

Economic Philosophy and Constitution Making in Nigeria

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Abstract

The analyses of constitutions, except in few instances, tend to be legalistic on the basis of examining the structures, functions and perhaps provisions on fundamental human rights that are contained in the document. A section by section legalistic interpretation of constitution making in Nigeria has tended to be devoid of the laying bare of the divergent interests in society in the epoch when the constitution was made and the subsistence of the dominant economic interests. To analyse constitution making in Nigeria this way is faulty. To incorporate an analysis of the dominant interests in society into constitution making is to understand that constitutions are not reflective of the interests of all in society but an instrument to protect property and economic mode of accumulation of the dominant class interests. An analysis of constitution making under the military dictatorships in Nigeria, starting with the 1979 through to the 1989 and 1999 constitutions support the position that these constitutions were made to protect property interests and a capitalist mode of economic accumulation.

Introduction

A constitution is *ab initio* considered a fundamental law on which the organisation of a state revolves. This simple fact often misleads analysts into seeing the relationships set in constitutions as mere legislative acts for good governance. In this respect, a formal legalistic treatment is given to an analysis of a constitution by way of a section by section or clause by clause scrutiny with respect to its legal interpretation. This sort of analytical approach operates under the assumption that the constitution being analysed is an abstract document that came out of the fundamental genius of a group that knew the interests of all the people in civil society. It is equally assumed that such highly intelligent philosophers were able to selflessly and un-interestedly collate and congeal all diverse interests in society together into one workable document that sets out all relationships in the processes of governance in society.

A counter epistemological orientation towards an analysis of a fundamental document like a constitution makes the understanding of the dominant interests in society paramount as a way of figuring out why a particular constitution reads the way it does. It is a paradigm that makes interests in society clear and sees a constitution as a natural product of the competition among contending

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forces in society. For this orientation, man must eat in order to live. And politics involves the struggles in sharing the gifts of nature and the social produce of society in order to satisfy the basic needs of foods, shelter and clothing. In such struggles for survival, the positions of groups of men who as a result of identity of interests constitute classes influence their politics. The dominant interests in such struggles build the rest of society in their image. It is this fundamental position that led Lenin to conclude that:

The essence of a Constitution is that the fundamental laws of the state... express the actual relation of forces in the class struggle. A constitution is fictitious when law and reality diverge; it is not fictitious when they coincide (Oyebode, 1979).

In this paper, our intent is to adopt the latter paradigmatic orientation as a more comprehensive analysis of the Nigerian constitution (Nigerian Constitution, 1999). This orientation operates on a clear knowledge of the fact that human beings write constitutions and in undertaking such efforts, they are guided by personal interests and experiences. This analytical approach will not only allow us to read and interpret the various sections of the constitution of the Federal Republic of Nigeria 1999, as amended, herein after referred to as the Nigerian constitution, we are also able to go beyond the stipulates to unravel the interests behind the Constitution and thereby make our study political. In this task, we are restricting ourselves to an analysis of the economic ideology that informs the 1999 Constitution. The intent is to unravel the world view or system of ideas that shaped the 1999 Constitution.

It might be in order to note that our conception of ideology as nothing other than a super structural scaffold put in place by the dominant interests of a specific epoch to legitimize and advance their material interests as the “natural” interests of society (Badejo, 1991). In effect, an ideology reflects the position of a class in society. “In the modern times, ideologies tend to be summed up in such abstract and catchy terms like Capitalism, Socialism, and Fascism etc” (Badejo, 1988).

Our task in this paper therefore, is to lay bare the ideological position that informs the supposedly ideologically neutral constitution bequeathed and promulgated for Nigeria by the General Abdulsalami Abubakar military administration that ushered in the Fourth Republic in Nigeria. As we show later in this study, the 1989 Constitution that was promulgated by President Ibrahim Babangida was short lived. The annulment of the presidential elections of June 12, 1993 and the putting in place of the Ernest Shonekan-led Interim National Government was an anomaly. It was not possible to run the 1989 Constitution when a decorative civilian shared power with a military council (for details, see, Oladiti, 2014). Spending barely 84 days in office the ING was sacked by the Chief of Defence Staff, General Sani Abacha (Ibid). Though this General

tried to perpetuate himself in office, death snatched General Abacha in June 1998 and the task of halting rulership through decrees fell on General Abdulsalami Abubakar.

Analysis on Two Previous Constitutions

In order to analyse the interests that informed the Nigerian Constitution, we find the work of Charles A. Beard at the beginning of the last century on an economic interpretation of the American constitution useful (Beard, 1960). In this book, Beard laid to rest the suggestions that the American Constitution represented the interests of all the people of the United States at the time of ratification of the constitution. He also pointed out that the constitution was not the outcome of so called abstract compromise or State interests versus Federal interests.

In setting about his analysis, Beard undertook a detailed biographical study of a number of the principal individuals that were involved in the processes that resulted in the constitution. This effort was supplemented by such primary data as the private papers and correspondence of the principal actors as well as tax records on these individuals. Beard did not leave out an analysis of the socio-economic environment within which the promulgation of the Constitution took place as well as analysis of particular Articles in the Constitution that were meant to protect property interests in realty and personality. With overwhelming evidence, Beard was able to validate his earlier claim to the effect that:

But it may be said that constitutional law is a peculiar branch of the law; that it is not concerned primarily with property or with property relations, but with organs of government, the suffrage, and administration. The superficiality of this view becomes apparent at a second glance. In as much as the primary object of a government, beyond the mere repression of physical violence, is the making of the rules which determine the property relations of members of society, the dominant classes whose rights are thus to be determined must perforce obtain from government, such rules as are consonant with the larger interests necessary to the continuance of their economic processes, or they must themselves control the organs of government (Beard, *ibid.*).

The monumental effort by Beard has, in a more limited fashion been undertaken with respect to the 1979 constitution of the Federal Republic of Nigeria by a number of analysts (Osoba, 1979; Oyebode, *op. cit* and Aguda, 1984). In his historical background to the 1979 Constitution, Osoba laid emphasis on the occupational and professional background of the men who

drafted the Constitution and those that constituted the Assembly that considered it before the promulgation by the military (for additional details, see Osoba *Ibid*). With this effort he suggested a class background to the sections of the 1979 Constitution and noted:

...the mythology usually peddled around by bourgeois constitutional lawyers about a constitution being the fundamental law of the land embodying the eternal principles and guidelines of natural justice and the rule of law in a society should be seen for the fraud that it is. A constitution is no more than a legal statement encapsulating and rendering in a formal manner the existing balance of social forces and the distribution of substantive power among the various classes and interest groups in society (Osoba: 3).

Akin Oyeboode and Akinola Aguda equally traced the background of the makers of the 1979 Constitution and the rejection of socialism as suggested by the sub-Committee on National objectives and public accountability of the Constitution Drafting Committee (Oyeboode: *op. cit.*).

We rely on the efforts of Oyeboode and Aguda and suggest that the data and analysis they provided on the 1979 Constitution remain valid for the current Nigerian Constitution which is largely a replica of that of 1979 in spite of the fact that there was a Babangida Constitution in between those of 1979 and 1999. In practice, the Babangida Constitution which was promulgated in 1989 was speedily under review by former military dictator, General Sani Abacha, who in 1995 released a draft constitution that was yet to be promulgated by the time of his sudden death in 1998 (for details, see *Daily Post*, June 19, 2017). As his successor, General Abdulsalami Abubakar, planned to leave office handing over to civilians within a year, he put in place a Constitution Debate Coordinating Committee (CDCC) led by a Judge of the Supreme Court of Nigeria, Justice Niki Tobi, which CDCC was to solicit the views of Nigerians on the 1995 Draft towards promulgating a new constitution. The CDCC claimed to have confirmed that Nigerians would prefer the re-enactment of the 1979 Constitution with slight amendments borrowed from the 1995 Draft Constitution. As he puts it:

In the light of the memoranda and the oral presentation on the 1995 Draft Constitution, it is clear that Nigerians basically opt for the 1979 Constitution with relevant amendments. Putting it in another language, the common denominator in the mouths of Nigerians the world over is the 1979 Constitution with relevant amendments. They want it, and they have copiously given their reasons for their choice in the different memoranda and oral

presentations. So we have recommended to the Provisional Ruling Council the adoption of the 1979 Constitution with relevant amendments from the 1995 Draft Constitution (Tobi, 1999).

The submission of the CDCC on April 22, 1999 was ratified by the Armed Forces Ruling Council on May 3, 1999 and General Abubakar promulgated it to a constitution on May 5, 1999 (Teniola, 2013). In effect, the critique of the 1979 Constitution by Osoba, Oyeboade and Aguda is applicable to the 1999 Nigerian Constitution.

The Socio-Economic Environment of the Current Nigerian Constitution

Aside from the data on the background of the makers of the 1979, hence 1999 Constitution, we intend to focus on the socio-economic environment within which the Nigerian Constitution was promulgated in order to decipher the interests that are structural follow-ups within such an environment. Structures in terms of recurrent patterns of human behaviour over time, which in itself later set parameters for subsequent behaviours, become important in interpreting the sections of the Nigerian Constitution in order to unravel the economic ideology behind the constitution. Of course, this effort will also require an economic interpretation of some of the sections of the new Constitution.

Segun Osoba (1979) suggests three models for understanding constitutional reviews. The model one is a situation in which the review arises from internal crisis within the ruling class with such internal crisis threatening the legitimacy and authority of the class and such a situation necessitating a new constitution. Model two involves a situation in which the internal crisis within the ruling class forces a segment of this class into an alliance with the popular masses in striving for hegemony. And to appease the popular masses, some rhetoric are included in the constitution. The model three is a total revolutionary situation that leads into the supplanting of the ruling class and the mode of production in society by a new mode of production and hence a new ruling class (Osoba, *ibid.*).

We can add a fourth model in which an external force imposes a Constitution on a people. This process could be in alliance with an internal ruling class where one is existent or the external force constitutes the ruling class by itself. This was the case with the colonial Constitutions that form the bedrock for the present Constitution that is under analysis. For us, the Nigerian Constitution is a combination of model one and model four.

The colonial incorporation of Nigeria into the capitalist system of production remains an enduring factor in all pre and post-independence Constitutions. The many Constitutions chaperoned by the British colonial power provided the fountain for subsequent constitutional efforts in Nigeria.

Lamenting the penchant for the making of Constitutions in Nigeria, Justice Tobi stated:

Nigeria is one country known to me, and probably to world legal history, where the constitution, the highest law of the land, the *fons et origo* of any legal system, changes like the weather cock in climatology. And that is sad, very sad indeed. It is part of our colonial history that following the amalgamation of the Northern and Southern Protectorates in 1914 by Lord Lugard, we had the Clifford Constitution of 1922, the Richard Constitution of 1946, the McPherson Constitution of 1951 and the Federal Constitution (otherwise known as the Littleton Constitution) of 1954. That was before Independence in 1960. At independence, we had the 1960 Independence Constitution. In our third independence anniversary the country became a republic and had the 1963 Republican Constitution. After some experience of military regimes, the country returned to a civilian government by the promulgation of the 1979 Constitution of the Federal Republic of Nigeria (Tobi, *op. cit.*).

As we have noted elsewhere, it is important to note that capitalism in Nigeria survives in a social formation in which elements of the old order survive (Badejo and Ogunyemi, 1989). In addition, the disarticulation of the Nigerian economy by colonialism has ensured the survival of a dependent and peripheral capitalist order that lacks essential internal energy generation motors (Ake, 1981; Onimode, 1983 and Badejo, 1991).

So the economic foundation on which the constitutional superstructure in post independent Nigeria has rested has been one based on a neo-colonial dependent and peripheral capitalist arrangement. The struggles among the governing elites and the class on behalf of whom they rule has been the procedure for sharing the surplus value created within the country and since the 1970s the sharing of the rent collected from the exploitation of petroleum. These struggles for the sharing of the 'national cake' have involved ethnic chieftains drawing the masses of the people into the arena of conflict under the banner of the defence of primordial rights.

The works we have cited on the review of the 1979 Constitution agree on the fact that the Constitution was for the protection of private enterprise. The dependent/peripheral capitalists of Nigeria as well as the civil and military bureaucratic elite that supervises state capitalist interests struggled for what was left by international capital. Despite the pretenses of lack of ideology in the 1979 Constitution, Osoba, Oyeboode and Aguda are agreed that the status

quo before that constitution and after it has been dependent capitalism. The attempt to suggest that Nigeria has some form of mixed economy following the Constitution Drafting Committee Report has been adequately critiqued. Wey and Osagie just before the promulgation of the 1979 Constitution had suggested that the idea of mixed economy as a system “is in fact more ‘mixed up’ than mixed...” (Wey and Osagie, n.d).

As Dotun Phillips pointed out, the issue of our times is no longer that of whether private enterprise and public ownership of the means of production co-existed in modern economies. The issue is that of which economic mode of production predominates and sets the parameters for operation by the others (Phillips, 1986). And in answering this question, Dotun Phillips concludes that there has been a consistent preference for private enterprise in Nigeria. In fact, he points out that the national accounts show a 4:6 public/private enterprise ratio before privatization drive (*Ibid*). But then Phillips would hesitate to call the arrangement capitalist given its inefficiency and the piratical tendencies in the set up. And it is in dealing with the problem of nomenclature that Phillips faced, that we have agreed with such literature that conceptualizes this sort of situation as dependent capitalism or peripheral capitalism (See for instance, Ake, *op. cit*, Onimode, *op. cit*).

The military regimes that commissioned drafters and debaters of Nigeria’s Constitution were all schooled under the British orientation of protection of private property and the capitalist mode of accumulation. Hence, the guidance to drafters was always based on the same economic orientation/world view geared towards the maintenance of the status quo with respect to property rights. All the CDCs and CAs operated without autonomy. They could not craft any Constitution outside of the influence or interference of the administrations that instituted them.

Dependent Capitalism and the Nigerian Constitution

In line with the claim that a constitution is devoid of material interests, much of the Nigerian Constitution does not contain express provisions that endorse the dependent capitalist order in which the constitution operates. In fact, the provisions that express clear economic objectives are part of Chapter II of the Constitution. Section 16(1), (2) and (3) of this chapter provides:

16(1) the state shall, within the context of the ideals and objectives for which provisions are made in this constitution.

- (a) Harness the resources of the nation and promote national prosperity and an efficient, dynamic and self-reliant economy;
- (b) Control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice, equality of status and opportunity;
- (c) Without prejudice to its right to operate or participate in areas of the economy other than the major sectors of the economy, manage and operate the major sectors of the economy;

- (d) Without prejudice to the rights of any person to participate in areas of the economy within the major sectors of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.
- (2) The State shall direct its policy towards ensuring;
 - (a) the promotion of a planned and balanced economic development;
 - (b) that the material resources of the community are harnessed and distributed as best as possible to serve the common good;
 - (c) that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group; and
 - (d) that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.
- (3) A body shall be set up by an Act of the National Assembly which shall have power;
 - (a) to review, from time to time, the ownership and control of business enterprises operating in Nigeria and make recommendations to the President on same; and
 - (b) to administer any law for the regulation of the ownership and control of such enterprises.

This section could be interpreted as providing adequately for the interests of all Nigerians. After all, Sub-section (1) (b) clearly emphasises the welfare, freedom and happiness of all citizens on the basis of social justice, equality of status and opportunity. Sub-section (2) (b), (c) and (d) appear to expatiate on this concern. It is clearly stated that the state is to manage the economy in such a way that the concentration of wealth in a few hands is not permitted. As such the wealth of the nation is to be equitably shared in such a way that the basic needs of life are provided for all citizens and support for the old as well as the infirm is equally guaranteed. Suffice it to note at this stage, however, that these sorts of arguments are futile.

Section 6(6)(c) of the Nigerian Constitution like (the identical provisions in the 1979 and 1989 Constitutions), makes it clear that the objectives in Section 16 of the Nigerian Constitution have no legal import. Governments that avoid the implementation of these clauses cannot be challenged over such avoidance by any concerned citizen before any court in the land. In effect, the government of the day has a free hand in violating any of the stated objectives. The citizens at large have no recourse to any court.

Certainly, the so called fundamental objectives and directive principles of State policy constitute a continuation of the rhetorical innovation of the 1979 Constitution which was to be smokescreen that kept the poor hoping. Just as

the hopes on a better distribution of wealth were not realized in the second and third republics, it cannot be realized under the fourth republic. As Aguda (1984) pointed out, progressive taxation is not enough to deal with such a major social problem that has been in place for long. The unfair distribution of income today is traceable to unequal access to positions that allow primitive accumulation in a peripheral economy and/or inequalities in the distribution of productive assets and/or values. To redress such a problem, if that were a genuine desire, will require fundamental changes in the economic system with respect to the ownership of the means of production. Otherwise, paper planning efforts towards social justice are exercises in futility (Badejo, 1983).

Fundamentally, however, the Nigerian Constitution expressly protects the status quo on the ownership of the means of production. This position is deducible from Section 44 of the 1999 Constitution which provides:

44-(1) No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things-

- (a) requires the prompt payment of compensation therefore [sic]; and
- (b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

This section constitutes an adequate protection for the properties in realty and personalty presently held by a few Nigerians. This provision equally gives the Nigerian Constitution away as basically a capitalist one to protect the interests of the propertied class.

The above provision as Aguda noted in his critique of the 1979 Constitution recognizes individual ownership of land despite the Land Use Act 1978. Though the Act purported to vest all lands in the military Governor of a State, in actual fact, it is common knowledge that land is transferred on a continuous basis without any reference to any Governor. The law i.e. Land Use Act, despite its entrenchment in Section 315 (5) (d) of the Nigerian Constitution, is like many archaic colonial laws such as the criminalization of bigamy. It is usual for people to even advertise the intention to sell land on freehold or lease basis in the national dailies. The land situation continues to follow the logic of the private enterprise system. Under the Act, it has become easier for those who already have to acquire more lands as a result of their easy access to sources of power and ability to bribe bureaucrats (See Aguda, *op. cit* and Oyeboode, 1977).

Concluding Remarks

The tendency to see constitutions as the fundamental law of a country flowing from the genius of dispassionate philosopher-sages who could perceive the interests of all and put this together in an eternal document is faulty. Constitutions, no doubts, are fundamental laws, but they are laws flowing from the interaction of social forces in the struggle over the allocation of the basic material needs in society. In effect, a constitution is an expression of the interests of the dominant class in any society in any particular epoch.

The dominant class in Nigeria is made up of a number of fractions that accumulate wealth through different sources and in addition there are foreign and national segments within this class. The Nigerian Constitution is to be understood as a document put together to protect the private enterprise system i.e. Capitalism. It must be noted however, that the capitalist arrangement in Nigeria is a peripheral or dependent type. As a result, the Nigerian Constitution is more of a continuity of the constitutional arrangements of the colonial period through to the 1979 Constitution. The rhetorical presence of the fundamental objectives and directive principles of state policy is, despite minor changes in nuances, a copy of the 1979 attempt to mystify the Nigerian poor. It is not justiciable.

The economic environment and specific provisions of the Nigerian Constitution point in one clear direction: the perpetuation of the dependent capitalist structure foisted on Nigerians by the British incorporation of Nigeria into capitalism. The writing of the 1999 Nigerian Constitution is not an outcome of a revolution but a result of the Abacha coup and his demise which put a military law-giver in the person of General Abdulsalami Abubakar, in power.

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