

Constitutional amendment and our democracy

Written by Tunji Abayomi

If a Constitution is Constitutional, it is amenable and amendable according to its own prescription. In the words of Honourable B.E Everett Jordan, Chairman of the United States Committee on Rules and Administration, in spite of the fact that we should ordinarily and naturally revere the constitution, it is nonetheless “changeable too because the circumstances in which it must function require an adaptation of institutions and a refitting of modes of doing things’.

Indeed no Constitution is intended by its makers to be static, rather it is in the words of Chief Justice John Marshall (U.S. Supreme Court) envisioned that the Constitution would “endure for ages to come and consequently be adapted to various crises in human affair’. Constitutional amendment is the surest way to assure the adaptation of a valid Constitution to the changing tides in human affairs.

For me, therefore, the current issues rotate not around the value or validity of a Constitutional amendment. The central concept of Constitutional jurisprudence in the current amendment debate concerns, in my view, the fundamental principles guiding constitutional amendment doctrine and whether in our peculiar situation in Nigeria, our constitution meets the minimum test of constitutionalism to warrant the application of the encompassing amendment principles in the refitting of Constitutional modes to the changing times of our nation. But before we venture further, we need to know what a Constitution is and what it is not.

Thereafter, we need to compare what we now have or what is otherwise called the 1999 Constitution to the norms of Validity and Constitutionality or constitutional legitimacy generally accepted through the ages. Then, we can conclude on the value and validity of the current amendment efforts by the National Assembly of Nigeria.

It is now generally accepted that a valid Constitution creates the powers of state and the limitation on such powers. Thus in practical terms in the cause of governance, the validity of the acts of government is charged, changed or challenged by the written Constitution. The Constitution thus becomes far more than just a broad discretionary mandate on powers and duties that elucidate general affection and regard. Constitution has occupied among the people, in our time, solely and unalterably the primary cockpit to guide governance in all ramifications.

But perhaps its more profound authority is that it designs the nature and structure of institutions of government in a sovereign state, prescribing in general, inherent characteristics of sovereignty, including authority of government over local matters.

Among the essential characters sought to be Constitutionalised in democratic constitutions, are federalism, that is, the union of several states for common and collective interests under the division of powers within defined spheres. Another important principle of federal Constitutions worldwide is the doctrine of separation of powers. This concept is about three distinct departments of government i.e. legislative, executive and judicial set forth in Aristotles’ Politics but elaborated by Montesquieu with the idea of government of “Checks and balances” in Book XI of his Spirit of the Laws.

As Montesquieu noted “men entrusted with power tend to abuse it” Consequently, it was necessary and proper to break up the powers of government. The above entire colligation of ideas is in a constitution presumed to emerge from the minds of the people who are deemed to make a constitution

for the practice of their government.

The truth is, government itself is not expected to be inevitably involved in the formulation of the original Constitution which is presumed to precede government, let alone approving, enacting and adopting it for the people. Now of the 1999 constitution we face no contradiction to the position that it is simply not a Constitution, but a fruit of a manifestly poisonous tree, that is the tree of dictatorship instead of democracy. First, unlike any known democratic Constitution, its other name is Decree 24 of 1999. Second, it was given by a treasonable oligarchy to the people of Nigeria without the approbation of the people.

Worse still, it was made by government instead for the Constitution to make government. Still more bizarre, is its proclamation: AND WHEREAS the Constitutional Debate Coordinating Committee has presented the report of its deliberations to the Provisional Ruling Council. AND WHEREAS, the Provisional Ruling Council has approved the report subject to such amendments as are deemed necessary in the public interest and for the purpose of promoting the security, welfare and good governance and fostering the unity and progress of the people of Nigeria with a view to achieving its objective of handing over and enduring Constitution to the people of Nigeria;

AND WHEREAS, it is necessary in accordance with the programme on transition to civil rule for the Constitution of the Federal Republic of Nigeria 1979 after necessary amendments and approval by the Provisional Ruling Council to be promulgated into a new Constitution for the Federal Republic of Nigeria in order to give the same force of law with effect from 29th May 1999: NOW THEREFORE, THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows: 1.

(1) There shall be for Nigeria a Constitution which shall be as set out in the schedule to this Decree.
(2) The Constitution set out in the Schedule to this Decree shall come into force on 29th May 1999.
(3) Whenever it may hereafter be necessary for the Constitution to be printed it shall be lawful for the Federal Government Printer to omit all parts of this Decree apart from the schedule and the Constitution as so printed shall have the force of law notwithstanding the omission.

2. This Decree may be cited as the Constitution of the Federal Republic of Nigeria (Promulgation) Decree 1999. It is apparent from the above "Constitution of the Federal Republic of Nigeria (promulgation) Decree 24, 1999" that the so called 1999 Constitution is an entirely military affair. It was brought about through a Debate Committee it set up on November 11, 1998. The conclusions of the Committee was submitted to the Military Government that tore it apart as it deemed fit and later enacted it to law over us without our consent. In short even by all the "whereases? preceding Decree 24, 1999, it is clear that the so called 1999 Constitution is neither from us nor of us.

It is, therefore, clear that the Constitution is not of the people of Nigeria. If the National Assembly is of the people of Nigeria, then it should do the job it ought to do or the job the people of Nigeria gave it, which, in my view, excludes legitimizing a wrong Constitution through a wrong Constitutional amendment.