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Shaping Public Policy Through Constitutionalism: Nigeria's Constitutional Development and the Quest for an Autochthonous Constitution

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Abstract

Purpose: This research is driven by the urgent demand for an "autochthonous Constitution" for Nigeria, championed by a diverse array of groups (ethnic nationalities, pro-democracy, civil societies, religious and student bodies). It seeks to unravel the historical foundations of Nigeria's constitutional development, spotlighting the influence of colonial legacies and military decrees. The primary objective is to propose a pathway for crafting an autochthonous constitution that genuinely reflects the desires and aspirations of the Nigerian populace. This envisioned constitution which will be deeply rooted in Nigeria's unique historical and cultural context is intended to serve as the foundational framework for the nation's policy directives.

Design/Methodology/Approach: The doctrinal method of analysis was adopted. It was based on current materials and drew on contrasting views of learned authors and scholars, as well as various legislative sources. Data was obtained using texts, articles, journals, case law, electronic sources, legislation, and other policy documents.

Findings: The colonial constitutions that preceded independence in 1960 had no imprimatur of the natives, it was tailored to suit the caprices of the colonialists, indicating its unauthorized nature. The subsequent adoption of the Parliamentary constitution of 1963 and the Presidential constitution of 1979 mutatis mutandis clearly have not met the expectations of many. The 1979 and 1999 Constitutions midwifed by the military with their attendant flaws and lacking in originality proclaims itself as having emanated from the people but the claim is debatable. A section in the Constitution proclaims the country as a Federation but in practice the system of government seems more like a unitary system. The 1999 Constitution (as amended) has not addressed Nigeria's multifarious and hydra headed challenges, thus it has suffered serious by eminent Nigerians leading to agitations for the enactment of an autochthonous constitution.

Research, practical & social implications: The research sheds light on the practical and social implications of Nigeria's constitutional journey. It elucidates how a constitution rooted in the nation's unique socio-political context can serve as a fundamental instrument for the advancement of public policy. The findings underscore the potential of an autochthonous constitution to address socio-cultural diversity, enhance governance, and promote social cohesion. This research, therefore, holds particular relevance for policymakers, legal scholars, and citizens alike, offering actionable insights into the vital role of constitutionalism in policy development.

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Originality/Value: The value of the study lies in its dual focus on the historical underpinnings of constitutional development in Nigeria and the contemporary pursuit of an autochthonous constitution.

Keywords: *Autochthonous, Amalgamation, Constitution, Constitutional Development, Colonial Constitution, Presidential Constitution, Parliamentary Constitution, Constitutional Conference, Constitution Making, Fundamental Principles.*

INTRODUCTION

The direct consequence of Nigeria's amalgamation in the judicial sphere was the introduction of English law, a unified legal system throughout Nigeria with only one Supreme Court and Chief Registrar and a Constitution. Thus, the Common Law of England and the Doctrines of Equity, together with the Statutes of General Application that were in force in Lagos and, in so far as they relate to any matter within the exclusive legislative competence of the federal legislature became enforced throughout the Federation. Constitutionally, all the Common Laws, the Doctrine of Equity, the conventions and Statutes of General Application which were in force in England on January 1, 1900 apply in Nigeria mutatis mutandis. Some of the English statutes that became applicable in Nigeria included; the Magna Carta of 1215, the Confirmatio Cartarum of 1297, the Petition of Rights of 1628, the Habeas Corpus Act of 1679 and the Bill of Rights of 1689. The 46 years immediately following the amalgamation witnessed five constitutional changes with the last ushering in the independence in 1960. Each of the changes was significant as it gradually moved the country towards the present federal system and establishment of constitutional democracy. However, it is important to note that none of the constitutions drafted during the colonial era are autochthonous. This is because, during the colonial era, the constitutional drafting committees were mostly composed of Britons who were not democratically elected by the people. (Abodunrin, 2021). However, while there have also been post-colonial constitutions, the question is whether these are autochthonous. While there are argumemts that the 1979 and 1999 Constitutions bear the imprimatur of the people as they are the subject of a constitutional conference made up of representatives of the people, many others argue that Nigeria has never had and currently does not have an autochthonous constitution. They base this argument on the fact that the constitutional making processes of the military, just like those of the imperialists suggests more of an imposition with very little or no participation by indigenous Nigerians and as such Nigeria needs its very own autocthonous Constitution to thrive. Indeed, it has been noted that "the silver thread which runs through Nigeria's 90 years of constitution-making is the perpetual search for a constitution that will satisfy the aspirations of the political elites, ensure peace, order and good government and promote the unity and the welfare of Nigerians" (Babalola, 2021).

Hence, the pre-and post-colonial constitutions will be examined one after the other, albeit, briefly to determine if Nigeria has ever had an autochthonous constitution. This work will also address how a people-oriented constitution can shape public policy for the good of the people.

LITERATURE REVIEW

Introduction:

Historical Context of Constitutionalism in Nigeria:

The foundation of Nigeria's constitutional history lies in its colonial legacy. The imposition of colonial constitutions, which were tailored to serve British interests,

established a pattern of external influence in the country's constitutional development. Aare Afe Babalola, SAN, OFR, CON (2021) observes that Nigeria's colonial constitution lacked the imprint of its native population, and its subsequent iterations, such as the Parliamentary constitution of 1963 and the Presidential constitution of 1979, failed to fully meet the expectations of the Nigerian people. Indeed, as argued by Hon, 2004, the major defect of the colonial Constitution was the non-representation of the North and the presence of the British both in the legislative and executive councils. As far back as 1944, a letter sent on the 6th of December, 1944 by Sir Arthur Richard (later Lord Milverton) as Governor, had its content greatly influenced by the Nationalist agitation for constitutional reforms which later took effect on 1st January 1946 and which was approved by the Westminster and promulgated in Nigeria. (Irukwu, 2014).

The Search for Autochthonous Constitutionalism:

Nigeria's journey towards an autochthonous constitution has been marked by numerous attempts to break free from the legacy of colonialism and military rule. Few years after Independence, the need for Nigeria to become a Republic was widely discussed in the press, at private forums, and at various legislative houses in Nigeria. (Joye & Igweike, 1982.) The constant amendments of the nation's constitution from then through to the 1999 Constituion is rooted in a desire for a document that genuinely represents the will and aspirations of the Nigerian populace. The 1999 Constitution, despite being framed as a democratic document, remains a subject of debate regarding its autochthonous nature. Scholars like Ebehikalu

(2022) argue that the involvement of the military during its drafting raises questions about its authenticity. Amah (2017) emphasizes that Nigeria's multi-ethnic and multi-religious society necessitates a constitution that accommodates diverse perspectives. Prof. Akin Oyebode, (2018), a professor of International Law and Jurisprudence, is of the firm view that the 1999 Constitution must be discarded before the country can make progress. He insists that the Constitution is a military document and no matter the number of amendments made to the constitution, it cannot work for Nigeria because it is entirely faulty and thus Nigeria must heed the call to replace the 1999 constitution with a new one.

HISTORY OF CONSTITUTION MAKING IN NIGERIA - COLONIAL CONSTITUTIONS

SIR FREDERICK LUGARD CONSTITUTION OF 1914.

The first colonial constitution of Nigeria was the Lord Frederick Lugard Constitution which amalgamated the Northern and Southern Protectorates with the Lagos Colony in 1914.

Lord Lugard was made the first Governor-General of Nigeria. The major characteristics or features of this Constitution was that the Legislative Council of Lagos was expanded to accommodate more members numbering about 36 with the Governor-General as the President. Members were nominated to represent commercial, shipping, mining and banking sectors. Of the nominated members, seven (7) were ex-officio members while the remaining thirteen were also unofficial members; six members comprising one (1) member each for Calabar, Lagos and Warri-Benin were also appointed while two (2) Emirs from Northern Nigeria and the Alafin of Oyo represented as far as might be the native population both of the coast and the interior. There were some judicial returns which were carried out by the new colonial administration. A national Supreme Court, headed by a Chief Judge was established, also established were Provisional Courts and Native Courts. The Lord Lugard Council was just advisory in nature as the Governor-General acting on the directives of the colonial secretary was the be all and end all in Nigeria.

The Constitution suffered series of set-backs viz:

Firstly, there was no real fusion of the administration of the Protectorates; rather there was a certain measure of a tripartite administration in the centralized government. Thus, a Lieutenant-Governor was appointed for the Northern and Southern Protectorates while an administrator was appointed for Lagos Colony. However, the Governor-General was placed in charge of the departments which were used in common by the two former protectorates and Lagos Colony. These included military, judiciary, railways, treasury, audit, P & T, survey, etc. Custom and marine were established only for Lagos Colony.

Secondly, the executive power of Nigeria was vested in the Governor-General who had the discretion of executing the decisions of the legislative council which he was a member.

Thirdly, majority of the membership of the Legislative council and all members of the Executive Council were white British officials who were appointed by the Governor-General and were loyal to him.

Fourthly, since the Legislative and Executive Council were meant to provide a form to enable the British officials obtain such local advice and opinion as might be useful to them the participation of the unofficial Nigerian membership was not encouraged in any way.

Fifthly, the Constitution was more or less authored by the imperialists and lacked participation by the natives. The resentment of the few educated Nigerians to the limitations in the Lugard Constitution compelled the next Governor, Sir Hughes Clifford to cause the Secretary of State for the Protectorate to abolish the Executive and Legislative Councils established by the Lugard Constitution. (Source: Confidential Letter dated 26th March 1921 from H. Clifford to Winston Churchill- Secretary of State for the Colonies, C.O 583, Vol.100. Public Record Office, London).

CLIFFORD CONSTITUTION (1922)

The Clifford Constitution of 1922 introduced a "Unitary System" of government when it established the Legislative Council of Nigeria for the whole country. It had the authority to legislate only for the peace, order and good government of the colony and Southern provinces and did not legislate for the Northern Provinces, except of course, on matters of expenditure out of funds and revenue of the whole country. The Governor-General continued to legislate for Northern Provinces by means of Proclamations, which of course meant the application of laws enacted by the Legislative Council.

The Legislative council had 46 members, 19 of which were ex-officio, while 27 were official members. The executive committee had 14 members, 12 were British and the remaining 2 were Nigerian ex-officio members. The "radical" reforms initiated by Clifford even in his limited form was opposed by certain factions of British Colonial Office establishment that considered his scheme a destruction of the excellent system developed by Lugard.

The major defect of this Constitution was the non-representation of the North and the presence of the British both in the legislative and executive councils (Hon, 2004). Though the 1922 Clifford Constitution impacted more positively than the former, its defects compelled the next Governor, Sir Bernard Bourdillon to conceive the idea for the establishment of a new constitution which Sir Arthur Richards (later Lord Milverton) as Governor later proposed to the Secretary of States for the colonies which was known as the Richards Constitution. It equally lacked participation by the natives, thus the call for its replacement.

THE RICHARDS CONSTITUTION (1946)

Sir Arthur Richard succeeded Sir Bernard Bourdillon as Governor in 1943 but he counselled restraint and patience as he said the abrupt political changes would jeopardize economic structure of the country and rather advised the development of the municipal and regional bodies. Thus, the Richards Constitution came into force on January 1, 1946. (Source: Nigeria Legislature Council Debate, 13 March,1944, pp.179-180)

The Richard's Constitution took its name from Sir Arthur Richard (later Lord Milverton) (Source: HL DEB 21 October 1953 vol. 183 CC 1273 – 312) As Governor, he sent a letter on 6th December 1944 to the British government; the content of the proposal were greatly influenced by the Nationalist agitation for constitutional reforms which later took effect on 1st January 1946 and which was approved by the Westminster and promulgated in Nigeria (Irukwu, 2014). By this time, Nigeria had become politically active through the activities of the new generation of Nationalist supported by a radical Nationalist press, trade union leaders, and the emergence of a modern political party, the NCNC and so many other political parties were created. The purpose of the constitution was to adequately represent the diverse elements of the country and to secure greater participation of Africans in discussing their own affairs.

Benard Bourdillon, the predecessor of Richard, made efforts at creating Nigerian unity, he devised a scheme of regional assemblies whose decisions were to be submitted to the Central Legislative Council for determination. The idea was to breach the gap created in the Northern province which has no representatives in that Council. Bourdillon could be seen as the architect of the 1946 Constitution; and not only that he was able to divide the South of Nigeria into Eastern and Western province in the year 1939 and this was before Governor Richard succeeded Benard Bourdillon and started the formulation of a new constitution known as Richard's Constitution of 1946. (Awa, 1964). The Constitution proposed for a Legislative council for the whole country, regional councils for the three regions, introduction of indirect representation through Native authorities and House of Assembly of the Legislative council, and African majority in the Legislature. The Richard's Constitution of 1946 was designed to promote national unity and participation of Africans in their own affairs. The special features of the 1946 constitution are the incorporation of the Native authority structure in selecting unofficial members of the Legislative council. The people's representatives were given the opportunity of taking part in the work of Government. The constitution was later criticised on different grounds viz: Regional Assemblies sharpened and intensified regional diversities which made National unity a mirage. Secondly, the Representation to the Legislature council was handpicked from the native authorities.

MCPHERSON CONSTITUTION OF 1951

As a result of the activities of nationalist challenging and opposing the colonial government, the Richards Constitution was short lived. Consequently, in 1948, Sir John Macpherson was appointed Governor to replace Sir Arthur Richards. In his inaugural address at the Legislative Council in August 1948, Sir Macpherson promised to bridge the communication gap between the people and government by subjecting government policies to public debate and evaluations (Nigeria Legislative Council Debates, 17th August 1948, p.5.). The basic feature of this constitution was the introduction of a quasi-federal system of government. Equally, it established for the first time a legislative council for the country referred to as the "House of Representative" which was made up of 149 members.

This constitution formed the foundation and basis of Nigeria becoming a federation and Nigerians participated directly and indirectly in fashioning out a new Constitution for the country thus, its somewhat autochthonous nature. The greatest advantage of the Constitution was that it not only affords Nigerians participation in the making of the Constitution but also advanced the country towards responsible self-governance. The

regions were no longer mere administrative units but political units vested with both legislative and executive powers in respect of certain areas. The legislative houses were for the first time made up of more elected Nigerians who were also in the majority. Thus elected representatives replaced the autocratic rule of the imperialists. The greatest short coming of this Constitution was the fact that the Regional Governors were both head of the executive and legislative council of that region.

The other short coming was that the Constitution only introduced a quasi instead of a full federal system of government. Consequently, the McPherson Constitution despite its merits was replaced with a new Constitution after a mass peaceful protest against the Macpherson Constitution, especially in the Eastern Region in January 1952 and also in Kano, Northern Region.

THE LYTTLETON'S CONSTITUTION OF 1954

The Lyttleton Constitution was enacted in 1954 after a nation-wide protest, especially when some delegates from the Northern Nigeria walked out of the House of Representatives in Lagos. It established the federal principle and paved the way for the independence. It was actually the product of the McPherson Constitution which was reviewed through constitutional conferences namely the 1953 London and 1954 Lagos Constitutional Conferences. The Lyttleton Constitution was regarded as a milestone in the Constitutional history of Nigeria and was in fact described by Chief Okoi Arikpo, (erstwhile Minister for External Affair and 1st Minister for Lands & Survey) as "the kernel of all further constitutional changes which culminated in the establishment of the Federal Republic of Nigeria". (Ojumu, 2015). At the conference in London and later in Lagos which was convened at the instance of Right Honourable Oliver Lyttleton, the Secretary of State for the colony, the Nigerian delegates agreed for the first time to adapt a truly federal constitutional structure for Nigeria consisting of five component parts namely: the Northern, Western, Eastern, the federal capital of Lagos and the Southern Cameroons which was excised from the Eastern region to become a full fledge region with legislative and executive authorities, except that it had no ministerial responsibility. The main feature of this Constitution was the autonomy of the regions and memberships of the House of Representative was increased to 184. It also introduced a federal system of government by sharing government power between the center and the regions.

THE CONSTITUTIONAL CONFERENCE OF 1957 – 1958 AND THE INDEPENDENCE CONSTITUTION OF 1960

None of the Constitutions above truly reflected the will of the people despite its improvements. Consequently, there were constitutional conferences preceding the independence in 1960. The first conference was held in London at the instance of the new British Secretary of State for colonies, Allan Lennox Boydin in 1957. A number of colonies were made as a result of intense pressures from the Nigerian delegates. The Nigerian delegates for instance insisted on independence for Nigeria in 1959 which was rejected for a date in 1960 if so requested by the House of Representatives which was to be elected in 1959.

It was however, agreed that the office of the Prime Minister was to be created and the Governor General was to appoint a Nigerian who commanded majority support in the House of Representative as the holder of that office. Thus, on September 2, 1957, Sir Abubakar Tafawa Balewa, a member of the Northern People's Congress, (NPC) in the House of Representatives, was chosen as the Prime Minister. It was equally agreed at this conference that the Eastern and Western regions should attain internal self government. Thus, on August 8, 1957, the West and East, having desired self governance, attained this, while the North deferred its own to 1959 which they finally got in March 1959. Independence was delayed basically because of the concerns expressed by minority groups in each of the regions who demanded certain assurances and self-guards as pre condition to independence. Consequently, the conference agreed for the establishment of

a minority commission to be appointed by the Secretary of State for the colonies with Sir Willick as Chairman. The 1958 Constitutional Conference was basically convened to put finishing touches to the independence Constitution. It was agreed that the Nigerian Police should be controlled by the federal government as a means of allaying the fears of the minorities. It was equally agreed that the list of fundamental rights be enshrined in the Constitution while the Northern and Southern Cameroons were to be allowed to decide their future through the plebiscite under the supervision of the United Nations. The plebiscite was eventually conducted on March 1961 and the Northern Cameroon opted to join the French Cameroons. The Constitution curiously gave Her Majesty power to appoint the Governor-General who was to hold office during Her Majesty's pleasure and was to be Her Majesty's representative in the federation. The Constitution equally empowered Her Majesty to be a member of the parliament and S.78 of the Constitution vested the executive powers and authority of the federation in Her Majesty, which was to be exercised on her behalf by the Governor-General. Also, by S.114 of the Constitution, appeals from the Federal Supreme Court were to go to the Privy Council which the Constitution called "Her Majesty in Council" (See Adegbeno v Akintola (1963) 3WLR63 P.C. formerly Akintola v Adedermi & Ors (1962) II NLR 440.SC where the Supreme Court's decision was overturned by the Privy Council in London). Thus Her Majesty, the Queen of England was the head of the executive through the Governor General; the head of the judiciary and also a member of the federal legislature. Furthermore, two legislative chambers were established namely; the Senate and the House of Representatives (made up of 305 members) while the Prime Minister was to be appointed by the Governor-General. The Federal Government was to legislate on matters in the Exclusive List while both the Federal and Regional Governments were to legislate on matters listed under the Concurrent List.

The Independence Constitution was of course made possible by the British Parliamentary Enactment of the Nigerian Independence Act of 1960. S.1 of the Act changed the name and legal status of Nigeria from Colony and Protectorates of Nigeria to 'Nigeria'. The dependence status of Nigeria on Britain was also terminated on these words: "Her Majesty's government in the United Kingdom shall have no responsibility for the government of Nigeria or any part thereof". Thus the legislative function of the British Parliament over Nigeria was terminated. S.12 provided that "No Act of the Parliament of the United Kingdom passed on or after 1st October, 1960 shall extend or be deemed to extend to Nigeria or any part thereof as part of the laws thereof". The Independence Act equally abolished the Colonial Laws Validity Act of 1865 applicable in Nigeria then and vested the power to appeal or amend any Act of the United Kingdom Parliament in the Nigerian Parliament. The greatest constrain or shortcoming of this Constitution was that though it established for the first time in the history of Nigerian constitutional development, a full-fledged Federal System of government in which Nigerians were in charge of their domestic and foreign affairs, the vestiges of colonial rule was not completely eradicated as the fundamental features of a colonial document was intact.

In 1960, on the 1st of October, Nigeria gained independence within the Commonwealth of Nations, marking the end of British colonial rule. The Union Jack, which had once flown in the skies, was lowered, and the Nigerian flag, with its white and green colors, was proudly raised, symbolizing the birth of a new nation. Nigeria, at the time, operated as a federation, albeit an unconventional one that harbored the seeds of its potential demise. Each of the three quasi-autonomous regions that constituted Nigeria functioned as a kind of empire, characterized by a diverse mix of races and ethnic groups. Notably, the Northern Region stood out as a dual empire, being geographically larger than both the Western and Eastern Regions combined. Even though Nigeria was now established as a federal state, given the unique shape and composition of this federation, its very survival was far from guaranteed.

CONSTITUTIONAL DEVELOPMENT UNDER THE CIVILIAN ADMINISTRATION

The Nigerian Constitution has not only been developed by the British Colonial administrations, it has also been developed by the Nigerian civilian and military administrators. Such Constitutions include:

(1) 1963 Republican Constitution

(2) 1979 Presidential Constitution

(3) The Constitution of the Federal Republic of Nigeria, 1999.

Even though the 1960 Independent Constitution afforded Nigeria an independent status within the commonwealth of Nations, Nigeria remained independent only in theory. In practice, Nigeria, of course remained a monarchy, with the Queen of Great Britain and Northern Ireland being also the Queen of Nigeria. Appeals from the Federal Supreme Court (Which subsequently came to be called Supreme Court) in Lagos lay to the Privy Council in London. The Governor-General and the Governors of the Regions, who were representatives of the Queen of England, continued to be appointed by her Majesty. Few years after the Independence, the need for Nigeria to become a Republic was widely discussed in the press, at private forums, and at various legislative houses in Nigeria. (Joye & Igweike, 1982.)

1. 1963 REPUBLICAN CONSTITUTION

The decision of the Privy Council in London in the Nigerian appeal case of In Pre. Hon. S. L. Akintola, Premier Western Nigeria & ANOR., (1962) 1 All N.L. G. (P+.3) 442-461 setting aside the decision of the Nigeria Federal Supreme Court (which later became the Supreme court), involved an important constitutional development. The Federal Government, being totally disgusted with the Privy Council appeal decision, decided that the right of appeal from the Federal Supreme Court to the Privy Council in London was no longer to exist. (Udoma, 1994). The Federal Supreme Court was therefore to be established as the final Court of Appeal for Nigeira. The 1963 Republican Constitution made Nigeria a Federal Republic on 1st October, 1963 and equally introduced the following:

ne, the Constitutional link between the British Queen and Nigeria was formally terminated and the British Queen was no longer designated the Queen of Nigeria. The Queen nevertheless remained the nominal head of the Commonwealth of Nations to which Nigeria is a necessary member. The effect of this was that the functions exercised by the Queen through the Governor-General and the Governor of the region under the 1960 Independence Constitution revolved on the President of the Federal Republic of Nigeria (an Office which was newly created in the Constitution).

Second, the Nigeria Parliament became the final legislative authority exercising federal legislative powers. Moreover, the Queen no more had the legal authority to veto federal bills through the Governor-General and the Governors exercised the executive power only in accordance with the 1963 republican Constitution, but not otherwise.

Third, appeals to the Judicial Committee of the Privy Council in London was abolished. This of course, left the Supreme Court of Nigeria as the final court of appeal, and, the chief Justices of the various Regions ceased to be justices of the Supreme court at the same time.

Finally, the allegiance hitherto owed by Nigerians to the British Crown by virtue of being British subjects or protected persons terminated, and, all Nigerian citizens began to owe their allegiance directly to the Federal Republic of Nigeria. Thus, the oath of office of public officers which hitherto subscribed to: "Her Majesty Queen Elizabeth, II, her heirs and Successors" became an oath sworn to "be faithful to the Federal Republic of Nigeria and the wellbeing of the people" (See the 6th Oaths to the 1999 presidential

Constitution). We cannot classify this as an autochthonous Constitution since it essentially represents a re-enactment of the Independence Constitution with only a few amendments.

2. THE 1979 PRESIDENTIAL CONSTITUTION

On the 1st October, 1979, Nigeria rejected the parliamentary constitutional model (similar to the British Westminster model) which it had adopted into its 1960 and 1963 Constitutions, and, adopted an entirely new model, the presidential model (similar to the American presidential model). Even though General Murtala Mohammed made it abundantly clear at the opening session of the Constitution Drafting Committee that the Supreme Military Council (SMC) was in favour of "an Executive Presidential system of Government" there was nevertheless much debate on the suitability of presidential, as opposed to the parliamentary Constitutional model at both the Constitutional drafting committee and the Constituent Assembly. (Joye & Igweike, 1982).

The time-table for the making of the 1979 Constitution envisaged three (3) stages; the establishment of the Constitution Drafting Committee (CDC), the establishment of the Constituent Assembly, and the promulgation of the 1979 Constitution. The Establishment of the Constitution Drafting Committee (CDC) In September, 1979, the Head of the Federal Military Government, and the Commander-in-chief of the Armed Forces, General Murtala Mohammed, set up a special committee known and designated as the "Constitution Drafting Committee" under the distinguished chairmanship of Chief F.R.A Williams SAN, and fifty (50) members to draft a constitution for the incoming civilian regime. In September, 1979, one year after, the CDC produced a reasonably workable draft constitution.

3. THE ESTABLISHMENT OF THE CONSTITUENT ASSEMBLY

On June 1, 1977, the Federal Military Government, in Decree No. 50 of 1977, established the Constituent Assembly headed by Hon. Sir Udo Udoma and Hon. Mr. Justice Mohammed Buba Ardo (Owoade, 2009). Of the 233 members, 203 members were elected in their respective constituencies in each state of the federation while 20 members were nominated members including some members of the Constitution Drafting Committee. The Constituent Assembly then modified the draft Constitution before presenting its own version to the Supreme Military Council for promulgation.

4. THE 1999 PRESIDENTIAL CONSTITUTION

The 1999 Constitution is fac simile with the 1979 Constitution though the constitution making process of the later was not as elaborate as that of the former. During the process of crafting the 1999 Constitution, a committee was established to assess previous Nigerian constitutions and create a draft. The drafting Committee of the 1999 Constitution was headed by Hon. Justice Niki Tobi (Supreme Court Justice, formerly a professor of law, Dean of Law and Deputy Vice Chancellor, University of Maiduguri). The constitution maintained the presidential system of government with one President and 36 State Governors.

While the 1999 constitution is seen by some people as an improvement on the 1979 constitution, it has been criticized on several grounds and insistence by eminent jusrists that it is not an autochthonous constitution as it does not emanate from the people (despite the preamble's declaration that "We the people of the Federal Republic of Nigeria..."). Abodunrin asserts that this constitution cannot be characterized as autochthonous, as it closely mirrors the 1979 Constitution. (Abodunrin, 2021). In fact, at various fora, Nigerian constitutional lawyer, Dr. Mike Ozekhome has consistently argued that "the 1999 constitution is an illegitimate document, a militarily imposed document. It is a decree (No. 24 of 1999) which was promulgated by the General Abdulsalami Abubakar military junta of 28 members of the Provisional Ruling Council. It was given to the late Justice Niki Tobi's panel (a cerebral jurist of the Supreme Court) to

couple together…, hence the constitution is wholly an illegitimate jurisprudential child of the military junta". (Ebehikalu, 2022). Furthermore, Prof Akin Oyebode while delivering a lecture titled 'the Nigeria conundrum and the way forward' said that as far as he is concerned, "the subsisting/extant 1999 constitution that provides the legal framework for the country's socio-economic, political, spiritual, secular and moral life, is irredeemably defective and should be discarded altogether, for the country to make progress rather than going round in circles in a manner reminiscent of the potter's will – all motion, no movement. We cannot continue living a lie by calling a military decree, which propagates an untruth against itself, the country's constitution. It should be jettisoned and replaced with a more acceptable instrument which adheres to the tenets of true federalism". Aare Afe Babalola, SAN, OFR, CON in a Vanguard Editorial, was even more scathing. He submitted: "The Nigerian 1999 constitution is not autochthonous; it was imposed on Nigerians by the military. An autochthonous constitution is one which is completely people-oriented; the process must completely factor in the people and their elected representatives.…(Babalola, 2021).

So what then is an autochthonous constitution? Perhaps, the phrase will be better understood by defining the word "Autochthonous". The word simply means indigenous or native. The word is traceable to ancient Greece where the Athenians considered their ancestors as the primordial inhabitants of the land, as if sprung from the very soil of the region that they inhabited. Thus their word for any true born Athenian was "autochthon" which is literally translated to mean springing from the earth. In the words of Honourable Justice Niki Tobi (of blessed memory), a constitution is autochthonous if 'it derives its force and validity from its own native authority and here the expression 'native authority' is not used in the context of a local government authority but rather in the wider context of the people in their sovereignty… Once the entire constitution making process is indigenous and home-made, the element of autochthony is fulfilled.

The U.S. constitution is a good example of an autochthonous constitution. The constitution-making process clearly reveals that it is autochthonous. The reason is not far fetched. As a result of the dismal failure of the Articles of Confederation, the 55 representatives of the 13 colonies-turned-states met at the Philadelphia convention on May 14, 1787, for the purpose of amending the defects of the Articles of confederation. However, when the delegates to the conference concluded that the Articles of confederation were beyond repairs, they proceeded to change the entire form of government at its very root. When 9 of the 13 state ratification conference congress ratified the draft constitution, the confederate congress of the United State, on September 17, 1788, enacted the new constitution to come into effect on March 4, 1789.

Equally, the preamble of the United States Constitution also testifies as to its autochthonous nature when it states: "We the people of the United States" in order to form a more perfect union. This wording indicates the process by which the United States of America was created – that is by the voluntary unification of the states, where the individuality of each state was accepted and recognized. According to Chief Justice Marshall in McCulloch v. Maryland (17 U.S 316 – a landmark U.S. Supreme Court decision that defined the scope pf the U.S Congress legislative power and how it relates to the powers of American State legislatures), the "We the people" of the United States of America, not the individual States, created it.

According to Chief Justice Chase in Texas v. White (74 U.S 700), a case argued before the United States Supreme Court in 1869 which involved a claim by the Reconstruction government of Texas that United States bonds owned by Texas since 1850 had been illegally sold by the Confederate state legislature during the American Civil War), the "We the people of the United States who had manifested their will, through their adoption and ratification of the constitution , to form "a more perfect Union", of indestructible states..", were the people of the "entire nation", not just the people of "a particular state".

The concept of the people as the legitimate authority to adopt a constitution, either through a referendum or a specially elected constituent assembly, is not unique to Nigeria but finds resonance in other countries. Belgium, a former European colonizing power in Africa, exemplified this principle in its constitutional history. In 1831, Belgium adopted its first written constitution through a specially elected National Congress comprising 200 delegates. Similarly, an amendment to expand suffrage in September 1893 was ratified by a constituent assembly elected for this purpose in April 1952.

In South Africa, the country's post-apartheid constitution, with its emphasis on inclusivity and reconciliation, has provided a sturdy foundation for democratic governance. Tthe Convention on Democratic South Africa (CODESA) played a vital role in resolving power contradictions. It led to the adoption of around thirty-four constitutional principles for a democratic South Africa. (Abioye, 2011).

The constitution of Ethiopia is worth mentioning. Ethiopia, after years of conflict, undertook a process-led constitution-making exercise that resulted in a unique constitution. Notable features include the recognition of Ethiopia as a multi-ethnic state, the establishment of ethnically based states, the right to self-determination, freedom for states to determine their working language, and the composition of the national defense force based on equitable representation of the nation's various ethnic groups. (Anyanwu (2006).

In Ghana, the 1960 Constitution was enacted by a Constituent Assembly after being submitted to a referendum. This constitution incorporated the people into the legislative process, allowing powers not delegated to the regular state organs to remain with the people. (See article 31 of the Constitution of Ghana 1960).

In Kenya, after battling with a colonial government-imposed constitution and a one-party-dominated parliament, the country initiated a constitution-making process centered on the Kenyan populace. The proposed constitution underwent public debate and was ultimately subjected to a referendum. (Media Development Association and Konrad Adenauer Foundation (2012).

The Indian Constitutional Assembly was elected by provincial legislative assemblies at the ratio of one to one million people. The three main communities namely Muslims, Sikhs and General Population elected the Provincial Assemblies. This constitution respects the nation's diverse cultural and religious mosaic underscores the importance of preserving pluralism. According to Dr. Hari Chand, the Indian Constitutional Assembly was the master of its own procedure and its powers were not limited or fettered by any other authority. It was a self directing and self-governing body.

Switzerland's Federal Constitution is deeply rooted in the nation's history of decentralized governance and diverse linguistic and cultural regions. This autochthonous constitution has enabled Switzerland to maintain a highly decentralized federal system, fostering political stability and inclusivity.

In Nigeria, the preamble to the Constitution of the Federal Republic of Nigeria,1999 for example, declares that it was made by "We the people of the Federal Republic of Nigeria having firmly resolved to live in unity". The wordings of the preamble is concerned with the creation of an "indivisible and indissoluble" whole, since the units were originally created by carving out three regions: Northern, Western and Eastern from the one unitary whole. According to Liav Orgad (Orgad 2010) the preamble to the constitution, clearly speaks of the Constitution as a by-product of the people put together and firmly confirmed by representatives of the people.

Although the mere declaration that a constitution is made by "We the people" does not ipso facto make it an autochthonous constitution, this research submits that the 1979 Nigerian Constitution making process which metamorphosed or birthed the 1999 Constitution, clearly shows that it is autochthonous and that the Constitution was drafted

by a Constitution Drafting Committee made up of eminent Nigerians and headed by Rotimi Williams, the foremost lawyer. The draft constitution was further debated by a Constituent Assembly which was made up of equally eminent Nigerian citizens. The majority of the membership of the constituent assembly members were elected by the people of Nigeria in their different constituencies. Moreover, Nigerians of all walks of life contributed immensely to the debates which preceded, and indeed, influenced the constituent assembly in its deliberation on the Constitution. The argument that it could not be described as being truly autochthonous seems, however, to have risen from a restrictive definition of what is autochthonous. The process that led to the making of the Constitution of the Federal Republic of Nigeria 1999 which is almost a replica or a facsimile of the 1979 Constitution gives credence to its autochthonous nature as stated above.

SHAPING PUBLIC POLICY THROUGH CONSTITUTIONALISM

It must also be made clear that the present perceived imbalances and lopsidedness in the nation have increased the agitation of the people who have found a scapegoat in the Constitution as the architect of the myriads or litanies of woes that have bedeviled the nation lately. Thus the herders and farmers conflicts; the Boko Haram and other insurgencies; agitation for creation of states and local governments; resource control agitation and devolution of power; issues bothering on type and style of governments; rotation and zoning of offices; revenue generation and sharing of Power; indigenization; local and state police; lopsidedness in political appointments; nepotism and favoritism; immunity of public officers etc., are all linked to the need for the making of an autochthonous Constitution. Jurists posit that the current political and socio-economic challenges being faced in Nigeria are by products of a failed constitution. (Babalola, 2021).

So, having in place an autochthonous constitution can indeed shape public policy in the following ways:

1 By providing a framework for policy decisions: An autochthonous constitution provides the framework for policy decisions. It establishes the norms and principles on which the country is governed and provides guidance on how policies should be formulated and implemented.

2 Policy Consistency: An autochthonous constitution for Nigeria will also ensure policy consistency by providing a stable and reliable framework for decision-making. This consistency is vital for businesses and investors, as it reduces uncertainty and encourages long-term planning and investment in the country.

3 Effective Governance: An autochthonous constitution can serve as the foundational framework for all policy directives. When policies align with the values and aspirations enshrined in the constitution, it enhances the effectiveness of governance and facilitates long-term development.

4 Defining Values and Principles: An autochthonous constitution typically articulates the fundamental values and principles that underpin the nation's governance.

5 Protection of Individual Rights: Nigeria's autochthonous constitution, when deeply rooted in its context, will place a strong emphasis on individual rights.

6 Guiding resource allocation: Policy decisions are often reflected in resource allocations. An autochthonous constitution can guide resource allocation by establishing priorities and goals for the country.

7 Reflecting the desires and aspirations of the Nigerian populace: An autochthonous constitution reflects the desires and aspirations of the Nigerian populace, which can influence policy decisions by giving all Nigerians a sense of belonging to the nation.

8 Promoting inter-ethnic harmony: An autochthonous constitution can promote inter-ethnic harmony by accommodating diverse interests and promoting national unity and providing clear ways that this much be achieved.

9 Safeguarding/Protecting minority rights: In a diverse country like Nigeria, an autochthonous constitution can protect the rights of minority groups, including religious minorities by ensuring that they are not discriminated against on the basis of their religion and that policies do not disproportionately favor the majority.

10 Balancing Regional Interests: An autochthonous constitution can play a pivotal role in balancing regional interests.

11 Socio-Cultural Sensitivity: Nigeria's autochthonous constitution may prioritize socio-cultural sensitivity in policy-making.

12 National Identity and Unity: By reflecting Nigeria's unique history and culture, an autochthonous constitution contributes to the development of a shared national identity and a sense of unity and ownership among the people.

13 Governance Structures: Such a constitution can impact governance structures by defining the separation of powers among branches of government, the roles of federal and state governments, and the relationship between various tiers of government.

14 Socio-Political Transformation: An autochthonous constitution can be a catalyst for socio-political transformation.

15 Conflict Resolution: A constitution that considers the diversity of Nigeria can provide mechanisms for resolving inter-ethnic and inter-group conflicts. By addressing the root causes of disputes, it can help mitigate tensions and promote peaceful coexistence.

16 Accountability and Rule of Law: An autochthonous constitution can reinforce the rule of law by establishing mechanisms for holding public officials accountable.

17 International Standing: A constitution that reflects the will of the people can improve Nigeria's international image and standing.

CONCLUSION

It has been noted that the continuous quest for a constitution that aligns with the desires of political leaders, guarantees peace, effective governance, and the well-being of the people, while fostering national unity, has remained a common thread throughout Nigeria’s 90 years of constitution-making. The 1960 Nigerian Independent Constitution, stemming from British imperial authority, was not autochthonous. In contrast, the 1963, 1979, and 1999 Nigerian Constitutions, while subject to debate, can be considered somewhat autochthonous as they originated from the Nigerian people rather than being imposed by colonial powers or external influences. Nonetheless, the ongoing demand for a genuinely homegrown and indigenous constitution remains valid. To actualize such a constitution in Nigeria, a national constitutional conference that includes input from all walks of life is imperative.

RECOMMENDATION

There remains a dire need and responsibility on the part of the Government of the Federal Republic of Nigeria to convoke a national constitutional conference of ethnic nationalities where Nigerians from all walks of life can contribute to the making of a constitution which will be considered completely autochthonous in nature. The National Assembly

should as a matter of urgency set up modalities for the actualization of this set goal of having a made by the people constitution in Nigeria that will serve as a grundnorm.

Consequently, this work recommends as follows:

a. New Constitution with Popular Representation: There is a pressing need for the creation of a new constitution that genuinely represents the interests and aspirations of the Nigerian people.

b. Constituent Assembly for Inclusive Representation: The formation of a constituent assembly is essential, comprising representatives who genuinely reflect the will and diversity of the people.

c. Exclusion of Foreign: The constitutional drafting process must be conducted without any form of foreign interference or influence.

d. Referendum for Popular Approval: Modern States have accepted the use of Direct Democracy, known as referendum for the purpose of enabling all citizens to participate in Constitution making and the adoption of the final Draft of the Constitution. (Elazar (2003). The final draft of the new constitution should be subject to a referendum, allowing the people to directly participate in its approval.

By following these recommendations, Nigeria can move closer to achieving a constitution deeply rooted in its unique historical and cultural context, promoting inclusivity, stability, and effective governance.

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