

CONSTITUTIONALISM AND DEVELOPMENT IN NIGERIA: THE 1999 CONSTITUTION AND ROLE OF LAWYERS*

Abstract

Nigeria has had a number of constitutions since 1914. It is intended in this work to trace the development of constitutionalism in Nigeria, and the role lawyers have played therein.

Introduction

Before the advent of the British, there was nothing like Nigeria. It was in 1914 that the geographical expression called Nigeria came into existence by the Amalgamation of the Northern and Southern Protectorates with the Colony of Lagos by Sir (Lord) Fredrick Lugard, the then Governor-General. Therefore, the nation Nigeria, originated from the concept of a group of people. The Nigeria nation has experienced many Constitutional changes since Sir Frederick Lugard in 1914 to the current 1999 Constitution. However, its administration was dominated by Whites who ruled by Executive and Legislative Councils.

In 1886, the Colony of Lagos merged with the Nigeria Coast Protectorate of Southern Nigeria. By 1st January, 1900, Britain structured the area into three administrative units.

1. The Protectorate of Northern Nigeria with Fredrick Lugard as its High Commissioner.
2. The Protectorate of Southern Nigerian with Sir R. D. R. Moore as its High Commissioner.
3. The Colony of Lagos with Sir W. Egerton as its High Commissioner. In 1906, it became two distinct administrative units of the Protectorates of Northern and Southern Nigeria and the Colony of Lagos¹.

Appreciating Constitutionalism

Constitutionalism refers to the whole process of governance based on the Constitution of a given State. It informs a government as instituted by Constitution with clear organs of government and functions of such organs of government clearly spelt out. It ensures obedience to the rule of law by people put in positions of authority other than rule arbitrarily. The true concept of constitutionalism envisages the supremacy of law. This supremacy of the Constitution is the case of Nigeria.

To buttress this point, the Constitution of Federal Republic of Nigeria (CFRN) has as its introduction viz:

This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria². The Federal Republic of Nigeria shall not be governed, nor shall a person or group of persons take control of government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution³.

If any other law is inconsistent with the provisions of this constitution, the constitution shall prevail and that other law shall be the extent of the inconsistency by null and void⁴.

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¹ O. Olakanmi, **The Nigerian Constitution, 1963, 1979, 1999, a Compendium**, 2nd Edition, Panaf Press, Abuja 2006, p.1.

². Section 1 (1)

³. Section 1 (2)

⁴. Section 1 (3)

What is meant by the Term ‘Constitution’?

Constitution is an instrument of government, embodying fundamental rules of any nation. It establishes and regulates the structure of a country. It regulates the powers and functions of the government as well as states the rights and duties of individuals in a given society. It regulates the relationship of arms of government and between government and the people. It stipulates the procedure for administering the public affairs of a country. It outlines modes of change of the government as well as procedure for constitutional amendment.

The 1999 Constitution of Nigeria is the *grundnorm*. It is the supreme law to which all other legal norms must conform. Where there is any inconsistency between the constitution and such other law, that other law to the extent of its inconsistency is null and void and of no effect whatsoever. Thus, it establishes the Nigerian democracy where the rule of law will prevail as held in **A.G. Fed. v. Abubakar**⁵ and **FRN v. Ifegwu**⁶

Any ideal constitution must state the principal officers of government, their powers, functions and mode of change of government. For example, a change by election and the tenure of any government must also be known. Still some insist that it is a mode by which a state or society is organized especially the manner in which sovereign power is distributed in a given state. Again, it means the body of rules, laws, conventions or practices, which, define the powers and functions of the state vis-à-vis other social institutions; prescribe the institutions and structures by which the power and functions of the state are exercised, and establishes relationships between and among the institutions and structures of state power.

Currently, constitution is seen as a social contract whereby the governed make demands on their rulers as succinctly put by Ward as follows:

We agree that you rule us principally to the extent that is provided for in this document (constitution), while we shall enjoy the rights and privileges stated therein. Anything done in contravention of the rules in this sacred document which can only be changed as we have agreed and stated therein shall not be binding on us.

Constitutional Development in Nigeria

Nigeria from inception has witnessed several constitutions. Initially wholly foreign, emanating from the Crown under the British rule up till 1960. The 1963 was partly foreign but was passed eventually by the Nigeria parliament. This probably marked the beginning of indigenous constitution making.

Clifford’s Constitution 1922

Sir Clifford assumed duty in 1919 as Governor General. He was forced by the West African Congress (a nationalist movement) to make some reforms. He thereby introduced the first Electoral System. Thus, the first election was in 1923 whereby 4 seats were created, 3 for Lagos and 1 for Calabar. The Legislative Council made laws for the Colony of Lagos and Southern Provinces. While the Governor continued to make laws for the North by means of proclamations. That Council had on the whole 46 members; 23 were officials; 15 nominees of the Governor; only 4 were elected. It was a form of diarchy between the Legislative Council and the Executive Council representing the British government. The Executive Council

⁵. (2007) ALL FWLR (Pt. 37) p.1264

⁶. (2003) FWLR (Pt.167) p.703

comprised: (1) Governor, (2) Chief Secretary (3) The Lt. Governors, An Administrator for Lagos, the AG, the Commandant of Nigeria Regiment, Director of Medical Services, Comptroller of Customs and Sec. of Native Affairs. No Nigerian was in that executive council. After Sir Clifford, came Governors Cameron and Sir Bernard Bourdillon, but they left no imprints in the constitutional development of Nigeria.

Richards Constitution 1946

This constitution introduced constitutional reforms. The then existing provinces of Central Eastern and Western became regions of Northern, Eastern and Western had Houses of Assembly. The North also had House of Chiefs. At the centre, the Legislative Council was reconstituted to legislate for the whole country. The regional council nominated Regional Reps. to the Legislative Council in Lagos. At this time, the Executive was expanded to include 2 Nigerians – Mr. S.B. Rhodes and Sir. Adeyomo Alakija. The Nationalists were still not happy.

McPherson's Constitution 1951

By 1949, the Nationalist Movement had yielded National Conferences. After the Ibadan General Conference in 1950, a new Constitution emerged in 1951 which was designed to greatly increase the participation (responsibility) of Nigerians in the conduct of their affairs, thus, the creation of House of Representatives with 148 members. It replaced the Legislative Council, and the Governor was the president. Both the North and West had Houses of Assembly and House of Chiefs each. Members of the Houses of Assembly were elected. Those of House of Chiefs were nominated. The central Executive Council had 9 Nigerians as members and 3 officials. Then in 1953, there was a constitutional conference following the call made by Chief Anthony Enahoro for Nigeria's Independence.

Sir Lyttleton's Constitution 1954

It came into force on the 1st day of October, 1954 following another Constitutional Conference in 1954 in Lagos. That Conference heralded Federalism in Nigeria. The constitution created the 3 arms of government the Executive, Legislative, Judiciary, Public Service and Marketing Board which were regionalized. Thus, Nigeria had 3 regions with a Federal territory of Lagos as capital. The Governor of Lagos became the Governor General, while the 3 Lt. Governors became the regional governors. There were the Exclusive and Concurrent Legislative Lists: Exclusive for the Federal Government and Concurrent for both Federal and Regional. Residual matters were also left for the regions. Where there is any conflict of laws between the Federal and regional enactments the Federal laws prevailed. The House of Representatives was increased to 194 and Cameroon had 6 members. Most Federations like America, Australia and Canada which started, are quite different from strong powers to a federating states and weaker centre. However, the Nigerian nation started with more or less a central or single administration with very strong central government which with time started shedding some of its powers to the federating states. Thus, the Nigerian Federal Government is very strong with weak federating states.

The 1957 Constitutional Conferences

By August 1957, self-government was granted to the Western and Eastern regions. They had Premiers to preside over their Executive Councils. While the Governor was to act on the advice of the Regional Ministers, there was an agreement to set up a Minorities and Revenue allocation formula Commissions, thus, the appointment of the Raisman Fisman Fiscal

Commission. There was progress which was reported in the 1958 Lancaster Constitutional Conference prior to Nigeria's independence.

1958 Constitutional Conference

The Landmark of this conference is the agreement to entrench the Fundamental Human Rights in the next constitution and the dual control of a centralized police force. The creation of Nigerian citizenship. The establishment of the Senate and Council on the Prerogative of mercy and provisions to create more regions. That conference also made stringent the amendment of the Nigerian Constitution. Finally, self-determination was granted to Southern Camerouns which later joined French Cameroun in March 1961 by a referendum. In December, 1959, a Federal election was held and the NPC and NCNC formed a coalition government. It must be noted that (Sir Abubakar Tarfawa Belewa, the Prime Minister) was of the NPC, while Dr. Nnamdi Azikiwe of the NCNC became (the Governor General) and Chief Obafemi Awolowo became the opposition Leader.

1960 Nigerian Constitution

On 1st October, 1960, Nigeria became an Independent Country (a sovereign nation) with a new Independent Constitution. It inherited the British Parliamentary System of Government. The nations' independence was made possible by an enacted Act, titled "An Act to make provisions for and in connection with the attainment by Nigerian of full responsible status within the Common wealth."

It was five in one constitution. That is one for the Federation and others for the Northern Eastern, Western and Mid-Western regions. It created ready tool for mischievous politicians and unwieldy. It was followed by the change in the name and legal status of the country from the Colony and Protectorate of Nigeria to Nigeria and the dependent status of Nigeria on Britain was formally terminated by the expression:

Her Majesty's Government in the United Kingdom shall have no responsibility for the government of Nigeria or any part thereof.

The 1963 Constitution

In 1963, Nigeria attained a Republican Status with the 1963 Republican Constitution No. 20 and was gazetted as Gazette Extraordinary No. 71 Vol. 50. It was also a five in one constitution. The Constitution created 4 regions, that is the Northern, Eastern, Western and the Mid-Western Regions.

The British Government was directly responsible for the enactment of all these Nigerian Constitutions though some Nigerians attended the meetings that yielded all the Constitutions. It is noteworthy that the 1963 Nigerian Republican Constitution was formally enacted into Law by the Nigerian Parliament⁷.

The 1963 constitution contains citizenship on Chapter 11 and Fundamental Rights in Chapter III. Strikingly, the 1963 constitution in chapter XI provided for Amendment in S. 154 provides for repeal of certain constitutional instruments and in S. 156 provides for Adaptation of existing laws and in S. 157 specifically mentioned Nnamdi Azikiwe to be President. While in

⁷. This can be referred to as the first home grown (autochthonous) constitution of Nigeria as a nation, as it was passé by the first elected Government .

Chapter XII which started with S. 159 copiously provided for the formation of the Niger Delta Development Board (NDDDB). It must be noted that, that constitution has a Pan-African motive, including international understanding to foster world peace as well as further the ends of liberty, equality and justice for all. Thus, the Preamble to the 1963 Constitution states:

An act to make provision for the constitution of the Federal republic of Nigeria, having firmly resolved to establish the Federal Republic of Nigeria, with a view to ensuring the unity of our people and faith in our fatherland. For the purpose of promoting inter-African co-operation and solidarity, in order to assure world peace and international understanding and so as to further the ends of liberty, equality and justice both in our country and in the world at large.

We the people of Nigeria, by our representatives here in Parliament assembled, do hereby declare, enact and give to ourselves the following Constitution:

The 1979 Constitution

The 1979 Constitution was drafted by 50 members of the Constitution Drafting Committee appointed by the then General Murtala Mohammed in 1975. They were called the 50 wise men with Chief F.R.A. Williams SAN, as the Chairman. It created a Presidential system of government in Nigeria. It was the first home grown (autochthonous).

It was easily a welfarist constitution by its Chapter II, the Fundamental Objectives and Directive Principles of State Policy⁸ and the contents of the Preamble of Section 13 and 14 run thus:

It shall be the duty and responsibility of all organs of government and all authorities and persons, exercising legislative, executive or judicial powers to conform to observe and apply the provisions of this Chapter of this Constitution.

Section 14: The Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice⁹.

It is hereby, accordingly, declared that:

- (a) sovereignty belongs to the people of Nigeria from whom the government through this Constitution derives all its powers and authority¹⁰;
-) the security and welfare of the people shall be the purpose of the government¹¹ and
- (c) the participation by the people in their government shall be ensured in accordance with the provisions or this constitution¹².

⁸. Notably the only parts of the CFRN 1999 which up till date is said to be non-justiceable. However have become justiceable by the domestication of the AFRICAN Charter on Human and Peoples Right (ACHPR) 1981 in accordance with section 12 (1) of the Nigeria Constitution 1979 and Cap. A9 Laws of the Federation of Nigeria (LFN) 2004.

⁹. 14 (1)

¹⁰. 14 (2) a

¹¹. 14 (2) (b)

¹². 14 (2) (c)

It was followed by the 1989 Constitution by the General Babangida regime, with the approval of the Armed Force Ruling Council (AFRC)s but that 1989 Constitution never saw the light of the day due to the political environment as manoeuvred by General Ibrahim Babangida, the then Head of State until he stepped aside. Chief Ernest Shonekan took over as the Head of the Interim Government of Nigeria (NIG.) 20th August, 1993 when Gen. Babangida stepped aside Type its S. 14 (1)(2) (a) (d) sovereignty to the people...

Later General Sani Abacha came to power by a subtle force in 1993. He and convened a Constitutional Conference Commission¹³, Under the Chairmanship of Hon. Justice A. G. Karibi – Whyte.

The draft of Constitution was submitted to the Head of State in 1995, but Gen. Abacha did not give any effect to that draft till he died. It is worthy of note that at the inauguration of the Commission the then Head of State Gen. Sani Abacha charged its members to:

... pilot the debate, coordinate and collate views and recommendations canvassed by individuals and groups and submit your report not later than December, 31 1998.

Gen. Abacha referred members of Committee to what he called the contentious issues in the draft Constitution and stated them thus:

I will like to raise most pertinent questions on the most contentious issues in the draft Constitution in respect of which I and my colleagues in the Provisional Ruling Council would welcome any fresh ideas.

Interestingly, the issues raised related to:

- i. Rotation principle of a presidency position in Nigeria which will cultivate a sense of belonging to all segments of the Nigeria Society.
- ii. Merits and demerits of multiple Vice-Presidents.
- iii. Effective anti-dote to future forceful seizure of political authority other than by Constitutional means.
- iv. Devolution of power to reflect Federal Character – See Sec. 153 (c) 1999 Nigeria Constitution.
- v. The principle of derivation as criteria for distributing the national wealth.
- vi. Creation of commissions in the Constitutions.
- vii. Establishment of National Judicial Council (NJC).
- viii. Establishment of a Constitutional Court.
- ix. Workability of proportional representation of political parties in cabinet formation.
- x. Retention of seats at the National Assembly for those appointed Ministers.

However, not all the issues survived inclusion in the 1999 Constitution of the Federal Republic of Nigeria.

¹³. S. 2 of Decree No. 3 of 1994.

It must be acknowledged that the then Head of State though the Military did not command the Committee members to observe any no go areas. He did not live to see the first presentation of the draft of the Constitution. The Constitutional public hearing was conducted when Gen. Abubakar came on board on 8th June, 1998.

It was obvious that the draft Constitution will be widely publicized to give every citizen the opportunity to study its provisions and participate in the Constitutional debates.

Thus, the members of the Constitutional Drafting Committee were divided into 5 teams. Each team handled debates in two debate centres of:

Benin –city, Enugu, Ibadan, Jos, Kaduna, Kano,
Lagos, Maiduguri, Port-Harcourt, Sokoto.
Each centre covered some states.
A special debate centre was fixed in Abuja for the then.

Provisional Registered Political Parties:

The Judiciary, The Nigerian Bar Association (NBA)
The Nigerian Medical Association (NMA)
The Nigeria Society of Engineers (NSE)
Nigeria Press Organization (NPO)
The Nigeria Labour Congress (NLC)
The Academic Staff Union of Universities (ASUU)
Armed Forces of Nigeria, The Police, Organized Private Sector,
Nigerian Farmers Association, (NFA)
Chartered Institute of Bankers of Nigeria (CIBN)
National Association of Market Men and Women Associations (NAMMWA)
Student Associations (SA)

Memoranda were submitted to the Committee at the end of the debates. The Committee submitted its report to the Head of State on 30th December, 1998. Thereafter, the AFRC, the highest Law Making Body of the then Military Government, debated the report.

The AFRC accepted some of the recommendations and rejected some. The Federal Ministry of Justice was mandated to publish the amended draft Constitution. After further debates and amendments; the AFRC on the 5th of May, 1999 promulgated the draft Constitution by Decree No. 24 of 1999 as the Constitution of the Federal Republic of Nigeria 1999. The Constitution came into force on the 29th day of May, 1999 on the birth of the 4th Republic as witnessed in Nigeria.

Origins of Constitutionalism

It evolved from the conviction of one of the great philosophers in human memory, Aristotle, who believed that the best form of government is that based on a Constitution which will have the elements of monarchy, aristocracy and democracy in such a way that the citizens enjoy privileges and encouraged to discharge their civic responsibilities in the spirit of patriotism as spelt out in a Constitution whether written or unwritten, federal or unitary, flexible or rigid.

Modern Constitutional concepts, which were based on Constitution as a social contract, were originated by philosophers like Thomas Hobbes who also was an English Scientist, (1588-1679), John Locke in English (1632 -1704), and French writer Jean Jacques Rousseau (1712 - 1778). John Locke further enunciated the doctrine of separation of powers among the three arms of government as a guarantee to liberty of all men.

Ingredients of a Good Constitution

In context, an ideal Constitution ought to embrace the following:

- a. Representation of the people in government.
- b. Creation of organs of government. For instance, in Nigeria there are (with stipulation of their functions) three organs of government such as:
 - i. The Executive laced with performing administrative functions.
 - ii. The Legislature empowered to enact laws.
 - iii. The Judiciary expected to interpret laws made by the legislature and checkmate executive lawlessness.

It is posited here that:

- a. The judiciary can perform these functions by being proactive.
- b. Ensure accountability in the conduct of any arm of government
- c. Encourage separation of powers among the three arms of government
- d. Mechanism for stability in the polity and change of government
- e. Adoption to economic, political, social and cultural changes to foster development.

Sources of Constitution

There are no strict modalities of origins of a Constitution. Usually, Constitution emanates from a combination of:

1. Customs and experiences of a nation.
2. International Law, treaties and protocol.
3. Laws of other countries.
4. Judicial precedents.
5. Notable historical documents¹⁴.

Ruling by Rule of Law

The rule of law doctrine upon which any Constitution is predicated stems from ideas from the philosophers as foresaid and even more. Henry de Bracton of the 13th Century in his writing posited that:

The world is governed by law whether human or divine. Thus, that the king ought not be subject to man but to God and the law for the law makes him king.

This epitomizes the strength of rule of law.

¹⁴. E. O. Malemi, **The Nigeria Constitutional Law**, Princeton Publishing Co. Lagos, 2006, p.12

Albert V. Dicey espoused the doctrine further by the following postulations. It means the absolute supremacy predominance of regular law as opposed to or betrays power and exclusion of extreme of arbitrariness or prerogative or even of wide discretionary authority in the part of the government. The English men are ruled by law alone.... A man may be punished for a breach of the law but he can be punished for nothing else.¹⁵

Equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law Courts, the Rule of Law in this sense excluded the idea of any exemptions of officials or others from duty of obedience to the Law which governs other citizens from jurisdiction of ordinary tribunals¹⁶.

In 1959, convocation of jurists held on New Delhi restated the concept as

... a dynamic concept ... which should be employed not only to safeguard and advance the civil and political rights of the individual in a free society but also establish social, economic, cultural and educational conditions under which his legitimate aspirations and dignity may be realized¹⁷.

In **Shugaba v. Federal Minister of Internal Affairs**¹⁸, the plaintiff applicant, a member of the Great Nigerian Peoples' Party (GNPP) and a Majority Leader in Borno State House of Assembly was deported from Nigeria by the Nigerian Government on the grounds that he was from Chad because his father hails therefrom though the mother was a native of the Kanuri tribe in Nigeria. The Court held that the deportation was unconstitutional and an infringement on his constitutional right to the dignity of his human person.

In **Garba v. FCSC**¹⁹ which was during a Military regime, the Court held that the plaintiff/appellant's dismissal from job while his appeal was pending was contemptuous, illegal and void, and that he was entitled to his emoluments.

Constitutionalism and Human Rights

There is no doubt that Constitutionalism is synonymous with governance by Constitution which is the organic law of any country and emphasizes rule of law and rule of law guarantees human rights.

In the **Director of SSS v. Agbokoba**²⁰. Here, the plaintiff/appellant sought a declaration that the forceful seizure of his passport by agents of the State Security Services (SSS) was a

¹⁵. C.C. Nweze, "Judicial Integrity, Desideratum for Good Governance in a Democracy", **Jos Bar Journal**, Vol. 1 No. 1, 2003, quoted in C. Arinze – Umobi and O. Ikpeze, **Gender Rights Laws in Nigeria (1)**, Folmech Printing and Publishing Co. Ltd, Onitsha, 2008. p. 94

¹⁶. *Ibid*

¹⁷. F. C. Nweke *et al.* "The Rule of Law as a cornerstone of Democracy and Good Governance" A paper presented at NALT 35 Annual Conference held in Maiduguri 2003 p. 83.

¹⁸. (1981) 2 NCLR p. 45

¹⁹. (1988) 1 NWLR (Pt. 71) P. 447

²⁰. (1994) 6 NWLR (Pt. 351) p. 475 { 1999) 3 NWLR (PT. 595) p. 314

violation of his right to personal liberty²¹ freedom of thought,²² freedom of expression,²³ and freedom of movement.²⁴

The Supreme Court per Justice Ayoda JCA as he then was held that:

It will be an affront to all known human rights norm were the rights to freedom Specifically guaranteed by our Constitution to be drained of all effects, by arrogating to the Government a discretionary and almost arbitrary power to withhold, with draw or revoke a passport.

The Court further held that where a statement in any document is in conflict with a clear and unambiguous provision of the Constitution . . . such a statement is unconstitutional or unlawful and cannot limit or abrogate the right of a citizen. For the Constitution is the organic document which must be interpreted as speaking from time to time and must interpret the fundamental rights in broad terms. The writer submits that such broad interpretation ensure the social contract tenets of the Constitution as well as meet the exigencies of time that will empower the people and guarantee development.

What is Constitution?

Constitution can be defined as the body of rules, laws, conventions or practices which stipulates the institutions, structures of a state and its powers and function *vis a vis* other social institutions. It is also the instrument of creation of a sovereign political community.

Constitution connotes the system or body of fundamental rules and principles of a nation or body policy for the determination of powers and duties of the government and guarantees certain rights to the citizenry. Ideally, any Constitution is superior to any other law in the land to the extent that any inconsistency with its provisions is to the extent of that inconsistency null and void. Simply put, constitution is the authority and basic law of any given state whatever any State Constitution fails to import explicitly or implicitly is disallowed.

Types of Constitution

- a. Written - where the provisions of a Constitution is incorporated in a formal document referred to as the Constitution. Nigeria, the United States of America, India, South Africa are countries with written Constitution
- b. Unwritten - where no formal document exists. Such Constitution stems from conventions, usage, uncodified customs as seen in the United Kingdom.

Furthermore, constitution can be:

- a. Unitary – where sovereign power of the state is concentrated in one power or body and can only be exercised by another on delegation.
- b. Federal – where power is shared among levels of government. For instance, Nigeria where power is distributed between the Central, State and Local Government.

²¹. Section 32 of CFRN 1979 now 35 CFRN 1999

²². Section 35 of CFRN 1979 now 38 CFRN 1999

²³. Section 36 of CFRN 1979 now 39 CFRN 1999

²⁴. Section 48 of CFRN 1979 now 41 CFRN 1999

The Import of Constitution

Where a state is governed by a Constitution, or presupposes the entrenchment of Constitutionalism which means a belief in constitutional government. It ensures constitutionality whereby it remains a fact that whatever operates is acceptable according to an existing provision of a Constitution²⁵. Therefore, anything outside the Constitutional domain is unacceptable and must be rejected or at least questioned.

Sir John Salmond, a renowned jurist captured in his jurisprudence thus:

...that the Constitution is both concurrent Constitutional practice and the reflection within the Court of Law. It is the Constitution not as it is in itself but as it appears when looked at through the eye of the State. The Constitution as a matter of fact is logically prior to the Constitution as matter of law. Thus, the constitutional practice is before the constitutional law...

Flowing from the above, obviously there can be no law without a Constitution. Therefore, no Constitution can have its source and basis in Law.

I dare say that John Salmond's view is arguable as it has been posited that the laws of God as in the Bible (the divine laws basically the fundamental laws) and existed before any Constitution and constitutionalism.

It is exemplified in the treatise of Roscoe Pound, the Dean Emeritus of Harvard Law School who wrote that:

Throughout the history of civilization there have been abortive attempts to set up and maintain a policy without law. Every utopia state has been designed to dispense with Lawyers...²⁶

Further, the renowned scholar posited that:

The task of law is to adjust relations and order conduct so as to give effect to the whole scheme of expectations of the citizenry in civilized society with less friction and waste

Bindingness of the Constitution

Usually, Constitutions are drawn up by a few individuals yet, it is binding for all time on the posterity guiding both the State and the citizens. Therefore, any Constitution has both political and social impacts. The dynamics involved in operating such Constitutions are enormous and tasking. For the provisions of the Constitution must be adhered to under constitutionalism. Such that the State must guarantee the promotion of good life and assist the citizenry to reach high development and excellence in life. The problems created by constitutional provisions were summed up by Joseph de Maistre in his "The Generative Principle of Political Constitution's" where he stated that:

²⁵. S. Wehmeier, **Oxford Advanced Learner's Dictionary of Current English**, Oxford Press, Oxford, 5th Edition p.245

²⁶. A. Babalola, **Lawyers and Nation Building**, University of Lagos Press, Lagos, 2003, p. 11.

The more we examine the influence of human agency in formation of political Constitution, the greater will be our conviction that it enters there only in a manner infinitely subordinate

From the above postulations, it is distilled that the most essential, most intrinsically Constitutional and truly fundamental, is never written and could not be, without endangering the State.

The third view is often experienced by Lawyers and Judges in the course of litigation and adjudication which can only be solved by the importation of the rules of construction viz:

- a. The Literal Rule,
- b. The Mischief Rule,
- c. The Golden Rule,
- d. The *Ejusdem Generis* Rule.

However, the issues of rights and liberty of the citizenry must remain paramount to avoid tyrannical governance. Interestingly, the Court recently, has embraced liberal interpretation of laws to accord with economic objectives of government.²⁷

Factors of Development and Structures

Development can mean growth and advancement to ensure strength. It can also mean events or stages that affect what happens in a continuing situation or a continuum.

It guarantees special change for the better. One of the major factors of development is unquestionably education.

However, education can be formal and informal. Education is difficult to define per se yet it refers to all types and levels of education including access to education quantum and quality of education. It is any process by which an individual gains knowledge or insight or develops attitudes and skills²⁸. Again, it is the transmission of the values and accumulated knowledge of a society²⁹.

A scholar Farrand, defines education as a universal practiced engaged in by all societies at all stages of development. It is the whole process of human learning by which learning is impacted, faculties trained and skills developed³⁰, whether at home or in formal school setting. It must be noted that formal education is the measurement of human and national development.

Other factors of Development that any good Government must heed include

1. Health.
2. Shelter.
3. Employment and elimination of poverty.
4. Positive culture that ensures justice within the state.
5. Accountability.

²⁷. By applying section 16 (2) (a) of the CFRN 1999 and buttressed in **Momodu v. NULGE** [1994] 8 NWLR (Pt. 362) P. 336 on reasonable national minimum living wage and unemployment.

²⁸. **Encyclopedia Americana** which recognizes three types of education that formal, non-formal and informal.

²⁹. **Encyclopedia Britanica**

³⁰. A. Atsenuwa, "The Right to Education and Gender Equality", **Journal of Economic, Social and Cultural Rights**, Shelter Rights Initiative, Lagos, Vol. 1 No. 1 May – July, 2001 p. 3

6. Monitoring and Evaluation.

Effects of Human Rights on Constitutionalism

The imports of these are seen in their provisions in virtually all human rights instruments starting from Post World War II.

- 1984 Universal Declaration of Human Rights (UDHR)
- 1966 International Covenant on Civil and Political Right (ICCPR)
- 1979 Convention on Elimination of all Forms of Discrimination against Women (CEDAW).
- 1985 African Charter on Human and People's Rights (ACHPR)
- 2000 The United Nations Millennium Development Goals (UNMDGs)
- MDG 1 - Eradicate Extreme Poverty and Hunger.
- MDG 2 - Achieve Universal Primary Education.
- MDG 3 -Promote Gender Equality and Empower Women.
- MDG 4 – Reduce Child Mortality.
- MDG 5 – Improve Maternal Health.
- MDG 6 – Combat HIV/AIDS, Malaria and other Diseases.
- MDG 7 - Ensure Environmental Sustainability.
- MDG 8 – Ensure a Global Partnership for Development.
- 2005 Protocol to the African Charter Supplementary.
- 2006 Protocol to the African Charter and so many others.

Interestingly, Nigeria is yet to domesticate CEDAW and some key International Law human rights instruments like Chapter II of our 1999 Nigerian Constitution justiciable. It never has domesticated African Charter II and its recent Protocol which contain most of the provisions of both CEDAW and Chapter II of the 1999 Constitution on human rights, women rights, environmental rights, and developmental rights.

Role of Lawyers to Societal Development

Without delving into the emergence of Lawyers in any society, it is clear that Laws, Lawyers and the Courts are synonymous with constitutionalism and development. Again, the laws are hardly adequate to meet the exigencies of both development and developing or under developed society.

Therefore, instituting the machinery for law reforms as a necessary tool for nation building can never be over emphasized.

Yet, most governments prefer maintenance of the status quo as against change even in Nigeria but Lawyers cannot afford to be static.

Thus, the NBA has engaged in a lot of civil society dealings by allowing herself as an instrument of social engineering to effect change in the Nigeria Polity and accelerate developmental strides in the society.

In our quest for development in Nigeria, due to lack of due process and obedience to the rule of law, Lawyers have challenged different organs of government in Court some of the actions have actually positively influenced government policies.

Lawyers and Rights Issues

Many Lawyers have engaged in championing the course of rights of various categories of Nigerians whether Governors, Speakers, Presidents, Freedom agitator, Indigent citizens, Widows, Girls, and Women. These are done mostly by Non-Governmental Organizations (NGOs) headed by Lawyers like the Civil Liberty organization (CLO), Legal Defence (LEPAD), Women's Aid Collective (WACOL) Women and Minority Rights Monitor (WAMRM), International Federation of Female Lawyers (FIDA) to mention but a few.

The Nigerian Bar Association

The Nigerian Bar Association is the Umbrella body under which members of the legal profession associate. The legal profession plays a central role in the realization of the welfare and development of the Nigerian citizenry. The legal profession as a concept comprises the law practice and practitioners, the law lecturers and teaching of law, the administration and dispensation of justice and other incidentals.

The association has as its duties in a nutshell thus:

- The maintenance and defence of the integrity and independence of the Bar and Judiciary in Nigeria.
- The encouragement of the establishment and maintenance of a system of prompt and efficient legal advice and aid for those persons in need thereof but who could not afford to any for same.
- The encouragement, ensuring and protection of the rights of access to the Courts and representation by Counsel, before the Courts and Tribunals.
- The promotion of the principles of the rule of law and respect for and enforcement of fundamental rights, human and people's right³¹.

Under the Legal Practitioners Act, the then Minister of Justice, Bayo Ojo in 2007 made Rules of Professional Conduct for Legal Practitioners. The introductory reads thus³²:

A Lawyer shall uphold and observe the rule of law, promote and foster the cause of justice, maintain a high standard of professional conduct and shall not engage in any conduct unbecoming of a Legal Practitioner³³. And the mandatory continuing Professional Development Programme,³⁴ Lawyers who are 5 years Post Call - 24 hours Credit, Lawyers who are over 5 years - 18 hours credit, Lawyers above ten years –12 hours.

It clearly shows that development is a continuous process and for Lawyers to contribute to it they too must be dynamic in development.

Recently, many laws have been enacted that may affect lawyers in conduct of their duties especially in the areas of client confidentiality. The Miscellaneous Offences Act, 1983, the

³¹. 1992 Draft Document of the Association.

³². Cap 20 LFN 1990.

³³. Article 1

³⁴. Article II (1)

1989 NDLEA Act, Money Laundering Act, 2004. The Corrupt and other related Offences Act, 2000.

Some of our colleagues have been arrested in the course of doing their lawful duty, especially in the fight against corruption.

It then means that the time has come for change in our approach. For lawyers to continue being relevant in the scheme of things lawyers must isolate themselves politically and above corruption. This was the holding in **AG v. Canada v. The Law Society of British Columbia**³⁵ and **R v. MCCHVE**³⁶ the Court held in the important relationship between a client and a lawyer stretches beyond the parties and it is integral to the workings of the legal system itself.

Conclusion

Suffice it say that in this era of development globally, any nation worth recognition in the World polity must abide by the rule of law. It must incline to address factors of development, while its legal process must be guaranteed by the legal profession. Thereby not only instituting constitutionalism but sustaining the observation of rule of law as expressed in the nation's Constitution. Thus, foster development through the applications of the tenets of law particularly the *grundnorm* – the Constitution. This can only be achieved when lawyers take up the challenge of vanguard of the nation through the Courts and the Courts being proactive, the legislature enacting living laws, while the Executive arm of government rules by law and law only.

³⁵. (1982) 137 DLR 3d

³⁶. (2001) 1 SCR p.445.