



Africa and Its Constitutional Development

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Constitutional Democracy in Africa

in 5 volumes

by Ben Nwabueze

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In his foreword to this work, the late Julius Nyerere described it as “at once magisterial and authoritative; ... learned and erudite without being pedantic, critical, incisive and perceptive without being carping, informative and comprehensive without 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 considerable attention to political and social, 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, they are closely related to each other and together form an extensive, imposing exploration of a range of issues around the topic of Constitutional Democracy in Africa.

Volume 1, on *Structures, Powers and Organising Principles of Government*, begins with a consideration of the concept of Constitutional Democracy. With its analysis and powerful condemnation of life-time heads of state in Africa, it establishes the work’s style of incisive and critical argument, drawing on worldwide history but always referring copiously to the experience of African states. It considers the functions of a Constitution, devotes several 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 Constitutional Democracy in Africa and elsewhere.

Volume 2, *Constitutionalism, Authoritarianism 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 Dictatorship, and Apartheid); and the Evils Associated with Statism. This volume makes out a case for the claim that Constitutional 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 Democracy*, Nwabueze identifies four pillars: “(i) a law-governed state; (ii) equality and justice; (iii) a market-oriented economy; and (iv) a society permeated by a libertarian, democratic ethic and ethos”. The remainder 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 contribution to the understanding of its subject-matter in two major respects. First, it highlights a wide range of legal, political, economic 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 information about the countries discussed that is not readily available elsewhere.

This book does not attempt to be a compendious 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 issue. 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 provided a definition of the rule of law, whereas he in fact provided a definition of freedom). In this respect, the breadth of its scholarship is impressive.

Volume 4, *Forms of Government*, is divided into three parts. Part I, an “Introduction” consists of a single chapter on “The Universal Heritage of the Single Executive”. Part II is entitled “Models of Constitutional Democracy”. It considers a number of models, defining them and examining critically the instances in which they have been adopted (and often adapted and discarded) in Africa. These are: the Westminster Export Model (Chaps. 2, 3), the American Presidential System (Chaps. 4, 5, 6), the French Model (Chap. 7), the Hybrid (of the Westminster and American Presidential systems) Model (Chap. 8), 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 government which have been experienced in Africa, under the title “Authoritarian Forms of Government”. It examines: the One-Party System (Chap. 11); Absolutist Military Government (Chaps. 12, 13, 14); and the Socialist State (Chaps. 15, and 16).

This book draws together, analyses and presents in an accessible form the experience of African states since independence with the various forms of government ex-

amined. It makes copious and accurate reference to the constitutional experience of all independent African states, discussing them critically and profoundly. Arguably in some parts the detailed attention to specifically Nigerian examples is disproportionate. This occurs especially in relation to federalism and military coups and military rule, where no doubt the Nigerian experience is particularly significant, but not entirely unique. It is possible that this concern with particular local detail may be the reason why little room is found for the elaboration of general conclusions, which tend to be briefly expressed in a few sentences at the end of each chapter.

While there is extensive reference to the texts of African constitutions, and adequate reference to writings about constitutional forms in Africa, there is not always a great deal of reference to literature discussing the issues of constitutional forms, such as that which seeks to identify the characteristic features of the Westminster Export Model, or which examines the relevant aspects of the American Constitution. In particular, references to constitutional developments in Ethiopia in recent years are noteworthy by their absence, and the author does not seem to have investigated the current, highly unique federal constitution of that country. Some guide to further reading on this and other topics might have been useful to readers.

If some of the other volumes had necessarily given a depressing picture of constitutional development in Africa in the periods of one-party, one-man, and military rule, Volume 5 carries the encouraging and well justified title *The Return of Africa to Constitutional Democracy*. Here, the first two chapters set the scene by analysing the trend, from about 1990 to the present, for the decline of authoritarian rule in African states. These are sound and well-informed chapters (except that the author is, in common with the great majority of lawyers who have had to grapple with this, not entirely accurate about the notion of the *Grundnorm* in Kelsen’s Pure Theory of Law. This criticism could be made also of a later discussion in Chapter 6). The next two chapters, comprising Part II, “Causes”, examine the reasons for this trend, and seek to weigh up the relative importance of international

and internal factors. These contain a masterly 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 information about the fall of socialist regimes in Eastern Europe from 1989 onwards, a subject 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 processes of democratisation in African states, taking separately the transition from absolutist military rule (Chap. 5) and from authoritarian 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 relevant to his theme, such as the international aid and development movement. The central 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 orientation is towards a western approach 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 exclusively 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 identify 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

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.

