

A new direction in an old constitutional wineskin?

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October 14, 2018

The Constitution of any nation, especially democracies across the world, is the foundation on which the whole state edifice rests. The philosopher— Kelsen described a constitution as the *grundnorm* of a society. It is the basic law of a people from which all other laws, actions and policies of their leaders derive their right of existence and legitimacy. In a minimal sense, a constitution embodies the set of norms creating and limiting leadership of a society, and comprising its values, beliefs and the aspirations of a people. Accordingly, the constitution is the supreme law of any society or nation. Therefore, no legislation, whether primary or delegated, bye-laws or policies of state practice should contradict or run contrary to the prescriptive dictates of the constitution of any society.

When societies decide on a document to regulate their conduct and affairs, the idea is to curb the excesses of powers or decimate the need for the exercise of discretion by their leaders. (I should add in passing that discretion is the breeding ground for authoritarianism) Constitutions are the compasses for order and organisation in every society. Also, constitutions serve as tools for predictability in governance. In olden days, societies were run by the vagaries of the mood of their rulers. Therefore, if a monarch wakes up grumpy, the entire kingdom or chiefdom would be infected by the consequences of their bad mood. The Bible records the story of King Herod who was troubled and as a result his entire kingdom was troubled too [*and all Jerusalem with him* Matthew 2:3]. Such was how pre-modern societies were run by their sovereigns. Also, an important aspect of modern constitutional charters is that they serve as a repertoire of human rights and privileges. The earliest documentary evidence of a constitutional recognition of the rights of man is the Magna Carta of 1215. Lord Denning described it as "*the greatest constitutional document of all times – the foundation of the freedom of the individual against the arbitrary authority of the despot*". The American declaration of independence of 1776 authored by Thomas Jefferson which many scholars opine was inspired by the British Magna Carta, reaffirmed that "*all men are equal and are born with inalienable rights*". However, such rights were never catalogued and are still evolving in the American society like the rest of the world.

From constitution documents emerged the doctrine of constitutionalism. Modern political scientists and scholars define constitutionalism as the process of adherence by the state and its actors and citizenry to the letter and spirit of their constitution. In essence, while constitution in an elementary sense is the document

which holds the contents agreed by a people, constitutionalism is the practice of complying with or adhering to what is stated or written down in the constitutional document. Constitutionalism is also synonymous with the doctrine of the rule of law. The rule of law is derived from the law prescribed in the Constitution. For instance, when the Constitution states that every person is entitled to freedom of liberty, it is against the rule of law for any agency of the state to detain a person without reasonable justification (arbitrarily). Therefore, the rule of law does not only exist to regulate citizens' behaviour, it also serves as a check on the agencies which implement, apply and enforce the laws and rules sanctioned by the constitution.

Sierra Leone's 1991 Constitution was designed to replace the 1978 Constitution of Sierra Leone. It was adopted during the period of global diplomatic feuds stemming from the cold war between the Western and the Eastern blocs. Although at the time of the promulgation of the 1991 Constitution socio-economic rights were already written down in an international instrument—the International Covenant of Economic, Social and Cultural rights, they were largely unrecognised by Eastern bloc countries. That perhaps might have dictated the omission of socio-economic rights in our Constitution. Even though the 1991 Constitution is the first multiparty democracy constitutional document, its contents were largely influenced by the global politics then. For instance, the President is clothed with enormous powers under the Constitution such as the unquestionable and extensive powers of appointment of both executive and judicial functionaries. And sadly, the recent Supreme Court adjudication of the declaratory supreme executive authority of the presidency has just exacerbated the already inordinate constitutional presidential prerogatives. Therefore, the American credo of presidential or executive supremacy firmly holds sway over the British parliamentary supremacy in our Constitution.

The extant Constitution of Sierra Leone has been overtaken by modern realities of governance and therefore its provisions cannot cater to the imperatives of modern conceptions of representative government and statehood. For over a decade now, the current constitution has weathered one inefficacious process aiming to revise or replace it after another. However, it seems the hostility of politics has not given way to constitutional progression. The recently concluded constitutional review process ate up several million US Dollars in a bid to assemble a modern constitution which reflect the differing but evolved streams of opinions, beliefs and aspirations of the people of Sierra Leone and global constitutional trends. But it seems divisive politics and our leaders' love for exploitation of the weaknesses of the current constitution have kept the said process in limbo.

President Bio campaigned on the mantra of “New Direction” of Sierra Leone. No doubt, that political message caught the affirmation of majority of Sierra Leoneans by granting him the legitimate mandate to usher the nation towards a new direction for at least the next five (5) years. Key amongst President Bio’s *New Direction* manifesto promises was his pledge to sanitise and restore the rule of law and constitutional supremacy. Consistent with this pledge, the President reaffirmed his commitment to return the nation to strict constitutional adherence during the State Opening of the fifth parliament of the second republic. The President admitted the dangers of having a presidency that is *beyond the limits of a Constitution* and committed himself to the discipline of refraining “*from acting unconstitutionally and scrupulously respecting the rule of law in the best interest of national development and stability*”.

To my mind and I believe many would concur that the current new direction governance paradigm should be led by a constitutional purification. There’s no gainsaying that the current constitution has been variously and unashamedly bastardised by the powers and agencies whose very duty it was and is to safeguard and uphold it. I must admit that even the current President is not excluded from the many transgressors of what ought to be supreme law of our land. The historic prostitution of the current constitution operates to disqualify the current constitution from piloting the forging of a new direction of our nation. Such a constitution that is old, inadequate and bearing all the scars of its perversion, would sabotage a quest for constitutional new direction of our nation. The vessel of the new direction should be controlled by the oars of a new, active and contemporary constitution drawing strength from various international normative standards on good governance and best practices in every facet of our society. No investment or infrastructural development can beat constitutionalism. As a matter of fact, if a society is not built on the rule of law and constitutionalism however economic prosperous it might appear to be, their foundation is terribly fragile. For instance, Libya was once considered a fairly developed nation with a GDP well-nigh that of first world countries. But many governance activists were of the view that there was no constitutional order and human right abuses were rife. Those might have been the very *casus belli* for the implosion of the Libyan state by political dissidents in 2011.

The President’s new direction drive should place premium on hewing out a new constitution and developing a national habit of respecting the black and white (the letter and spirit) of our nation’s constitution. That respect must start from the leadership at state house to the chambers of our representatives and to the

hallways of justice. There should be at the outset a sincere political atonement for the constitutional transgressions of the past. And such penance must be demonstrated by a desire not to repeat the wrongdoings of the past. The leadership of the new direction government must consistently demonstrate a new character of obedience to the supreme law of our land. Let me emphasise that to show respect for the constitution is to show regard for the people of Sierra Leone whose views, opinions and validation of state governance are captured and endorsed therein. The constitution is more than just a document of reference in regard the relationship between government and the governed. Its powers, limits and standards must be the supreme regulator of the powers, actions and policies of government.

There is a deafening urgency to get our nation a new or revised constitution which restrains autocratic tendencies of executive powers and privileges, expands fundamental human rights and spaces for citizen's participation in governance (which the current constitution lacks). I am of the view that the new direction should be driven by an advanced constitutionalism, a better constitutional decorum and respect for the laws of our country. I should concede that a new constitution does not automatically generate constitutional reverence if such political culture and mannerisms do not exist. However, with a new constitution, there would likely be a surge of new energy and renewed quest to match the ambitions of a new constitutional order consented to by all shades of opinion in our society with the shedding of propensities to disparage the new constitutional atmosphere. It behoves the new President to now translate his pledge into action by reactivating the constitutional review process and ensuring a closure to that long-drawn process. The New Direction should not be poured into the current worn-out constitutional wineskin. It would surely burst forth! The new direction ought to be marshalled and supervised by a new constitution and consummate constitutional behaviour exemplified by our leaders reflecting the evolution of our society and advancement of democratic governance in the global community of nations.