**OBI JESSICA CHINEZE**

**POL 104 ASSIGNMENT**

**100 LEVEL INTERNATIONAL RELATIONS AND DIPLOMACY**

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**CONSTITUTION AND CONSTITUTIONALISM**

CONSTITUTION

A constitution is an aggregate of fundamental principles or established precedents that constitute the legal basis of a polity, organisation or other type of entity, and commonly determine how that entity is to be governed. When these principles are written down into a single document or set of legal documents, those documents may be said to embody a written constitution; if they are written down in a single comprehensive document, it is said to embody a codified constitution. Some constitutions (such as that of the United Kingdom) are uncodified, but written in numerous fundamental Acts of a legislature, court cases or treaties. Constitutions concern different levels of organizations, from sovereign countries to companies and unincorporated associations. A treaty which establishes an international organization is also its constitution, in that it would define how that organization is constituted. Within states, a constitution defines the principles upon which the state is based, the procedure in which laws are made and by whom. Some constitutions, especially codified constitutions, also act as limiters of state power, by establishing lines which a state's rulers cannot cross, such as fundamental rights. The Constitution of India is the longest written constitution of any country in the world, containing 444 articles in 22 parts, 12 schedules and 124 amendments, with 146,385 words in its English-language version. The Constitution of Monaco is the shortest written constitution, containing 10 chapters with 97 articles, and a total of 3,814 words. The Constitution of the United States is the world's oldest continuously-active codified constitution, having been in force since 1789. Only half of all constitutions function continuously for more than 19 years.

CONSTITUTIONALISM

Constitutionalism is descriptive of a complicated concept, deeply embedded in historical experience, which subjects the officials who exercise governmental powers to the limitations of a higher law. Constitutionalism proclaims the desirability of the rule of law as opposed to rule by the arbitrary judgment or mere fiat of public officials. Throughout the literature dealing with modern public law and the foundations of statecraft the central element of the concept of constitutionalism is that in political society government officials are not free to do anything they please in any manner they choose; they are bound to observe both the limitations on power and the procedures which are set out in the supreme, constitutional law of the community. It may therefore be said that the touchstone of constitutionalism is the concept of limited government under a higher law.

**THE PERIODS OF MAKING CONSTITUTION AND THEIR EFFECTS**

COLONIAL PHASE (1914-1959)

Series of Constitutions were experimented under this phase. These constitutions varied only in terms Of the composition of the representatives in the legislative council. Nigeria's first constitutions were enacted by order in council during the colonial era, when the country was administered as a Crown Colony. The constitutions enacted during this period were those of 1913 (which came into effect on 1 January 1914), 1922, 1946, 1951 and 1954. In 1946 a new constitution was approved by Westminster and promulgated in Nigeria. Although it reserved effective power in the hands of the Governor-General and his appointed Executive Council, the so-called Richards Constitution (after Governor-General Sir Arthur Richards, who was responsible for its formulation) provided for an expanded Legislative Council empowered to deliberate on matters affecting the whole country. Separate legislative bodies, the houses of assembly, were established in each of the three regions to consider local questions and to advise the lieutenant governors. The introduction of the federal principle, with deliberative authority devolved on the regions, signaled recognition of the country's diversity. Although realistic in its assessment of the situation in Nigeria, the Richards Constitution undoubtedly intensified regionalism as an alternative to political unification. The pace of constitutional change accelerated after the promulgation of the Richards Constitution. It was suspended in 1950 against a call for greater autonomy, which resulted in an inter-parliamentary conference at Ibadan in 1950. The conference drafted the terms of a new constitution. The so-called Macpherson Constitution, after the incumbent Governor-General, John Stuart Macpherson, went into effect the following year. The most important innovations in the new charter reinforced the dual course of constitutional evolution, allowing for both regional autonomy and federal union. By extending the elective principle and by providing for a central government with a Council of Ministers, the Macpherson Constitution gave renewed impetus to party activity and to political participation at the national level. But by providing for comparable regional governments exercising broad legislative powers, which could not be overridden by the newly established 185-seat federal House of Representatives, the Macpherson Constitution also gave a significant boost to regionalism. Subsequent revisions contained in the Lyttleton Constitution, named for Oliver Lyttelton, 1st Viscount Chandos and enacted in 1954, firmly established the federal principle and paved the way for independence.

POST COLONIAL ERA (1960-1999)

In the process of granting independence, colonialist were seriously interested in leaving certain legacies which help them in maintaining the status quoi. Consequently, the independence constitution of 1959 retained most of the provisions of the Lyttleton constitution which perpetuated serious agitation for change. The Constitution (independence constitution) which provided for a parliamentary system of government, with the three regional governments (Northern, Eastern and Western Regions), a bicameral legislative framework at the federal (Senate and House of Representatives) and regional levels (House of Assembly and House of Chiefs) with the legislative powers of government delineated into three lists; exclusive, concurrent and residual. The parliamentary system premeditated under the constitution recognized the British monarch as the Head of State with powers to appoint a resident agent (the Governor-General) to exercise executive powers on her behalf while a Prime Minister elected by the Federal parliament acted as the Head of the Federal Executive Council. This culminated to a constitutional conference held in Lagos from 25th to 26th, july 1963 where Nigerian political leaders resolved that, Nigeria should become a Federal Republic, which was passed on 19th September 1963. Thus, the key features of the 1963 Constitution were the establishment of Nigeria’s First republic under a parliamentary system of government by replacing the Governor-General appointed by the British monarch with a President elected directly by members of the Nigerian federal legislature. In addition, in place of the Privy Council, the Federal Supreme Court became designated as the final appellate judicial authority over any person or matter in Nigeria.

MILITARY PHASE (1979-1999)

It is unfortunate that despite the military arbitrariness to constitution, the Nigerian constitution could not be disengaged from the military. With the collapse of the first republic, Nigeria witnessed thirteen years of military rule. In 1979 new constitution was promulgated which led to the inception of the second republic. The 1979 constitution of the second republic was quite different from the one of first republic. Some of the essential contents were: it opted for presidential rather than parliament system of government, under which the president and state governors will be elected together with their deputies. Constitution was made to be supreme, in which powers were delineated and spitted between and among various tiers of government so as to strengthen the federal structure of the federation. The constitution was drafted by 49 members out of fifty and finally the draft was reviewed and amended by the Armed Forces Military Council that issued a decree enacting the 1979 constitution. In analyzing the extent of constitutionalism under the second republic, it is evident that the constitution was subjected to debate by Supreme Military Council for first scrutiny. The second republic was affected by the left legacies of authoritarian and arbitrary practices of 13 year military legacies which manifested in the form of political repression, abuse of executive power and noncompliance to the rule of law. In Kaduna state assembly National Party of Nigeria (NPN) members with the majority in the house ended up impeaching the executive governor in June 1981 without conforming to section 174 (2) of the constitution. The attempt to revoke the television channel allocated to Lagos state by the Federal government were all abused of the constitution. Even though During Babangida’s 1989 and Abacha’s 1994 military regimes there were some impotent attempts for constitutional reconstructions, they ended up as mere stage shows. The conclusive one in our discourse is the 1999 constitution of Abdussalam Abubakar. The Supreme Military Council of 26 officers promulgated another constitution into law under General Abdulsalam Abubakars’ military administration which successfully ushered in the Fourth Republic on the 29th of May, 1999. Nevertheless, as the constitution lacks the necessary prerequisite of consultation and popular representation, being enacted by only 26 Nigerians and imposed on Nigerians just like its predecessors. As a result, constitutionalism is castoff. Further, the language of the constitution also is criticized as a masculine if not militaristic and the composition is highly ambiguous with legal jargons. Thus, many pundits see it as a just legal document that inflicts a unitary system of rule.

**CONSTITUTIONS UNDER THE COLONIAL ERA**

1914 AMALGAMATION CONSTITUTION

During the colonial constitutional era (from 1914-1960), Nigeria served as a Crown Colony under the control of Britain. In course of this British dominance, Nigeria had its first 5 constitutions by order in council. The foremost of these 5 constitutions was the 1914 constitution. Notably, this constitution was laid down in 1913 but actually became effective on 1st of January 1914.The idea of one Nigeria dates back to 1914 with the Frederick Lugard Constitution. This Frederick Lugard’s 1914 Constitution amalgamated southern Nigeria with northern Nigeria. The resulting entity was administered under Lord Frederick Lugard’s government.

1922 CLIFFORD’S CONSTITUTION

The Frederick Lugard’s 1914 Constitution was later replaced by the Sir Clifford’s 1922 Constitution. The Sir Clifford’s 1922 Constitution formed a legislative council that was given lawmaking responsibilities for Lagos and the southern provinces. In 1922, the foremost colonial constitution was succeeded by a new constitution which remained effective until 1946. Officially regarded as the Clifford Constitution, this constitution was named after the then Governor-General Sir Hugh Clifford. Under Sir Arthur Richard’s control as the British Governor-General of Nigeria, Westminster declared the approval of a new constitution in 1946. In that same year, the constitution came into effect as implemented by Sir Arthur Richards. Officially known as Richards Constitution, the 1946 constitution vested effective power in the then Governor-General and the Executive Council. In spite of this, the constitution was notable for the provision of an extended Legislative Council authorized to meditate on national issues. In addition, below are the other notable features of the Richards Constitution; Provision of separate legislative bodies in order to address local questions, issues, and complaints in each of the three regions. Also, these were meant to serve as advisory bodies to the lieutenant governors; Provision of the federal principle which transferred deliberative authority to the regions and further recognized the diversity of Nigeria; Emphasis on the promotion of regionalism as a possible means of achieving political coalition.

1946 ARTHUR RICHARDS CONSTITUTION

In 1946, the Sir Clifford’s 1922 Constitution was replaced by the Arthur Richard’s 1946 Constitution which defined Nigeria for the first time. The Arthur Richard’s 1946 Constitution divided Nigeria into the Northern, Western and Eastern regions. This Arthur Richard’s 1946 Constitution came into effect after the end of World War 2. The enactment of the Richards Constitution in 1946 boosted the level of constitutional development in Nigeria. But due to a vehement demand for intense autonomy, the Richards Constitution was interrupted in 1950. A chain of events resulted in the formation of a body called the National Council for Nigeria and Cameroons. This body later changed its name to the National Council of Nigerian Citizens, (N.C.N.C). This body mobilized indigenous peoples of the country to fight for their political independence. Meanwhile, this gave birth to an inter-parliamentary summit held in Ibadan [the capital city of Oyo] in that same year. At this summit, the terms of a newly proposed constitution were drafted and in the subsequent year [1951], the new constitution was eventually enacted.

1951 JOHN MACPHERSON’S CONSTITUION

The Macpherson Constitution came into being in 1951 as Nigeria’s fourth constitution under British colonialism. The Sir John Macpherson’s 1951 Constitution was said to widely reached out to the people than the previous constitutions. Through the most significant changes in the newly established Macpherson Constitution, the two-sided course of constitutional development was strengthened and this paved the way for both federal unification and regional autonomy. In addition, below are the other significant features of the Macpherson Constitution; Significant provision of a central governing body together with a Council of Ministers; Expansion of the elective principle; Reinforcement of political participation and party activity at the national level; Provision of similar regional governments broadly authorized to wield legislative powers. Also, the Macpherson Constitution prevented the newly-introduced 185-seat federal House of Representatives from outweighing these powers; through similar regional governments, the Macpherson Constitution gave a notable improvement to the idea of regionalism. In 1953, there was massive loss of lives and property which was as a result of fights between the northerners and southerners. This violence, however, led to the formation of a new constitution in 1954.

1954 LYTTELTON CONSTITUTION

In 1954, a new constitution came into effect. Officially known as Lyttelton Constitution, the constitution was named after the 1st Viscount Chandos, Oliver Lyttelton. Significantly, the Lyttelton Constitution of 1954 allowed for Nigeria’s independence and strongly initiated the federal principle. The Constitution, however, made regional governments independent of the central government. The Oliver Lyttleton’s 1954 Constitution is however described as the most instrumental constitution that marked the end of the colonial constitution and helped Nigeria gain independence in 1960.

**CONSTITUTION OF THE REPUBLICS**

1963 CONSTITUTION [CONSTITUTION OF THE FIRST REPUBLIC]

Though Nigeria was already independent beginning from 1st of October 1960, Queen of England remained the ceremonial Head of State of Nigeria until October 1st, 1963 –the third year of independence. However, some flaws in the 1960 Constitution. led to the birth of another one.In 1963, Nigerians began to complain about having a Head of State [the Queen of England] who was of British descent and who lived about 3000 miles away from Nigeria. Though the Queen of England performed no administrative functions over Nigeria, many Nigerian leaders believed it was ridiculous for the country’s Head of State to be far away from them. Due to this, an agreement was reached that Nigeria should have an indigenous Head of State who would be elected by the people to serve a five-year term. At the same time, it was agreed that such a person would be a titular Head of State. In this case, he wouldn’t rule the country directly but his name would be used by Ministers in executing governmental functions. Nigerians succeeded in the decision to have an indigenous Head of State and this gave birth to the attainment of a republican status on 1st of October 1963. Having established Nigeria as a federal republic, the 1963 constitution paved the way for Nigeria to continue adopting the Westminster system which had been in effect prior to independence. One of the main features of the 1963 Constitution was the establishment of Nigeria’s 1st republic under a parliamentary system. However, in 1966, Nigeria experienced its first and deadliest military coup. The consequence of the coup brought about many disasters including great massacre, an abolition of the Westminster system and termination of democracy.

1979 CONSTITUTION [CONSTITUTION OF THE SECOND REPUBLIC]

Nigeria’s Second Republic came into being under the influence of the 1979 constitution. As part of the features of the 1979 constitution, an American-oriented presidential system was adopted at the expense of the former Westminster system. Following the implications of the American-oriented presidential system, Nigeria conducted a direct election which produced Alhaji Shehu Shagari as the country’s first Executive President. In order to prevent Nigeria from experiencing the drawbacks of the First Republic for the second time, the 1979 constitution made it compulsory for the Federal Executive Council and political parties to depict Nigeria’s “federal character’’. Going by this, political parties were given the mandate of being registered in no less than two-thirds of the entire Nigerian States. Moreover, each Nigerian State must account for at least one representative among the cabinet members. Like the First Republic, Nigeria’s Second Republic lasted only a few years beginning in 1979 and ending in 1983 as a result of a military coup. Meanwhile, this coup eliminated the Second Republic together with its associated constitution –the 1979 constitution.

1993 CONSTITUTION [CONSTITUTION OF THE THIRD REPUBLIC]

After the abolition of the Second Republic, Nigeria’s democratic institutions were phased out and General Muhammadu Buhari took over in 1983 as Nigeria’s military Head of State until he was overthrown by General Ibrahim Babaginda in 1985. In the hope to restore democracy in Nigeria, some Nigerian elite organized political parties and contested in an election in 1993. Following the result of the 1993 Presidential election, Chief M.K.O Abiola emerged as the winner and was expected to restore democracy by ascending the Presidential seat. However, a lot of controversies flared up and amidst these, the then military President –General Ibrahim Babangida –cancelled the result of the Presidential election of June 12, 1993. Afterwards, Babangida appeared on air to state the reasons why he canceled the results of the Presidential election held on 12th of June 1993. In consequence of the result cancellation, riots flared up in South-West of Nigeria and these claimed the lives of many Nigerians. Due to the vehement opposition and severe tension, General Ibrahim Babangida willingly stepped down from his position as military President. Thereupon, he assigned Chief Ernest A. Shonekan to ascend power as the head of an interim national government. With the intent of bringing back democracy, a constitution was set up in 1993 but without full implementation. The 1993 constitution marked the establishment of Nigeria’s short-lived the Third Republic. On 17th of November 1993, General Sanni Abacha –who served as the Defence Minister of the then interim government –eliminated the constitution and ended the Third Republic after overthrowing Chief Ernest Shonekan. In this manner, General Sanni Abacha became Nigeria’s sixth military Head of State.

1999 CONSTITUTION [CONSTITUTION OF THE FOURTH REPUBLIC]

After the abrupt abolition of Nigeria’s Third Republic by General Sanni Abacha, the military regime was restored and it continued until 1999 when General Abdulsalam Abubakar fulfilled his promise of stepping down from power. On the basis of the 1979 constitution, a new constitution was introduced in Nigeria in May 1999. Being a democratic constitution, the 1999 constitution paved the way for Chief Olusegun Obasanjo to become a democratically elected President. Since it was adopted in 1999, the constitution has remained effective to date. Being the first time the 1999 constitution will be modified since its introduction, two amendments were proposed and President Goodluck Ebele Jonathan endorsed them in January 2011.

**CONSTITUTIONAL DEFECTS**

1999 CONSTITUTION- The constitution is not clear on the functions and creation of the local governments. This makes local governments to be at the mercy of the other governments. Then, this issue of creation of more local governments has been a major source of conflict between states and federal governments. A classical example was Lagos vs Federal Government during Obasanjo's administration.

1951 CONSTITUTION- The colonialists still have restrictions as to what areas can be touched and what areas the people cannot not legislate over.

1946 CONSTITUTION- The elective principle was still as restrictive as under the 1922 constitution.

1954 CONSTITUTION- Too much veto power was vested in the Governor and Lt. Gov who could without accent to the bill passed by the houses.

1922 CONSTITUTION- Although there was the attempt to ensure more representation at the legislative level, there was not such a thing at the executive level.

**DEMOCRATIC GOVERNMENT IN NIGERIA**

The Nigerian government was dominated by the military till October 1979 when Democracy was, once again, restored, thus, announcing the second republic. Elections held in August 1979 and were won by the National Party of Nigeria (NPN) consequent upon which Alhaji Shehu Shagari became the president. Soon enough, corruption allegations were in constant increase against the government and thus producing tension and unrest in the country until finally the democratically elected government was again overthrown by a military coup which ensured that Major General Muhammadu Buhari became the military leader in on the 31st of December, 1983. The third republic was characterized by a little bit of drama and was aborted prematurely. The elections which held on the 12th of June, 1993 was won by Moshood Kashimawo Abiola, known as MKO Abiola. However, Democracy was not allowed to have its way as Ibrahim Babangida, the then incumbent military leader annulled the elections, hence aborting the Third Republic. Democracy took a completely different turn in Nigeria from 1999 till date. After the death of the military dictator, General Sani Abacha in 1998, General Abdusalami Abubakar who took over governance from him is known to have worked out Nigeria’s return to Democracy or Democratic rule. The election that was conducted in April 1999 ensured that the People’s Democratic Party (PDP) won as a result of which former military leader, Olusegun Obasanjo was sworn in as the President and Commander in Chief of the Federal Republic of Nigeria in May 1999. Obasanjo also won the April 13th, 2003 elections and ruled for another term as provided by the constitution. In the 21st, April 2007 elections, Umaru Musa Yar’Adua of the People’s Democratic Party was elected and sworn in. However, things took a little bit of a different turn when Yar’Adua died on the 5th of May 2010 and Goodluck Jonathan was sworn in, in his place. Jonathan completed Yar’Adua’s term and also won the 16th of April 2011 elections with 22,495187 votes. Powers, however, changed hands in Nigeria’s Democratic rule in the 28, March 2015 elections which when the All Progressives Congress (APC) won the elections and thus, former military leader, Muhammadu Buhari was sworn in.

**THE FEDERAL CHARACTER PRINCIPLE IN NIGERIA’S CONSTITUTION AND THE MANAGEMENT OF THE PLURALITY**

The “federal character” principle, which has been enshrined in Nigeria's Constitution since 1979, seeks to ensure that appointments to public service institutions fairly reflect the linguistic, ethnic, religious, and geographic diversity of the country. Application of the principle in the federal civil service and the military has amounted to a confused balancing of the merit principle and the quota system, based essentially on states of origin. This has had adverse consequences for both institutions in terms of discipline, morale, and overall effectiveness and efficiency. Faithful implementation of universal primary education and imaginative rehabilitation of secondary and tertiary education are required to ensure equal opportunities for all citizens to compete for civil service positions on the basis of merit. With regard to the military, only rapid implementation of the constitutional provision on compulsory military training and a definitive end to military rule can help to reduce the salience of the “federal character” principle.