

INTERROGATING AN IMPOSED CONSTITUTIONALISM IN CONTEMPORARY AFRICAN COUNTRIES

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ABSTRACT: *The work interrogates an imposed constitutionalism in contemporary African societies. We traced the development of imposed constitutionalism to 1945 when Japan was defeated and American drafted a constitution for Japanese which were described as old fashion and the present imposed constitutionalism been drafted and adopted under the shadow of gun; it happened in Yugoslavia, East Timor, Afghanistan and Iraq. Since majority of African states constitution are imposed, the work set out to examine the impact of imposed constitutionalism on contemporary African states. We discovered that the attempt by one country to impose a constitution on another country is bound to be a difficult task, more so when the reform is coming from outside. Because impose constitutionalism will bring with it a new culture, the cultural conditions that may not fixed in to the country concern. The work then suggests that the advanced countries should give the African opportunity to try their hand on their own constitution, the constitution that will fit in to the culture of the country concern. And the African on the other hand should endeavor to chose the best out of the crops of learned men endowed the continent to produce a constitution that will not only fit in to the culture but that will take care of the common good of the citizen.*

KEYWORDS: African, Constitution, Constitutionalism, Contemporary, Continent, Common Good.

INTRODUCTION

Constitution-making has been tantamount to a people's aspiration to disrupt the continuity of their political system and to found a new polity (Ulrich K. Preuss 1995). But this view has now been challenged by the emergence of constitutions which do not originate from, or pay little regard to the constituent power of the people. A sovereign government effect regime change on another sovereign government through the imposition not just of new ruler but of a constitution under the shadow of gun. This process is called an imposed constitutionalism. The imposed constitutionalism was championed by Feidman (2002). He made a distinction between constitutionalism and imposed constitutionalism (Schepple, K. L (2003). Constitutionalism is legitimate, but the imposed constitutionalism is not. This is a multilateral nature of constitution making. It is illegitimate because they are being drafted "in the shadow of the gun". Many of these cases have not seen a substantial local participation in the constitutional process. Rather, they have seen substantial intervention and pressure imposed from outside to produce a constitutional outcome preferred by international actors, such as NATO, U N O, NGOs, United States and Germany.

Imposed Constitutionalism and Contemporary Society

Japan represents an old and good example of this kind of constitutionalism. After the defeat of Japan in the Second World War in 1945, American legal officers wrote a constitution for Japan, had it translated into Japanese, secured the acquiescence of the Japanese government which

was in existence at the time but under the auspices of the United States occupation headed by the Supreme Allied Commander, General Douglas MacArthur (Moore and Robinson 2002). The Japanese situation is an “old-fashioned imposed constitutionalism” (Moore and Robinson 2002) and it is rare today, what we now have is constitution been drafted and adopted under the shadow of gun; it happened in Yugoslavia, East Timor, Afghanistan and Iraq. The different between the Japanese type and the new type of imposed constitution is that; the Japanese constitution was fashion by the allied power and imposed on the country while the new one is being fashion by the allied power as well as the citizen of the country concern but under the shadow of gun.

In African, virtually all African countries had an imposed constitution, because they were all at one time or the other colonised by European. And in an effort to secure their independence the colonizer imposed a constitution on them. Though there were later developments of constitutional conference held be various colonies with the hope of giving them more participation in the government of their countries, but no total or homemade constitution until after their independent. The case of France colonies was how ever different because of the policy of assimilation which was implemented, but the constitution was also imposed.

Impact of Imposed Constitutionalism on contemporary African

The impact of imposed constitutionalism on contemporary society is negative, the expected dividend that lead to the imposition of a new rule was never materialised. The attempt to forced a totalitarian society to a democratic ones in this modern age is bound to be a difficult task, more so when the reform is coming from outside. No society is static agreed but any positive reform can only start from within even in a gradual way and not from outside. For a sovereign state from outside to force a new ways of life on another sovereign state is an arbitrary. It cannot work, many of these countries are boiling today, all the sacrifice been made by the foreign powers to liberate and imposed a new ways of life is now being destroyed. For example; the dismal failure of western interventionism in Afghanistan, where the elimination of the Taliban has proven to be impracticable, the 2003 invasion of Iraq by the America has yielded no good result because today Iraq is burning to ashes with deadly inroad of ISIS militants reversing whatever it is the imperialist ever established after the overthrowing and murdering of Saddam Hussein. The elimination of Gaddafi family and the Jamahiriya practitioners had tuned Libya to a failed state run by numerous rival militia groups with helpless government in Tripoli, and the military act of NATO in Yugoslavia are a clear case of anarchy. The adventure is not bringing in any positive change in those countries but calamity and violence. All these is as a result of imposition from outside, if the reform is internal it may not have generated such destruction.

The imposition of constitutionalism on an autocratic society would definitely involved imposing a new culture, the cultural conditions that may not fixed in to the country concern. Cultural factors are happened to do with the cultural context of the imposed constitution, bearing in mind that the alien’s culture is not compatible with the country concerned, this will produce a new way of life which may also affect the religion as well as orientation of the citizen. This effort will produce a new group of beneficiary who may be inform of minority before and the former beneficiary may be at lost, there is tendency for them to loss their place which may not go down well. The imposition will definitely produce a new ruling class in the society, new leaders, discourses, organizations, demands, networks, and contestations for office and power that will altered political spaces significantly. The consequence destroyed the much expected desire of the impostors because there were broad opposition, problems of

grandstanding, corruption, opportunism, over-personalization of issues, limited creativity, ideological bareness, and proliferation of parties and movements that are unable to reach accommodation with each other.

The presence of alien culture increases the culture of corruption, mismanagement, insensitivity to the plight of the poor, elite privatization of the state, and the subversion of traditional values and institutions culminated in new challenges to the state and its custodians. These noticeable unethical behaviours have negative effects on moral commitment on the part of the citizens as well as the government agency in the performance of their duties, the situation has gone so worst that the nation has found it difficult to identify and thread the appropriate philosophical and developmental paths much less on ethical values (Aina 1992).

The imposed constitutionalism in Africa witnesses other challenges that are a new enthusiasm for democracy and human rights among women, students, professionals, workers, religious leaders, and other non-bourgeois constituencies. The result, as is now clearly evident, has been the gradual restructuring of political spaces to enhance pluralistic politics and re-establish new political values and the construction of new institutions. But the indices that would have made the system work was not just there because immediately the impostors left the inherited state and class structure return in fact today the gap is even worse than it was before the advent of imposed constitutionalism. The new power elite simply Africanized or indigenized the exploitative, repressive, and arrogant appropriation and deployment of power that had been the tradition of the colonial state. This often led to the marginalization of rural areas, the harassment of political opponents, and the subversion of the constitution. Within two decades of political independence therefore, the continent was littered with coups and counter-coups, civil and inter-state wars, ethnic violence, agitations for autonomy, alienation from the state and its custodians, and the withdrawal of support for public policies. Good governance was thrown over-board and leaders busied themselves with the construction of dubious ideologies, personality cults and looting their respective treasuries. This cannot move the cause of growth, development and democracy forward because the continent is now awash with brutal dictators, corrupt regimes, misplaced priorities, institutional decay, and social dislocation and violence.

Another noticeable negativity of this imposition is the crisis of legitimacy of the constitutional outcome. The legitimacy of the constitution making processes will be defined by domestic, social and political contexts in individual countries. The process of constitution making had to be transparent, open and credible. Moreover, constitution required an enduring quality and had to enjoy the support of all irrespective of ideological differences. With reference to the history of political conflict and mistrust, the credibility of the final constitution was an important goal. This depended on a process of constitution making through which people could claim ownership of the constitution. It is also necessary to allay the fears and concerns of minorities and yet find favour with the majority. In short, the constitutional foundation of democracy had to be placed beyond question. But everything about imposed constitution is radically different from this. Imposed constitution is a foreign imposition that hardly had enough local participation in the making, thus made the acceptability of such an alien impostor a big problem in the countries concerned. The imposed constitutions have failed to influence the Africa in any way, because they fail to learn any lesson that will stop them from going back to their dark authoritarian past. For example; little has been done to curb the temptation for leaders to seek to entrench themselves or their parties in office. The executive power in Africa is overwhelming partly because the leaders do not believe in constitutional rule or those

provisions that limit their powers. The lack of legitimacy affecting imposed constitution also extended to even the so-call home made constitution. Bransch (1963) asserted that the independence constitutions of African were “too close to the western models” because the western models were imposed on the colonies. That is the reason why independence constitutions were altered or over tuned completely in the absence or violence in the first few years of independence.

The acceptability of the constitution to the people is another case. How would the citizen get use to the new constitution; most especially in Africa where majority of the population concentrated in the rural areas. Taking Nigeria for example, the constitutional conferences started as early as 1920, many of the citizens then never aware of any constitution even till 1960 when the independence was finally granted. Lack of formal education has being the greatest obstacle here; for an illiterate person the issue of constitution is meaningless. Ignorance of the organizational structure and the functioning of the state have continued to be the lot of large majority of Africans. These informal discussions, although not representative of the total Africans nevertheless revealed through lack of understanding and discomfort about talking, of the constitution on the part of the citizens. An example is found in the following:

Constitution wetin be that? Me a never see constitution
before o. Na wetinebi? Na book or na food? Abina di name
of one new govnor? My broda, a beg make you talk the one
way poor man pikin fit sabi (Ihonvbere, J.O. (2000).

It shows that illiteracy and language problems carry part of the blame for this ignorance. Education is supposed to impart knowledge, to broaden the individual mind. It is also intended, to make him/her a better behaved member of the society. Lacks of formal education, poor education, inadequate education, ignorance, wrong educational upbringing are some of the obstacle that affected the acceptability of any constitution

The impostors of constitutionalism are the developed countries and are usually associated with capital economy. They are Liberals and held that the individual is a natural human being with autonomy, freedom and dignity, and that these characteristics possess both intrinsic and instrumental value. For this reason, the principle of autonomy should, in their view, be respected by society. In other words, the liberal position endorses the individual as a source of self-validating claims. When constitutionalism is imposed on any country, these would go with all attributes of liberalism in which capital economy is a part. The interaction and the adoption of some element of liberalism; i.e. capital economy in a communalistic society would bring abnormality in to the society. It is not often easy to cross from one side to the other; USSR is a classical example moving from communist to capitalist society almost led to their end. The introduction of individualism into African political and economic life has brought nothing but backwardness. For the development of Africa, Africa basic cultural system must be promoted. Any continues copying of western values systems will cause more damages to African humanism which is the basis of our cultural values.

Conclusion therefore, since almost all the countries in Africa were at one time or the other been a colonies of the European, they must have almost all experience imposed constitutionalism at independence. Many of these countries have changed this constitution immediately after independence, some have re written their constitution several times with many amendments,

yet they have not succeeded in removing the evil effect occasion by the imposition of constitutionalism. All effort so far has been able to generate constitution without constitutionalism: a written and rigid constitution on paper that have no significant impact on the life of the citizen than promoting the culture of corruption and other evils inherited from the impose constitutionalism. It is time for African countries to seat down to design a better future for the coming generation by formulating a constitution that will fit in to the culture and aspiration of Africa. A constitution with constitutionalism, that will be participatory, and as well taking to cognizance the common good of the Africans.

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