



THE UNIVERSITY OF ZAMBIA
School of Education
Department of Language and Social Sciences Education

CVE 9020: LEGAL EDUCATION AND PUBLIC POLICY

Topic 6: Lecture Notes

Topic : Varying Conceptions of Constitutionalism

6.1 Topic Content

1. Introduction
2. Marxist Concept of constitutionalism
3. Western versus eastern(socialist/communist)Concepts
4. Concept of constitutionalism in Developing Countries

6.2 Aim: To give an account of the development of constitutionalism.

6.3 Objectives: By the end of this unit you should be able to:

- 1 Give an account of the historical background of the development of Constitutionalism.
- 2 Compare and contrast constitutionalism in Britain with that of USA.
- 3 Compare and contrast constitutionalism in Zambia with that Britain and USA.
- 4 Identify and explain the various problems associated with constitutionalism in both developing and developed countries.

6.4 Introduction

Constitutionalism, as already stated, stands for a system having division of powers and an arrangement of checks and balances so that the government remains responsible; it also desires that the system be provided with adequate techniques and procedures that can bring about a systematic and orderly change. It does not stand for a particular form of government, though it may be described as essential for a democratic polity in view of the fact that it limits the powers of the government and seeks to check the 'abuse of power'. Constitutionalism is against any form of centralization of powers wherein there is no harmony between the authority of the state and the liberty of the individuals. In view of the foregoing, in this unit you will learn about constitutionalism in terms of what is contained in the Western, Marxist and Developing Countries Conceptions.

6.5 Western Concept of Constitutionalism

According to the Western Concept of Constitutionalism the provisions of the constitution not only provide for the composition of various organs of the government and the powers entrusted to them, they also attach sanctity to the norms of liberty, equality, justice, rights, etc. According to this view, the constitution is not only an end that ought to be respected by all; but also a means to an end, and such end being the achievement of security and the protection of liberty of the people. The western concept of constitutionalism stands for a constitution that is either in the form of a document, or it is like an assemblage of numerous laws, institutions and customs. The rules may either be written, or they may exist in the form of conventions of the constitution and both of them may have the same force of application. What makes a constitution, therefore, is the actual observance of recognised principles relating to the government of a country.

Whether the constitution is in the form of a document made at a particular time of history as the American constitution was made by the Philadelphia Convention in 1787, or it is in the form of numerous laws, institutions, and conventions, western concept of constitutionalism lays emphasis on this point that the basic laws of the land should be such that difference between the government of the people and the constitution of the state is discernible. The constitution is more important than the government. The constitution makes adequate arrangement for the establishment and

maintenance of restraints so that the areas of a civilised government are well preserved. These restraints may be embodied in the legal framework, they may also be in the form of informal arrangements. What is really needed is that the restraints must be effective so that the government remains limited and also committed to realise the ideas of the constitution. The problem of effectiveness “involves a factual situation and an evaluation and existential judgement of that situation. If no one has ‘absolute’ power, if in actual fact there exists no sovereign who holds unrestrained power in a given community, then the restraints may be said to be effective.”

The western concept of constitutionalism desires a ‘constitutional state’ that has a well-acknowledged body of laws and conventions for the operation of a limited government. It has a legislature, an executive, and a judiciary all required to work within the prescribed framework by following the defined procedure. If there is a change, it should be peaceful and orderly so that the political system is not subjected to violent stresses and strains. There is the rule of law ensuring liberty and equality to all; there is the freedom of the press to act as the ‘fourth estate’, there is a plural society having freedom for all interests to seek the ‘corridors of power’: there is a system that strives to promote international peace, security and justice. Thus viewed, constitutionalism becomes ‘an addiction’ to the extent and operation of a democratic political system that is fundamentally different from those system where constitution “is treated with neglect or contempt.” (Johari, 2011c).

6.6 Marxist Concept of constitutionalism.

In the Marxist concept of constitutionalism, in a ‘socialist’ country, the constitution is not an end in itself, it is just a means to implement the ideology of ‘scientific socialism’. It is a tool in the hands of the ‘dictatorship of the proletariat’ that seeks to establish a classless society that would eventually turn into a stateless condition of life. The purpose of having the constitution is not to limit the powers of the government but to make them so vast and comprehensive that the ideal of “workers’ state” is realised and ‘a new type of state’ comes into being. The real aim of the constitution in such a country is not to ensure liberty and equality, rights and justice for all but to see that the enemies of socialism are destroyed and the new system is firmly consolidated. In this way, the real aim of the constitution is “to firmly anchor the new socialist discipline among the working people.”

The Marxist concept of constitutionalism is based on the principles of a particular ideology of Marxism-Leninism according to which the state is viewed as a class institution whose *raison d'être* is to act as an instrument of exploitation and oppression by one class over another. If the bourgeois class makes use of this instrument to perpetuate its rule of exploitation and oppression over the working class, the proletariat will make use of the same instrument for the purpose of liquidating the enemies of socialism and all counter-revolutionary forces. Thus, not the constitution of the state but the policy of the Communist Party is supreme. The Marxist concept of constitutionalism, thus, stands for the system of the soviets wherein "is realised the universal participation of the working people, one and all, in the management of the state (Johari, 2011 d).

6.7 Concept of constitutionalism in Developing Countries

The Concept of constitutionalism in Developing Countries may be very difficult to suggest. This is because the precise features of the concept of constitutionalism in such countries, most of which have recently emerged as sovereign nation-states, are dependent on whether these nations have chosen a western, eastern or a mixture of the two models for achieving their idea of a social welfare state. Most of them are torn between imitating the system of some European country under which they remained for a sufficiently long period of colonial domination on the one hand, and going for a better and more workable system having much of the indigenous elements coupled with something of the 'socialist' systems of the world on the other. It is also found that several developing countries are experimenting with the imported constitutional arrangements and trying to establish a synthesis between the ideals of the liberal-democratic constitutional state on the one side and the demands and aspirations of the local people on the other. It is for this reason that countries like Zambia can be found involved in employing aspects of both parliamentary and presidential systems. It can also be found that the failure of the constitutional state has led to the collapse of the popular system and its replacement by a system of military rule that should be regarded as the breakdown of constitutionalism in most of the countries of the Third World like in Nigeria and other west African countries., Turkey, Sudan, Afghanistan, Pakistan(Johari, 2011 e)..

After the collapse of the soviet union, the case of constitutionalism in developing countries has, of late, taken a new turn as the democratisation wind of change has made most countries to incorporate the values of a western constitutional state. In Zambia, after the tailing effects of the Structural adjustment programme, a definite shifts towards imbibing the socialist values has been visible to solve the pressing problems of a nascent social welfare state. It is for this reason that essential constitutionalism principles in developing countries. Keep on wavering.

6.8 Unit Summary

In this unit you have explored varying conceptions of constitutionalism. What do you think was your major benefit from the foregoing discussion? in my view, I see you to have gained much knowledge about how these varying conceptions of constitutionalism influence governance and design of government systems. With this knowledge you should be able to analyse power relations in any given regime. In the next unit you will learn more about constitutionalism, focussing more on problems and prospects of constitutionalism.

6.9 Activity

- 1: Explore constitutionalism in developing countries, and highlight the problems and the Possible solutions to such problems.
- 2: Compare and contrast constitutionalism in Nigeria with that of Zambia
- 3: Discuss the Marxist concept of constitutionalism
- 4: Explore the western Concept of constitutionalism
5. Compare and contrast Marxist concept with western Concept of constitutionalism. In your view which one of these two would be suitable for Zambia?