

## A Critique of Constitutional Development in Nigeria

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### ABSTRACT

Why have Constitutions been written in Nigeria since 1922? They were written to address fundamental problems of the emerging Nigerian nation State. The two features of the Constitutions have been the Fundamental Objectives (FO) which refer to the goals of the Constitution and the Directive Principles (DP) which refer to the strategies for achieving the goals of the Constitutions. Philosophically, these Fundamental Objectives and Directive Principles have been anchored on the social themes of liberal democracy and democratic capitalism thereby leaning heavily on the theories of John Locke, Thomas Hobbes, Charles Darwin, Jean Jacques Rousseau, Montesquieu, David Hume, J S Mills, C Wright Mills, K Marx, Marx Webber and F Hegel. Essentially, these philosophers and theorists posited the thesis that people can through constitutions raise themselves to the level of reason and rationality and thereby becoming free and independent. In developing Constitutions for the emerging State called Nigeria, the drafters and crafters since 1922 have based these Constitutions on the philosophy of the men mentioned above, just as the American, the French or indeed any other capitalist, liberal, democratic Constitutions were based on the theory of liberal democracy. Unfortunately, none of the almost ten constitutions written for and about Nigeria since 1992 has worked. The task of this paper therefore is to raise critical questions concerning the fundamental philosophy of capitalist liberal democracy and its possible workability, against the social-political and historical cultural background of Nigeria and indeed Africa. An attempt is made finally to construct fundamental objectives and directives principles to underline an indigenous Constitution for Nigeria based, not on modulative and foreign philosophies but on generative radical and home grown philosophies.

Keywords: Constitution, Fundamental Objectives, Directive Principles, Development, Indigenous and Capitalist Liberal Democracy.

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### INTRODUCTION

Since 1922, Nigeria has written and adopted nine Constitutions with the tenth on the way. These include the Clifford (1922), the Richard (1946), McPherson (1951) and the Littleton (1954). Others include the Independence Constitution of 1956/7, the Republican Constitution of 1963, the 1979, 1987, and the 1999 Constitutions. These Constitutions are philosophically underpinned by the theorists of capitalist, liberal democracy of Western Europe and America. Consequently, behind these Constitutions are the hidden philosophies and meta theories of Europe. These hidden philosophies and meta theories are reflections of the nature of 17<sup>th</sup> -19<sup>th</sup>

Century Western man and Western society as well as the relationships that existed between Western man and Western society in the 17<sup>th</sup>-19<sup>th</sup> Century European Governments. There are two schools of thought regarding the emergence of Constitution development in the Western world; earliest of which are the American and the French Constitutions. One school of thought argues that all men are born free and therefore are equal with equal rights. Examples of thinkers in this school of thought are J. S. Mills, J. Locke, Montesquieu, J. J. Rousseau and K. Marx etc. However, the second school argued that men are neither born free nor equal and therefore have no equal potential rights.

This school includes philosophers like Plato, T. Hobbes, C. Darwin, F. Galton, Adam Smith, G. Orwell, Herbert Spencer and Max Weber. In developing a critique of constitution making and their failures in Nigeria since 1922, it is therefore pertinent to argue that the Achilles heel of Nigerian constitutions have been that they are written based on the assumption that humans beings are created equal, are born reasonable, rational, free and have equal rights. This is based on the social and political theory of Liberal democracy. Yet in practice the Nigerian society is more based on the assumptions by those in Government that men are not created equal nor are they born free, nor should they have equal rights. They seem to agree with George Orwell that even if all animals are equal, some are more equal than

#### CONCEPTUAL FRAMEWORK

The term Constitution has been defined by many authors and interpreted by deferent scholars. Some of these definitions are mentioned including the working definition that suits this paper. According to [1];

1. Constitution is defined as a body of fundamental principles according to which a State is organized'.
2. Also, [2] says that it is "the basic law or the fundamental legal charter of the land". These two definitions bring out very clearly the fundamental nature of a Constitution in relation to a society. But they do not highlight one crucial aspect of Constitutions and that is the position of the people in relation to the constitution. It was Gilchrist who captured this aspect and defined the constitution as "the assemblage of those publicly acknowledged principles which are fundamental to the Government of a people". His definition embodies a very crucial factor because the Constitution is not just a body of principles for the governing of a people, but that the people themselves must know and acknowledge those laid down principles as reflecting their

others. This derives from a Constitutional theory or political philosophy of capitalist democratic federalism. The consequence is that Nigeria has written and continues to write Constitutions that cannot work. What is the way out? A suggested way out is to examine critically and evaluate the Nigerian people essentially as they are and then write a Constitution that will reflect the existing relationships; recognizing the way we are. Writing Constitutions about the way we dream or hope to be is basically Utopian in ontological and epistemological terms.

The rest of this paper shall evaluate the relevant strands of debate and attempt the development of a critical model for analyzing Constitutional development in Nigeria or indeed Africa

aspiration, values and beliefs.

3. [3] Defined Constitution as the body of rules which directly or indirectly affects the distribution or the exercise of the sovereign power in the State. He further defined it as the collection of principles according to which the powers of government, the rights of the governed and the relationships between them are adjusted.
4. [4] Considers the dynamic relationship between the State and its citizens, the later and their Governors and defined Constitutions as the rule and habits, conventions and practices by which a particular people are governed and by which the citizens are bound together.

Finally, [5] defined it as "(whether written or unwritten) an agreed body of laws and principles existing between the government and governed which sets out the nature and the operative mechanisms of government, its functions, the organ of government, the rights and privileges of citizens as well as their relationships with the constituted authority of the nation in question

These definitions have collectively defined

Constitutions as the legal entity guiding both the Governors and the governed, a position this paper sees as Utopian, idealistic, unrealistic and epistemological. For example, if a country's Constitution is a legal entity, what laws do the definitions so derived obey? Where do the definitions derive from? Do the Constitutions written so far in Nigeria since 1922, obey the laws of God or Nature; the laws of man or Nigerian society? The Constitutions seem to be based on the ideals of liberal democracy. Do Nigerian Governors or the governed know that liberal ideology or liberal democratic ideals upon which their Constitutions have been based is a mere Utopia and therefore unrealistic and unnatural? The above definitions disregard the roots of the schools of thought, such as Adam Smith, Thomas Hobbes and Charles Darwin's theories which suggest that people are not born equal and therefore have no equal rights. The definitions did not observe or take into consideration the concept of class differences. God has even made it so that all fingers are not equal and therefore the parable in the Bible of unequal gifts from the Master to His servants. This is often

### **The Philosophy of Nigerian Constitutions Since 1922**

Every constitution whether written or unwritten has a philosophy behind its establishment. The recent Nigerian Constitutions (e.g. 1979 and 1999) have a philosophy which reads thus; we the people of the Federal Republic of Nigeria: Having firmly and solemnly resolved;

*To live in unity and harmony as one indivisible and indissoluble sovereign Nation under God dedicated to the*

Do hereby make, enact and give to ourselves the Following Constitutions:

*Below are some of the general provisions;*

- i.* This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.
- ii.* The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons

referred to as the Matthew law which according to Max Weber is the spirit of democratic capitalism. For the purpose of this paper, Constitution is defined as different bodies of fundamental rules, laws and regulations that guide different classes of people within the same society. This definition considers the fact that all men are not born equal and therefore cannot have equal rights in the society. There is always the presence of class differentiation. Aristotle evinces a certain impatience with utopianism: he is prepared to offer help to Constitutions far removed from the ideal and, interestingly enough, the help offered by Aristotle, does not come by sudden or radical Constitutional change; nor by demanding a fresh start, but by "Fabian" gradualism and piecemeal "social engineering" and with the consent of the inhabitants of the State concerned. Aristotle even was of the opinion that Constitutions are Utopian and idealistic; therefore, a better and practicable working Constitution should be written which will reflect class differences and should be consented to and accepted by everyone concerned.

*Promotion of Inter-African solidarity World Peace, international Co-operation and understanding; And to provide for a constitution for the purpose of promoting the Good government and welfare of all persons in our country on the Principles of freedom, equality and justice and for the purpose of consolidating the unity of our people:*

take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution.

- iii.* 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.

- iv. Nigeria is one indivisible and indissoluble sovereign State to be known by the name of the Federal Republic of Nigeria.

From the Clifford constitution of 1922 to the General Abdusalami Abubakar's of 1999, Nigeria's Constitutions have been characterized by the same philosophy which includes the spirit of unity and harmony, the spirit one indivisible and indissoluble sovereign nation and the spirit of peace, cooperation and understanding. Others include the spirit or philosophy of promoting good governance and welfare for all persons and finally the principle of freedom, equality and justice.

Most Constitutions in the world are based on the belief that people are born equal and because of equality, that is why there is the issue of human rights. The concept of inalienable rights derives from the beliefs that people are born free and equal.

The Liberal Party in Britain in 1906 had to push for a welfare state and for Universal Adult Suffrage because of the belief in equality. The party derived their position from John Stuart Mill who wrote that "Liberty" was an undeniable human instinct; and argued that oppressed human beings will always seek for freedom and equality even at all costs. Also [6] in his book the "Social Contract" had made similar arguments when he talked of equality, liberty and fraternity.

Roosevelt the great American president of the New Deal Fame had argued that the independence of a democratic Nation is about four freedoms for her citizens;

- Freedom from want
- Freedom from fear
- Freedom of speech
- Freedom of association

If a nation is independent and has a Constitution; the four freedoms must be operational in accordance with the principle of human rights in the country.

The modern European and American democracies and their Constitutions are products of 17<sup>th</sup> and 18<sup>th</sup> Century revolutions. These revolutions or social tremors and transformations which occurred in the 18<sup>th</sup> Century were based on ideas or philosophical movements that

opposed or rejected injustices and inequality among people. These liberal philosophers opposed the feudal restraints that prevented the individual from rising out of a low social status to a high social status. They resisted barriers such as censorship that limited free expression of opinion; and arbitrary exercise of power over the individual by the State. These social tensions witnessed in England and France, rendered America most attractive to hordes of emigrants and the massive bodies of liberal ideas which provided the philosophical basis for America's successful rebellion in 1776. America, then a union of 13 States, successfully declared independence from England, thereby becoming the first country ever to be delivered on the principles of liberalism.

In 1789, French Republican Revolutionaries successfully overthrew the monarchy leaning also on the liberal slogans of "Equality, Liberty and Fraternity". According to [6] America since inception, has always remained "a liberal civilization". The philosophy or background of Constitution - making in the United States of America is also reflected in the Nigerian Constitution - making process which ideologically is a liberal democracy. Also in the modern State formation and Constitution - making process in the liberal democratic tradition, the America experience is the oldest and represents a model. It does not mean that the idea of State formation and Constitution - making did not exist earlier. Available evidence suggests that democracy in its broadest form along with Constitution -making had existed for over 2,500 years before the United States was founded. The earliest democracy and Constitution dated back to the period of the passage in ancient Greece of the Ethos (organization based on kingship and blood ties) represented by the Polis. The Polis were sovereign entities of moderate population size characterized by social differentiation to wit; aristocrats, chieftains, kings, nobles, priests, well-to-do traders, slave owners and their families) In the Polis, many of the egalitarian

qualities of the Ethos survived, though more in their form rather than essence. As [7] observed, "pre-literate tribesmen who with their kinsfolk lived and worked under collective conditions, were subjected to nature but not to other men". However, the American example has acquired the status of originality in that it was there that ideas of liberalism, modern

democracy, modern State formation and Constitution - making first attained fruition. But then, theorists like Thomas Hobbes, John Locke, Darwin, Galton, Adam Smith and so on brought the notion of individualism, inequality, men not being born equal and therefore not having equal rights.

### **The Debate on Constitutional Principles, Philosophy and Ideology**

It can be stated that there are two major strands of debate with regard to Constitution making and the governance of human societies. On the RIGHT are philosophers who believe in conservative Constitutions as a guide to the governance of human societies. They believe in the divine right of rulers, an unequal society based on tyranny, imperialism; authoritarianism and autocracy. Ironically such philosophers also believe in liberal democracy upon which principles Nigerian Constitutions so far, have been crafted. Such philosophers include Plato, Charles Darwin, Adam Smith; John Locke; Thomas Hobbes, Francis Galton and F. Hegel.

According to Hegel democracy is a rule by democratic Constitutions and represents the highest form of governance, based on reason and rationality, as well as logical positivism. Man as Homo Sapiens is a rational and reasonable animal, who can only be governed by a natural law based on a liberal democratic Constitution. This is the position to which Locke had agreed but argued however that since all men are not equal rationally, those who are more rational should lead but favour those who are less rational, using a rational Constitution.

Thomas Hobbes agreed no less when he argued that the laws of nature were brutish and merciless, making life in the state of nature short and nasty. Hobbes argued therefore that societies needed the laws enshrined in man - made Constitutions which will be used to govern societies. Of course Darwin in (1859) had given a scientific proof for this position in his law of the survival of the fittest, which when translated as social Darwinism,

meant that all men are not born equal and that democratic Constitutions would recognize that natural inequality, and allow the "fittest" to govern the "unfit"

Rene Descartes had also argued that democratic Constitutions must be based on liberal freedom and that citizens must have the right to dare to know because in the final analysis, "Knowledge is Power". Hence those who know, those who are wise should rule and govern. This agrees somewhat with the notion of Plato that intellectuals and philosophers should be rulers and Governors or even kings.

[8] has also argued that the bottom line of democracy and democratic Constitutions **Are Reason and Freedom**. There seems therefore to be a teleological linear pattern which suggests that Constitutions should encourage **Reason** in citizens. This condition should lead to more FREEDOM in citizens; which should lead to more **Rationality and Scientism** and therefore more **Liberal Democracy** in any society.

But **Reason** is the **Achilles Heel** of modern man, because as David Hume had observed man is not a Homo Sapiens but a Homo Sentient. He therefore argued that man is ruled by passion, sentiments, emotions and selfish interests; not by **Reason**, but at best by purposive rationality. Little wonder [9] had argued that the conception of scientific Constitution - making based on a paradigm of rationality and freedom is nonsensical. Constitutions are all the time documents crafted by a dominant class of people to protect their selfish interests and who then turn around to project the document as a law to govern



the citizens of society. On the LEFT are those philosophers who believe that democratic Constitutions should be radical and revolutionary, rooted in equality, liberty and fraternity and based on the ideologies of anomie, protests, popular activism and revolutions. Such events occurred in Russia in 1917; in Cuba in 1959; and in China in 1949. And the philosophers who believed in this brand of democratic socialism and constitutionalism include such people as Karl Marx, Jean Jacques Rousseau, J S Mills and C. Wrights Mills. Here in lies the dilemma of modern Constitution - making and implementation, leading to the dialectical contradictions found in the development of modern democracies such as USA, India, UK, France or Nigeria. These countries practice capitalist democracies based on the principles of inequality, individual differences as

#### **Why Constitutions Fail in Nigeria**

Since 1922, Nigeria, has written ten Constitutions. Between independence in 1960 and today in (2020), Nigeria has fashioned out six (6) Constitutions. Nigeria changed her Constitution in 1963. That was normal and expected since all British Commonwealth nations which became independent could decide to adopt the Republican Constitution. Not only that, the pre-colonial Constitutions (1922-1960) were master minded by the colonialists and had little participation or representation from Nigerians. There are other major reasons why Constitutions fail in Nigeria. The striking characteristic of all Constitution Drafting Committees is that they always have more selected members than elected ones. Even the elected few are always under Government directives. This has happened in all cases of Constitution-making in Nigeria since 1922. More often than not, members of the Constitution Drafting committees are handpicked by colonial masters or Nigerian Military Governments, to work for them and are automatically directed by government on what to do.

Regionalization is another reason why Constitutions have failed in Nigeria. Regionalization accentuated the feelings of

exemplified by the capitalist economics (Adam Smith) of exploitation of the weak by the strong. This practice is based on the Matthew law, as well as the Spenserian Darwinism of the survival of the fittest. The fact to pose at this point is: it is not possible to practice equality, liberty, freedom and fraternity under a Constitution that projects democratic capitalism and centralized federalism as we find it in the USA and in Nigeria? [10] eminent jurist of Nigeria has argued that the Federal Constitution of Nigeria has only led to a highly centralized capitalist democracy. And [11] of DFID (the UK Department of Foreign International Development) has equally argued that the Federal Constitutions of Nigeria have failed because since 2004, the democratic and participative space has continued to shrink to the point that Nigeria today is de facto a one party State.

ethnicity and xenophobia. Many nationalists described it as a "stratagem of divide and rule". [12] argued that even though the constitutions achieved integration of Northern and Southern Nigeria into a common legislative council, they still had a great impact on the fragmentation of the country. It also brought the policy and theory of divide and rule, ethnic bigotry and unpatroitism into the country. For instance, even today Nigerian citizens do not feel that they belong to Nigeria as a country; rather they feel that they belong to their ethnic groups or affiliations. This in effect has not brought even progress and national development since Nigerians regard their tribes as the basis for their ethnic nationalism. Yet all our Constitutions have preached equality, freedom, unity and fraternity.

The fear of the minorities which has not disappeared, since amalgamation in 1914, is another reason why Constitutions have failed in Nigeria. In all the Constitutions so far made, the minorities are not adequately considered with regards to how they can participate in the rulership of Nigeria. There is always the fear-that the majority tribes' domination of the-political space will clear them from the face of the

earth. For instance, the majority groups' languages in Nigeria are Igbo, Hausa, and Yoruba. The languages of the minority groups are very often not considered at all in national broadcasts and debates. All these signals of neglect have been causing agitations, violence/destructions, and threats by the minorities which could lead to possible disintegration of Nigeria or the suspension of the Constitution as it has happened. In Plateau State recently where a Military General was governing a State in supposedly, democratically and constitutionally installed Federal and State Governments. Indiscriminate dumping of the Constitution by Military regimes is another reason why Constitutions have failed in Nigeria. The implementers or Governments never care to implement the provisions of the Constitution. The Constitutions have often been set aside at will while the rulers autocratic wishes are always implemented. However, a concomitant implication becomes that since the constitution is set aside, dropped or dumped while the implementers autocratic wishes are implemented, the implementers' lieutenants are left at the mercy of the chief executive officer. Since most members of the public are not consulted, their feelings are not reflected either. Some of the Constitutional provisions which would have benefited the public such as the law of equality, freedom and unity have been abused by the implementers because the theory that everyone is equal before the law is nonsensical. Failure to get the right Revenue Mobilization and Sharing Formulae is another reason why Nigerian Constitutions have failed since 1922. From 1947/48 to date, over eight (8) different Revenue Formulae have been designed and adopted but none has been universally accepted by Nigerians. For example, the Sydney Philipsons Revenue Allocation Formula Commission of 1947/48 which was based on the principles of derivation and even development was universally acclaimed and accepted on paper, but not

implemented. The 1951 Hacks Philips' Formula which emphasized derivation, national interests and need or the Lois Chick Formulae of 1954 which was based on derivation, and the Rose Mans formulae of 1957 which emphasized Economic and national integration, were all practically unworkable and unrealistic. Others included, the J K Bins of 1965, Dina's of 1969 which were based on equality and population; Pius Okigbo and the Olatunji Aboyade Formulae of recent memory. The development of acceptable revenue formulae by the Constitutions have caused agitations in Nigeria especially in the oil producing States who feel cheated by the process of revenue allocation. Destruction of oil pipelines, burning of villages, losses of lives and property are the results of unacceptable revenue sharing formulae which the Constitutions have failed to address. Consequently, more underdevelopment becomes the result of all the destructions. The Constitutions of Nigeria since 1963 are called "Federal Constitutions for the Federal Republic of Nigeria". This means that Nigeria should be practicing a Federal system of Government. Observation shows that Nigeria in practice is not implementing the true characteristics of federalism but practices more of Unitarianism. For instance, States are not autonomous in terms of finance, Police, legal systems, as it is the case in the USA. All the component units of the Nigerian Federation look up to Federal Government every month for revenue allocation (monthly National Cake Sharing Ritual) which should not be so. Hence the Central Government becomes a Father Christmas to all the 36 States it has made to be very lazy. This however does not reflect a true federalism. Furthermore; separation of powers which is another characteristic of federalism is not implemented. The executive which is one of the arms of the Government usurps all executive legislative and judicial powers allocated and distributed by the Constitution. The Centre or national Government becomes

the determinant of all, since all the powers of control over money resides with the central Government. Consequently, development in this system becomes difficult. Finally, the provisions of Federal character and quota system in the Constitution have encouraged mediocrity instead of meritocracy in the country. It has also discouraged honesty, hard work and

hierarchy which are the bed rock of competition, development, performance, productivity and effectiveness. If all these constraints are not checked and corrected, Nigeria will not cease from churning out Constitutions frequently and this may postpone the country's developmental processes for ever.

### A Critical Appraisal

Many salient constraints that undermine constitution development in Nigeria have been discussed and analyzed above. The question becomes; are these major characteristics and constraints of the Constitutions solely responsible for the constant non workability of Nigerian Constitutions? The answer is no because they are many other fundamental issues that are responsible for constant Constitutional breakdown leading to underdevelopment in Nigeria.

The two features of Nigerian Constitutions which are the Fundamental Objectives (FO) and the Directive Principles (DP) are very important for enduring Constitutional development in Nigeria. The Fundamental Objectives which are the goals of the Constitution are clearly stated in every constitutional document since 1922. The Nigerian Constitution's Fundamental Objectives or goals are unity, welfare, the principle of freedom, equality and justice. These are the major goals of the Nigerian Constitutions which the drafters since 1922 to date have based their philosophy. The theory behind these goals or philosophy of the Nigerian Constitutions is anchored on the liberal democratic principles of John Locke, Thomas Hobbes, and Charles Darwin and so on.

Liberal democracy as represented by the USA; UK, indeed the entire Europe, Asia and Africa, is also capitalist democracy. Whereas liberal social theories of John Locke and Jean Jacques Rousseau argue that men are created free and equal, democratic capitalists like Adam Smith, Weber, Charles Darwin, Herbert Spencer,

Bacon and Galton argue that all men are not born equal, that only the fittest shall survive through fierce competition and so, the strong may exploit the weak through colonialism, industrialization, globalization, market forces and the exploitation of the masses by the rulers. Furthermore, Liberal democratic capitalists' Constitutions are based on the assumption that human beings are reasonable, scientific, rational, and therefore cherish the ideals of freedom, equality, equity, fraternity and unity.

When Nigeria is examined first under colonialism and federalism between 1860 and 1960, and then since independence till date, the poser is: can we say that liberal democracy is universal in its application? Like the technology transfer debate, is it possible that Western European or America's liberal democracy can be transferred to Nigeria or Africa through more drafting of Constitutions? Can liberal democratic Constitutions ever work in Nigeria? As cherished values, ideals, attitudes, beliefs and philosophies of Western Europe (17<sup>th</sup> Century Renaissance and 18<sup>th</sup> Century Enlightenment) can Nigeria or indeed Africa ever be reasonable, rational or scientific enough to practice liberal democracy: based on rational and reasonable democratic-capitalist Constitutions? For 70 years (1917-1987) the Soviet Union held out hope as an alternative to the liberal democratic-capitalist variant outside the social formation of USA and Western Europe. But USSR is no more. *Perestroika* and *Glasnost* under Michael Gorbachev, as an agent of capitalist imperialism, ensured



that the Soviet Union was dismantled. Since the end of the USSR, liberal capitalist democracy has been touted as the best and only universal form of Government on earth. Every country on earth is now forced to become a democracy through the enactment of democratic Constitutions (see Iraq; Afghanistan; African and Asian nations. Even Saudi Arabia is now being urged to become a democracy).

But liberal democracy and its capitalist variation is for reasonable and rational

### **Secularism and Democratic Constitutions**

Secularism (the belief that man's destiny is in his hands, not in any God's hands) laced by reason and iced by rationality, is at the centre of constitution - making (see USA-1776). This philosophy or belief derives from the 17<sup>th</sup> and 18<sup>th</sup> Century scientific revolutions of Keppler, Galileo, Newton, and so on. Human reason and rationality is the basis of secular humanism and rational logical positivism. Through the process of reasoning and rationality human beings can constitutionally become free, rational and scientific enough to decide for them and therefore govern themselves by writing and obeying Constitutions. Constitution - making therefore becomes the building of scientific theories for the governing of modern human societies, especially since 1776 in the USA and 1789 in France.

Through 17<sup>th</sup> and 18<sup>th</sup> Centuries of Renaissance, Enlightenment and Revolutions, Constitution - making has become a process by which men have reasoned out the most rational ways for governing themselves. So, in order to have a proper appreciation of constitution making and implementation in Nigeria or anywhere, the concept of MAN as a rational being, obeying the laws of NATURE, becomes very critical.

John Locke, the father of liberal democracy was aware of the laws of nature in proposing his theories of Constitution -making. Thomas Hobbes had argued that only through reason

Homo Sapiens. It is for people who cherish and value equality, equity, freedom as well as liberty and fraternity. These values, it is believed, can be transplanted from the centers of democracy (USA, UK etc) to the peripheries and backwaters of democracy such as Africa, Asia and Latin America, simply through the making and enactment of Constitutions based on liberal democratic capitalist ideals of democracy (USA, UK etc).

and rationality can man discover the laws of nature. The laws of nature make life short, brutish, wicked and nasty, hence the need for a civil society based on a rational Constitution, implemented by rational, reasonable and scientific men. This is the only way man can be saved from the raw and wicked laws of nature. Similarly, Rene Descartes and Charles Darwin had propounded very clear thoughts in this direction by emphasizing the need for rational man to take over the running of the affairs of civil society. Irrational, unreasonable and unscientific people cannot operate rational, reasonable and scientific Constitutions. A rational man is a reasonable man, and a reasonable man is scientific and free; free to govern his society through a rational and scientific document called Constitution. This document guarantees *Rights* bestowed by the reasonable management of the laws of nature.

A reasonable man is a free man; and a reasonable society is a free society. A free society can be governed by a liberal Constitution based on the tenets of democracy. Accordingly, increased rationality has become the only basis for increased freedom. But according to human societies that claim to be democratic (e.g. USA), there have not even realized liberal democratic, freedom for all men, hence there is indeed no free man and a free society anywhere in the world. What we have are "adapted men" in adapted societies; pretending men;

hypocritical men in pretending and hypocritical societies. What we have in so called democratic countries like USA and Nigeria are men who pretend that

### **Dilemma of Liberal Democratic Constitutions**

The dilemma of liberal democracy and its Constitutions (such as the ones written in Nigeria, for Nigerians since 1922) is that the Nigerian man or woman is conceived as Homo Sapiens: the reasonable rational, scientific man. But unfortunately, this man in deed is Homo Sentiens; the emotional, unreasonable, irrational selfish man. According to [13] [14], when the chips are down a careful examination of man will reveal that he is governed by selfish interests; not by reason or rationality. So here we are as Nigerians pretending human beings, claiming to be rational and reasonable, and writing Constitutions based on rationality but left to be implemented by selfish irrational, unreasonable men as politicians and citizens. Consequently, as things stand today, modern liberal democracies like capitalist America (USA) have gone a half way to accepting "enlightened self-interest" as the basis for globalized capitalist-liberal democracies. If man must escape from the state of nature (from the Garden of Eden) to the state of civil society (e.g. Europe, USA, or Nigeria), governed by liberal democratic Constitutions; what then is the role to be accorded to reason, and rationality in human affairs such as we see in political behavior in Nigeria, USA or Europe? Can it be said that democratic societies governed by liberal democratic constitutions are made up of reasonable and rational leaders (presidents, governors, ministers, local government chairmen etc) and the citizens? The events of the 19th, 20th Century or even the 21st Century cast a long shadow of doubt on such an assumption. Adolph Hitler as Chancellor of Germany (1933-45) nearly destroyed the world and yet he was a product of liberal democratic Germany. Examine presidents George Bush 1 (1990-91) and Bush (2003-4) and their roles in Iraq. Were these roles played as projections of reason and rationality or

they value freedom, equity and reason, but do not really know the meaning of freedom, equity and reason.

were they played as symbols of enlightened self-interest? What of African presidents like Idi Amin; Mobutu Sese Seko, Mugabe, Abacha, Babangida, Obasanjo or Buhari? was both a champion of revolutions, authoritarianism and democracy. The apostle of Social Contract, freedom and equality was therefore a confused philosopher. He was more emotional than rational. Since 1922, 10 Constitutions based on liberal democratic principles have failed to govern Nigeria simply because Nigerian leaders and citizens are neither reasonable nor rational [15]. The Constitutions have been crafted out of context for societies that in reality do not exist. Nigerian constitutions since 1922 were made for nonexistent societies as conjectured by men like Jean Jacques Rousseau in 1759. Consequently, it is our thesis and argument in this paper that liberal democratic Constitutions based on man's reasonability and rationality have no meaning in reality today.

Indeed, [16] has commented on the fallacy of rationalistic liberal democratic Constitutions and their so called rationalistic societies. According to him the dilemma is that:

"They begin the construction of their political Constitution models with the isolated reason of the individual. They make the pure autonomy of the individual clash and finally merge with the autonomy of a perceived free and fair society. But man does not start with a formed and pure Freedom. A man free of society is free of AIR: free to suffocate. The rationalist puts the individual against an abstract order of justice, freedom and equity in the State, instead of encouraging the spontaneous growth and development of the social forces that give the citizen a field for expression and activity".

So in consequence, the forms of Government practiced in Nigeria or Africa are not autochthonous; not home grown;

not contextualized and not unique. When it is possible to conceive that a form of Government called liberal democracy which is operated through rational concept. We in Nigeria or everywhere in the world expect our leaders, the interpreters of the Constitution (e.g. Olusegun Obasanjo 1999-2007) to be reasonable; but are they, is he? Are Nigerians citizens and followers reasonable? According to reason is vague, because

"Reason is said to govern the world but people speak of "Reason" without being able to indicate its definition, context and meaning which would enable us to judge whether something is rational or irrational. Without such a definition, we can get no further than mere words"

Since 1922, Nigerians have been talking about Constitutions that cannot work. Democracy and its liberal Constitutional variants speak glibly and pretentiously about reason, rationality, equality, freedom, liberty, unity, fraternity and such other vague concepts. But until one is free from outside control and from inward selfish passions and hurt, one is not truly free. Indeed, Karl Marx had noted that man may make history but not in circumstances under his control.

If Constitutions can be "exported" or "transferred" from USA or Europe to Nigeria\*or even worldwide, then such a form of Government quickly becomes what it is: an apotheosis of human error [17] [18]. Such procedures lead to compass errors and navigational mistakes, based on a Manichean assumption that some people have evolved (rational) while others have not (irrational). Besides the foundation of the entire conception of human governance based on rational Constitutions which can be operated by reasonable men (leaders and followers) is pure hubris. Who can be reasonable rather than selfish? That person is rare in the arena of governance and public affairs such as politics and economics. Reason itself is vague and real freedom is self-determination which no Constitution can ever hope to guarantee [19] [20]. Reason

and common sense are good. We should seek for them in Nigeria. They may even rule the word some day. But, how can it be said that today man is reasonable enough to obey laws and Constitutions on his own accord? What can democracy and its Constitutions really guarantee? In 399 BC, Socrates was killed under a democratic Government in Greece-Athens, for speaking the truth. Plato had examined the circumstances surrounding the death of Socrates and declared that democracy was the worst form of Government ever devised by man since it is only under democracy and their Constitutions that true men of honour and conscience are killed. (How many men of honour have been assassinated since 1999 in Nigeria?) Some 2020 years ago Jesus Christ was killed in a democratic Israel, for speaking the truth. Must reason and rationality express themselves only through liberal democratic Constitutions? Moreover, democracy which derived from the Greeks as a historical institution and instrument is neither reasonable nor reliable. In 1806, when the Napoleonic Jack Booths destroyed the "democratic German State" Hegel had announced the end of history". Democratic Germany came back but again was destroyed by Hitler. Today the USA is marketing and exporting democracy, Constitutions and capitalism throughout the world by the destruction of nation States such as Iraq or Afghanistan. How may we trust democracy and its Constitutions. According to [21], the actions of USA have historically been based on irrationality and selfishness, mixed with reason. In 2004, were the actions of USA based on their touted liberal democracy and its model Constitution of 1776, another beginning or the end of history? What kind of history or society have the Constitutions of Nigeria since 1922 fashioned out for the Nigerian society? We must therefore begin to look at liberal democracy and its Constitutions, especially the exported and imposed variants as we have in Nigeria since 1922; with a pinch of salt.

## CONCLUSION

### **Home Grown Model as Alternative**

Since 1922 Constitution - making and implementation in Nigeria have become a farce because the philosophies and principles of liberal democracy which are based on secular evolutions and revolutions of Europe since the 17<sup>th</sup> Century, do not adequately reflect the contextual terrain of Nigeria and indeed Africa [22] [23]. There is therefore the need to seek for alternative directions and strategies in Constitution development. Africa and indeed Nigeria have many things in common with the Asian nations. We can therefore look at what they have that works for them, to see how it can be adapted to work for us here in Nigeria. There is today what has been called the "Asian Paternalistic-Authoritarian Model (APAM) or Paternalistic Asia Authoritarianism Model (PAAM). In fact this development is seen as the most serious contender to the so called liberal democracy model of Europe and America, together with their Constitutions. We hereby propose the African or Nigerian Paternalistic or Communalistic Authoritarian Model (APAM; or ACAM) of Government and Constitutions. According to Fukuyama, liberal democracies consolidate themselves through operative Constitutions at four (4) different and distinctive levels of development as follows:

- a) Ideology- Rational, Liberal, Democratic etc
- b) Institutions-democratic-capitalist governments and social institutions.
- c) Civil society-Political Parties, Education etc based on freedom.
- d) Culture-Based on democratic ideals of Freedom, Equality, etc.

Africa and indeed Nigeria must and cannot follow this pattern of development. Indeed, it must be reversed as follows:

1. Culture
2. Civil society
3. Civil institution/structures
4. Societal ideology.

Africa and indeed Nigeria have a long

historical and lively vibrant culture. We must start from what is our own; from what we have and work it out and then generate a civil society based on our home grown dominant culture or cultures. The emerging civil society must reflect the cultures on the ground. From there we can build institutions and structures and Constitutions based on the culture and institutions on the ground. Following from this we can evolve the relevant ideology for our people and society. Based on this line of thinking, it is the thesis of this paper that Africa and indeed Nigeria must work backwards beginning from our cultures to get ahead, because our future is in our past. This is the only way to avoid the intrinsic and extrinsic dilemmas of imposed and exported democracies and so avoid the problem and agonies of trying to develop democracies without liberal ideologies or the pain and confusions of pursuing Form and Shadow (USA) without the Contents and Substance of democracy. Nigeria and indeed Africa can only develop by being and discovering themselves. Democracy is a technology. It is a culture, and it is difficult to export or transfer; because there is always an existing culture or technology where you want to export it to [24]. Truly, Nigeria can govern themselves based on the Nigerian culture. And indeed there is not much that the USA or European variants of liberal democracy and its Constitutions can offer Nigeria. We have tried it since 1922 and failed. As has observed: "There is nothing we can take from American democracy and its Constitution (or from liberal democracy) because the parts of that democracy are not detachable or exportable ".Herein lies the predicament or paradox of liberal democracy and its Constitutions. It is not possible to detach some parts of American democracy and crate it and fly it to Nigeria. We cannot hope to pluck some parts of American Constitution, then panel beat them in so called Constitutional conferences and hope to get a variant of democracy that is truly

Nigerian. After all, the USA did not copy the British model in 1776. Consequently, according to Bergun, the predicament of liberal democracy and its imported Constitution is:

*"How can a people export freedom and equality to others and expect the latter to lift modes and institutions which depend on habits long ingrained by the former?" Moreover, how can a people imbibe the ways of free Government*

*until the people are really free? And how can Nigeria stay free if it is unable to run the kind of machinery and Constitution associated with self-Government and free citizens?*

Let us begin from what we have to look for what we want. Nigeria must evolve their own form of Government, civil society and institutions, based on the cultures on the ground.

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