Africa and Its Constitutional Development
Gordon R. Woodman

Constitutional Democracy in Africa
in 5 volumes
by Ben Nwabueze

In his foreword to this work, the late Julius Nyerere described it as “at once magis
erial and authoritative; ... learned and erudite without being pedantic, critical, in-
cisive and perceptive without being carp-
ing, informative and comprehensive with-
out being tedious.” The author, Professor
Nwabueze, a leading constitutional lawyer
in Nigeria, has written a work on Public Law
from a lawyer’s perspective, but has given
costume, political and so-
cial, as well as moral issues related to its
subject-matter. Each of the five volumes can
be read as a self-contained work. Clearly,
however, as the topics are closely related to each
other and together form an extensive, im-
posing exploration of a range of issues around the topic of Constitutional Demo-
cracy in Africa.

Volume 1, on Structures, Powers and Organising Principles of Government, be-
gins with a consideration of the concept of Constitutional Democracy. With its analy-
ysis and powerful condemnation of life-time heads of state in Africa, it establishes the
work’s style of incisive and critical argu-
ment, drawing on worldwide history but always referring copiously to the experi-
ence of African states. It considers the func-
tions of a Constitution, devotes four chapters to aspects of the Federal order in
Nigeria, and then sets out, with supporting argument, the basic principles which need
to be observed for the achievement of Con-
stitutional Democracy in Africa and else-
where.

Volume 2, Constitutionalism, Authori-
tarianism and Statism, examines, again with
numerous examples from Africa: the Virtues
of Constitutional Democracy (all of which
arise from the concept of Human Rights); the
Evils of Authoritarian Rule (including
cases of One-Party systems, One-Man Di-
tatorship, and Apartheid); and the Evils
Associated with Statism. This volume makes out a case for the claim that Consti-
tutional Democracy is more conducive than any other system of government to the
achievement of good in social life.

In his opening chapter to Volume 3, The
Pillars Supporting Constitutional Democr-
cy, Nwabueze identifies four pillars: “(i) law-governed state; (ii) equality and jus-
tice; (iii) a market-oriented economy; and (iv) a society permeated by a libertarian,
democratic ethic and ethos”. The remain-
der of the book is then divided into four
parts, each of which analyses one of these in
two to five chapters.

This book makes an original contribu-
tion to the understanding of its subject-
matter in two major respects. First, it high-
lights a wide range of legal, political, eco-
nomic and social issues, each of which has
been discussed extensively and in depth in
the literature, but which have not been much
discussed together in a unified manner. Second, it relates all of these issues to the
laws and constitutions of contemporary African states, with some stress on Nigeria,
setting out and using a good deal of infor-
mation about the countries discussed that
is not readily available elsewhere.

This book does not attempt to be a com-
prehensive work of reference in the sense of
providing an exhaustive bibliography of the
topics discussed: that, indeed, would have
required many times more space and
working years, and would not have resulted in
a work which was as accessible as this.
But the work does identify, make use of,
and provide understanding of the major published works in the many areas in is-
ue. These are almost always reported with
complete accuracy (although it might be
noted that there is a misquotation of John
Locke at p. 19, which suggests that he pro-
vided a definition of the rule of law, whereas
he in fact provided a definition of freedom).
In this respect, the breadth of its scholar-
ship is impressive.

Volume 4, Forms of Government, is di-
vided into three parts. Part I, an “Introduc-
tion” consists of a single chapter on “The
Universal Heritage of the Single Executive”. Part II is entitled “Models of Constitu-
tional Democracy”. It considers a number of mod-
els, defining them and examining critically the instances in which they have been
adopted (and often adapted and discarded)
in Africa. These are: the Westminster Ex-
port Model (Chaps. 2, 3); the American Presi-
dential System (Chaps. 4, 5, 6); the French
Model (Chap. 7), the Hybrid (of the West-
minster and American Presidential systems
Chap. 3); and the Federal System
Chaps. 9 and 10), which would seem to be not so much another model as an additional
dimension to models already discussed. Part III deals with other forms of govern-
ment which have been experienced in Af-
rica, under the title “Authoritarian Forms
of Government”. It examines: the One-Party
System (Chap. 11); Absolutist Military Gov-
ernment (Chaps. 12, 13, 14); and the Social-
ist State (Chaps. 15 and 16).

This book draws together, analyses and
presents in an accessible form the experi-
ence of African states since independence
with the various forms of government ex-
ferred. It makes copious and accurate ref-
erence to the constitutional experience of all independent African states, discussing
them critically and profoundly. Arguably in
some parts the detailed attention to spec-
ifically Nigerian examples is disproportion-
ate. This occurs especially in relation to
authoritarian rule (Chap. 5) and from au-
thoritarian one-party rule (Chaps. 6, 7). The
last two Parts of the book are more directly
evaluative. Part IV (Chaps. 8-11) assesses the
merits of the new forms of government as
manifested in African states. Part V (Chaps. 12-15) examines more deeply the
main themes of the book and assesses the
means of seeking to secure the future of
democracy in Africa.

In addition to the repeated references to
Eastern Europe, the other marked focus of
attention is the particular experience of
Nigeria, on which again the author provides
much detail. But where it is relevant, the
book contains detailed studies of other
African states and other institutions rel-
vent to his theme, such as the international
aid and development movement. The cen-
tral literature in each of the fields studied is
cited.

If the five-volume work is considered as
a whole, it may be remarked that its orien-
tation is towards a western approach to
to political and constitutional issues. This
does not entail an omission of African facts.
A great deal of information is provided and
used in argument, in the constant references
to African constitutions and the political
experiences of African states. But there is
little mention of the indigenous, “traditional” social foundations of African
societies. Rather, attention is given almost
eclusively to the governments, constitutions and laws of states. Where the
argument requires reference to traditional
forms of government in Africa, it appears
that the author is somewhat ill at ease in
attempting to identify the characteristics of
these societies, and the references tend to
be simplistic.

Further, no use is made of the work of
those accomplished philosophers who iden-
tify their thoughts as having a specifically African character, derived
presumably from African traditions. It may
seem surprising that there is little mention
of the possibility that African societies may
call on their indigenous, “traditional”
foundations to devise new developments
for dealing with modern problems, and
there are few references to customary law
and internal factors. These contain a mas-
terly analysis of a series of factors which have
generally been studied by different
specialists but not often weighed together.

Here the author begins to use informa-
tion about the fall of socialist regimes in
Eastern Europe from 1989 onwards, a sub-
ject on which he has clearly developed a
deep knowledge, and which he brings to
bear skilfully on the African questions he
discusses. In Part III he examines the proc-
esses of democratisation in African states,
taking separately the transition from abso-
lutist military rule (Chap. 5) and from au-
thoritarian one-party rule (Chaps. 6, 7). The
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or African political philosophy. This is not to suggest that the realities of African states today are overlooked, or that the focus is not on African issues, but rather that the solutions seem generally to be sought in western ideas. The author is no doubt conscious of this, and would probably reply, with much justification, that the ideas in question are not specifically western but belong to humanity in general.

The books are well written: they are clear, precise, as easy to understand as the depth of analysis will allow, and without the slightest degree of condescension or oversimplification. Most aspects of presentation, from English grammar to proof-reading, are well-nigh flawless. The only weakness in this respect that I have noticed is in the tables. In volumes 1 to 4, the tables of cases are not well set out and the tables of statutes are very poorly ordered and incomplete. In pleasant contrast, in volume 5 the tables of cases and statutes are well ordered and accurate.

In the view of this reviewer these volumes should be a huge inspiration and a constant source of reference to thinkers about constitutional democracy in Africa. The bulk of their readership will be African, although the emphasis on western literature makes the books instructive for those with an interest in constitutions and democracy everywhere. The books will appeal to the intelligent reader who is interested in contemporary African political and legal orders, whether or not that reader has a specialist knowledge. Indeed, I believe that they will, laudably, appeal especially to those who have a burning desire to see democracy thrive in Africa. It is apparent that the author himself cares very deeply about this (but without ever weakening his objectivity in assessing history or prospects), and this will be an inspiration to his readers. Nyerere’s judgement in endorsing the books in such warm terms must be respectfully endorsed.