Constitutionalism, Rule of Law, and Human Rights

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Introduction
Following the amalgamation of the protectorates of Northern Nigeria and Southern Nigeria in 1914, the British colonial regime imposed the founding Constitution of 1922. The other constitutions under which the country has been governed since then have equally been imposed by either colonial or military regimes. In particular, the Constitution of the Federal Republic of Nigeria (Promulgation) Decree 24 of 1999 (otherwise known as the “1999 Constitution”) was created by the defunct Provisional Ruling Council and signed into law on May 5, 1999, by General Abdulsalami Abubakar, the last military head of state.

The document never saw the light of day until after the restoration of civil rule on May 29, 1999; however, in its preamble the constitution claims that “we the people of the Federal Republic of Nigeria” made and gave it to ourselves. As it did not derive from the Nigerian people, the late Chief F. R. A. Williams (SAN) once described the constitution as a “forged document” (Williams 2000, 8). It has, however, remained the supreme law of the country because it largely represents the selfish interests of the ruling class.

This chapter discusses the nature, scope, and application of constitutionalism as well as the observance of human rights in Nigeria from 1999 to 2007. From the conviction that constitutionalism has been subverted under the imposed 1999 Constitution, it is urgently recommended that Nigerians produce a new constitution that clearly
defines the limits of the powers of government and its social responsibilities to the people.

**Constitutionalism under the 1999 Constitution**

In liberal political discourse, constitutionalism is defined in terms of the limited powers assigned to government and the guarantee of individual rights. According to Louis Henkin, constitutionalism implies that “public authority can legitimately be exercised only in accordance with the Constitution. There can be no extra-constitutional government, no exercise of public authority by any person or institution not designated pursuant to the Constitution. There can be no continuation in office beyond the term for which officials were elected or appointed” (Henkin 1998, 11–12). In the context of Nigeria it has been said that mainstream liberal democratic thought “emphasizes the supremacy of the Constitution, pluralist and competitive party politics, the need to protect and enforce fundamental human right including cultural, economic and social rights and the separation of powers” (Olagunju, Adele-Jinadu, and Oyovbaire 1993, 31).

In exposing the myth that surrounds the concept of separation of powers in liberal democracies, I. G. Shivji has observed that “constitutional provisions provide for, regulate and allocate functions/powers to the three branches while constitutionalism presents the process as a separation of powers thus ideologically masking the unity of state power. In the bourgeois liberal model, constitution and constitutionalism are fused” (Shivji 1991, 27–28).

In order to check the arbitrary exercise of power and promote accountability in governance, constitutionalism insists that the executive, legislative, and judicial powers be vested in separate organs of government. But a holistic study of the constitution reveals that the enormous powers conferred on the president—the head of the executive organ—are a complete negation of the concept of separation of powers. Under the defunct military junta in Nigeria, all the powers of government at the federal level were concentrated in the head of state. The wide powers conferred on the president ought to be placed in proper context. The members of the Provisional Ruling Council who wrote the constitution were influenced by their dictatorial background and orientation. For them, the president required sufficient powers to govern the country effectively. Accordingly, the president