizen in the city-state collectively participated in the management of the common affairs. They meet from time to time, deliberate and vote in regular assembly meetings. Subsequently,

political theories and philosophical works of Plato and Aristotle emerged in attempt to grapple with the challenges and realities of democratic existence or governance. Hence, they were unequivocal in their discontent for democracy as a form of government and governance. For Aristotle, democracy is the rule by the multitude. Elsewhere in the text, he defines democracy as government by a poor majority. He therefore sees democracy as the worst or pervert form of government. As already pointed out elsewhere above, Aristotle sees the problem with democracy as having to do with the fact that it defines freedom wrongly or badly, which leads to slavery. The defining principle of democracy is the claim that justice is equality based on numbers rather than merit. Because the democrats think that all men are equally free, they believe that all men should be absolutely equal. Hence, besides having the desire for equality, the poor majority also desire for effective superiority since they constitute the majority in terms of numbers. Aristotle claims that this can lead to instability or crisis in the polity, and thus, his discontent for democracy.

However, as a form of government, democracy has become so fashionable in contemporary times to the extent that it weaves strong appeal even among the common or ordinary people on the street, who believe in the ‘democratic faith’ of participation and the capacity to govern themselves which are considered as the basis of democracy. Among the leaders, there is hardly anyone who does not wish to be seen or described as a democrat and his regime as democratic. Within the international level, there is however a strong pressure mounted on nations to return to democracy or democratic rule. Consequently, it has virtually become a contemporary doctrine, if not article of faith and or mantra that “to develop, nations must democratize”. What is more, those nations in front line of this advocacy go out their way to support almost every insurgency against existing authorities of nations deemed by them as undemocratic with all at their disposal including military supports, armaments and necessary logistics in combat, all in attempt to democratize sovereign nations. In fact, it is said that democracy rules the world. But then, why is democracy so highly valued or desirable? Is democracy synonymous with development? Are democratic nations more developed than the undemocratic nations? These issues raised here will enable us in reconciling Aristotle’s position on democracy.

Besides Aristotle’s reasons for his discontent for democracy, it (democracy) is seen as one of the best regimes or forms of government with all that it promises the citizenry, it must be clearly stated here that it is not akin to development, for the indices, attributes and beauty of democracy lies in participation, consent and freedom or liberty, equality before the law, enjoyment of fundamental human rights by the people, independent judiciary and multi-party system; not in result, utilitarian or material considerations, that is, not in maximizing the satisfaction of wants and better life of the people. When material benefits like food, shelter, health, social amenities and technologies are built or brought into democracy as constituting its meaning, the beauty and essence of democracy is diminished. In simple terms, the distinction is that while democracy is ultimately not about “result”, development is ultimately “result-oriented”. Democracy can aid development, but cannot guarantee it.

That the people govern themselves does not imply or guarantee development, since the people can govern themselves and yet remain underdeveloped. The point being made here is that relying on democracy as a form of government no matter how pretty or fashionable it is, cannot guarantee development. Development can only be guaranteed when the people are serious and committed to the demands and requirements of development. Secondly, for those who cherish democracy based on the claim that it gives rise to material considerations or development, it is worth mentioning here that no form of government or regime is an exclusive panacea for aiding development, including democracy, monarchy, aristocracy, oligarchy or any kind of regime. The fact is that if we believe that material or economic considerations should justify democracy, then we have

to also concede to the fact that these considerations should also justify any kind of regime, provided such regime also generates economic growth and makes people better and happy. Let us now look at the citizen and the Nigerian constitution.

The Citizen and the Nigerian Constitution

Aristotle echoes the importance of the constitution as the starting point of a country's legal order. 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. Section 1 (2) of the constitution of Nigeria prohibits any seizure of power by any person or group of persons. It reads:

Federal republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the government of Nigeria or any part thereof, except in accordance with the provisions of this constitution.

These are ideals of politics, yet, it cannot be said to be true that these political ideals are operational in Nigeria. To start with, constitutions are 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 "lawness" upon its restriction by the people to be governed by it. The constitution needs to be properly 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. Unfortunately and most sadly in view of the above, the preamble of the constitution of the Federal Republic of Nigeria makes a false and deceitful claim when it reads:

WE THE PEOPLE of the Federal Republic of Nigeria: HAVING firmly and solemnly resolved: TO LIVE in unity and harmony ... and to provide for a Constitution... DO HEREBY MAKE, ENACT AND GIVE TO OURSELVES the following constitution.

As a matter of fact the constitution was not given to the people by the people. Let us at this point avail ourselves with a brief reflection to buttress our point. To be specific, in 1998 Nigeria was still under military rule before the regime of General Abdulsalami Abubakar took over a transition government which lasted only for eight months. As a result of the overwhelming rejection of Abacha's regime by majority of Nigerians over reasons that border mostly on lack of good governance and human rights violations, the Abdulsalami Abubakar's administration was committed to hand over to a civilian administration, thus, he hurriedly developed a 25 member "Constitution Debate Collating Committee" established in November, 1998. This committee was headed by Justice Nikki Toby of the Court of Appeal. The committee was alleged to have reported that the majority of Nigerians preferred the 1979 constitution; thus, they went to work on the 1979 constitution, and made what was considered some necessary amendments. This view was reinforced by the decree No. 24 of May 5, 1999 promulgating the 1999 constitution as it recognized that "such amendments were necessary in the public interest and for the purpose of promoting the security, welfare and good governance of the people of Nigeria. However, within this period of the constitutional amendment, the military was hostile and intolerant of any debate and dialogue process. At the end of the process the constitution was enacted into law only a few days to the inauguration of the new civilian administration in 1999 through decree No. 24 of May 5, 1999 without proper consultation and contribution from the people.

From the above analysis, we can understand that the elections conducted in 1998 and early 1999 were without the promulgation of the constitution. So, the contestants were contesting for positions for which they did not know the legal basis. It was after the elections, just before the swearing in ceremony that the constitution was released. The question is why there should be electoral laws without national laws or constitution. There is no way therefore, that a constitution which was made during the military, and approved by the Armed Force Ruling Council can be said to be a democratic constitution. 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 thus 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.

The point we are labouring to make here is that the Nigerian constitution is a factor that contributes to the sad political situation in the country. The constitution is responsible to both inequality and lack of rule of law in the country. The issue of immunity is one aspect of this inequality. 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. This clause has far reaching implications and consequences on the people of this country, the country itself and on politics. The clause was a latent strategy by the military to inject themselves into civil politics. It was a conscious strategy to protect their past, their present and their future looting. The implication of immunity clause in the Nigerian constitution is quite unprecedented; it means that when those who are covered by it steals or commits egregious crimes against humanity while in office, they are protected even from civil suit, but when ordinary citizen does the same, he will be jailed to the full intent of the law. What an injustice! Immunity is therefore an illusion and a mirage on the smooth running of rule of law, equality, accountability and justice. Elechi captures it thus:

The immunity granted to some public office holders from prosecution and civil suit, to our mind, violates the principles of justice and equality. It is a way of shielding them from accountability. Justice demands that everyone is equal and equality implies that everyone must be treated without any considerations (2010:135).

Immunity sets those who are covered by it above every other individual in the country including the constitution itself. It sets the people while in office free from legal obligations. It negates the principle of rule of law. It gives the leaders the opportunity of stealing and of being corrupt. It could become an instrument of impunity of actions and impurity of outcomes, especially in the hands of public officials who seek to formulate and impose fraudulent policies on the Nigerian citizens. It could become a dangerous tool in the hands of those who possess a perverse sense of law, ethics and political decency. It is therefore not only absurd to use immunity to protect criminality, but it is also criminal in its intent. A good constitution, no less, therefore, should so reflect distinctions of good faith, transparent honest actions and good will.

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 evinces considerable selection procedures and so on.

Constitutionally, there exists a contradiction and/or inability of the constitution to afford equal protection of all society's members. This inability is to the extent that the constitution contradicts itself with its provisions when compared with the provisions of section 308, where some people are clothed with immunity 'to do anything they like'. If it is true therefore that all are equal before the law, then why does the constitution shield some people from prosecution and civil suit? This, to my mind, is not only a deceit, but a politico-constitutional conspiracy. 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.

Conclusion

The idea of a constitution derives from the need for establishing order within human aggregations. Constitutionalism entails the principle of the rule of law or the supremacy of the constitution. However, although constitutionalism fosters social order and stability, it does not necessarily promote good governance and a democratic culture-these features derive from the origin, nature and content of the constitution. On the other hand, constitutionalism is usually a consequence of either or both of two factors, namely deep allegiance and loyalty to the state, and the existence of an affective governmental apparatus to coerce compliance with the provisions of the constitution.

Nigeria presents a case of aberration. The Nigerian constitution is not "the people's constitution;" rather, it was foisted on the people. This condition has negative influence on citizens' allegiance and loyalty to the state and their compliance with its laws. The military were able to achieve compliance with instrumentality of coercive force; but civilian rule lacks such capacity. Because the constitution did not originate from the "people" (that is, the citizens), it was contrived

to satisfy the motives of the ruling class who crafted it. Hence, it leaves room for massive corruption, which combines with the pitfalls in its provisions to undermine its suitability and credibility. Nigeria cannot lay a valid claim to practising democracy without a true democratic constitution. 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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