

NIGERIA'S CONSTITUTIONAL ROAD TO INDEPENDENCE

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WHEN Lord Durham, more than a century ago, recommended "responsible government" for Canada, he did not envisage the range of territories to which this concept would eventually apply. Nor did he anticipate that the communal problem there would not be solved by his prescription. Newer colonial dependencies, inhabited not by Europeans but predominantly by Asians and Africans, came also to demand representative government. This has, not surprisingly, involved a series of constitution-making experiments, because the British are said to be neither philosophical nor theoretical but empirical.

Since India, Pakistan, Ceylon and Burma achieved the status of independent nations shortly after World War II, the empirical approach could be said to have paid off handsomely. Other countries have begun to travel in the same direction. The Gold Coast has been reborn as an independent Ghana. Malaya has attained independent nationhood. The same fundamental process is taking place in Nigeria, Sierra Leone and the Caribbean Federation. Yet there is at least one important difference between the experience of constitutional development in the Asian countries and in West Africa. British policy regarding the process of the transfer of power, particularly in the Gold Coast and in Nigeria, has been officially described as one of "creative abdication of power"; whereas the policy in the Asian countries was one of fighting a rear-guard battle and grudgingly handing over power. The West African approach would, therefore, imply a far more positive and energetically pursued policy designed to bring independence more quickly than was the case in Asia.

The purpose of this article is to present a brief survey of Nigeria's constitutional development up to the present time—pointing out, where necessary, the stresses and strains which this development has involved, and finally hazarding prospects for the country's future.

Socially and ethnically, Nigeria is a heterogeneous society. It is made up of a large number of groups commonly referred to as "tribes", with different cultures, traditions, languages and ways of life. There are three major tribal groups in the country,

namely, the monarchical Moslem Hausas predominantly inhabiting the north, the equally monarchical and shrewd Yorubas inhabiting the south-west, and the pushful and republican-oriented Ibos inhabiting the south-eastern part of the country. These three major tribes are each roughly located in each of the present three main administrative divisions of the country. But, besides these three, there are several other linguistic or tribal groupings, such as, the Fulanis, the Edos, the Ibibios, etc. The population of the country, according to the 1952 census, is roughly 32 million, distributed in the three administrative regions as follows:

North—17 million; East—8 million; and West—7 million.

Politically, the geographical entity called Nigeria today is an artificial British imperial creation. Its existence was not made possible until just about half a century ago when Sir Frederick (later Lord) Lugard conquered the Moslem Emirates of what is today Northern Nigeria. British administration has since been concerned with the effort to create a single and united state out of this welter of tribes and peoples. It was not, however, until 1914, that Nigeria as a political unit came into existence with the amalgamation of Northern and Southern Nigeria. During the period, the dominant principle of government was the concept of "Indirect Rule"¹—the system whereby peoples are governed through their own chiefs or traditional heads—introduced by Lord Lugard.

For nearly a quarter of a century, Nigeria was ruled under the instrument of the Clifford Constitution of 1922. The only novel and democratic aspect of this Constitution was its elective principle, provided only for Lagos, the capital city, and Calabar, a town in the south-eastern corner of the country.

World War II had a tremendous impact on the acceleration of constitutional change in Nigeria. Other external influences, such as the Atlantic Charter and the growth of the Labour Party, helped in making for a changed outlook in British colonial policy. Internally, the social and economic ferment brought about by the war had created a radically different climate of opinion. Young men developed new visions and horizons and consequently looked for new and vigorous leadership. The emergence of dynamic nationalism under the leadership of the late Herbert Macaulay and Nnamdi Azikiwe, popularly known as

¹ For details on the working of the Indirect Rule system, see Perham, Margery, *Native Administration in Nigeria*, Oxford, 1937; see also Hailey, Lord Malcolm, *African Survey*, London, 1945.

Zik, (now Premier of the Eastern Region), the impact of the Nigerian Press, and the growth of trade unionism, all played a part in accelerating constitutional reforms through the stimulus which they gave to the demands for self government.

In 1946 Sir Arthur Richards (now Lord Milverton), then Governor of Nigeria, without consulting the people or their leaders, arbitrarily introduced his constitutional reforms. The Richards' Constitution introduced the concept of "Regionalism" by dividing Nigeria into three Regions—Northern, Eastern and Western. But, partly on account of the arbitrary manner in which these reforms were launched by the Governor and partly on account of their unpalatable taste, the Richards' Constitution was denounced and decried by all the nationalist elements of the country whose co-operation was essential for its successful working. Consequently, it did not live its full life.

During this period, two new factors affected the course of constitutional change. First, there was the Nigerian Government's initiative in the political and economic fields, coinciding approximately with the arrival of Sir John Macpherson as Governor in 1948. Secondly, there was the emergence of tribal nationalism which tended to slow down, if not to stagnate, the pace of constitutional change. Nigerian politics, as a result of the current bitter antagonism and hatred between Yoruba and Ibo leaders, immediately became an admixture of tribalism and nationalism—an unstable mixture in which, at their first encounter, the forces of tribalism appeared to prevail. It was during this period that Sir John Macpherson took the initiative to introduce his own constitutional reform.

The Macpherson Constitution of 1951 was the outcome of a complicated series of lengthy conferences, from the village and district meetings through the Provincial and Regional Conferences to the General Conference at Ibadan. One point of particular importance about these conferences is that their membership consisted almost entirely of Nigerians. The Constitution so evolved as a quasi-federal one and reproduced, to a large extent, the three regional structure of its immediate predecessor. Its most novel characteristics were the general application of the elective principle (using for the most part the method of indirect elections) throughout the country, and the introduction of the ministerial system of government which brought about the evolution of the party system of government at least in the Regions. Faced with the stresses and strains of

inter-regional jealousy and partisan hostility, the Constitution showed signs of instability and immediately broke down when in 1953 a major crisis split the Council of Ministers—a federal body charged with the task of formulating general policy for the whole country.

As a result of this breakdown of the Macpherson Constitution, a delegation of Nigerian political parties went to London in 1953 to review it. Here, one must mention the party set-up in the country. The N.C.N.C. (National Council of Nigeria and the Cameroons), under the leadership of Dr. Nnamdi Azikiwe, was the party in power in the Eastern Region; the Action Group, under the leadership of Chief Obafemi Awolowo, was the party in power in the Western Region; while the N.P.C. (Northern Peoples' Congress), under the leadership of the Sardauna of Sokoto, was the party in power in the Northern Region. Each of these three leaders comes from each of the three major tribal groups of the country. Dr. Azikiwe is an Ibo, Chief Awolowo is a Yoruba, while the Sardauna of Sokoto belongs to the Fulani ruling class over the Hausas. The outcome of the London and the Lagos Constitutional Conference was the Lyttelton Constitution. This Constitution further strengthened the power of the Regional Governments and the legislatures in relation to the Central Government.

The great disparity in the size, population (in the Northern Region is very much larger than the Eastern and Western Regions combined), and resources of the three Regions not only created suspicion and resentment but awakened deep-seated animosities and local prejudices, inter-regional and inter-party controversies, which appeared likely to undermine the federal structure and the unity of the State. These dangers would have been of less significance had the N.C.N.C., which alone preached the gospel of "one country, one God and one destiny", succeeded in winning country-wide support. Its failure left the task of holding Nigeria together as a single state to the British administration.

Ghana's independence on March 6, 1957, clearly spurred Nigerian leaders to take a fresh and bolder look at the future of their own country. Accordingly, on March 26, 1957 Nigeria's central legislature, the House of Representatives, unanimously agreed to instruct federal delegates to the Resumed Constitutional Conference in London "to demand independence or Nigeria within the Commonwealth in 1959". When, however,

the Conference resumed in London in May 1957, it was overshadowed not by the issue of independence, though all delegates had put up an appearance of unanimity on it, but by the problem of the fears of minorities, which rent it asunder. Prior to the Conference, there were strong demands for the creation of separate states notably from the advocates of a "Mid-West State" in the Western Region, of a "Middle-Belt State" in the Northern Region, and of a "Calabar-Ogoja-Rivers State" in the Eastern Region. These demands had arisen out of the fears, real or imaginary, of minority groups that they would become perpetual victims to the tyranny of the majority groups as soon as independence was attained and the protecting hand of British justice finally withdrawn.

When, therefore, the leaders of the three major delegations and that of Southern Cameroons demanded that the United Kingdom Government should undertake to grant independence to Nigeria in 1959, the Colonial Secretary, Mr. Alan Lennox-Boyd, blandly refused, saying that he was unwilling to commit Her Majesty's Government "to draw a blank cheque" in favour of Nigerian independence in 1959, when several fundamental issues, such as, regional self-government, minority issues, etc. were yet to be settled. Disappointed and rendered impotent by the Colonial Secretary's firm, if chilly statement, Nigerian leaders quickly relented and extended the target date from 1959 to a date not later than April 2, 1960. But this was a mere affirmation of hope and faith to which the Colonial Secretary, not surprisingly, replied that he had taken careful note of it.

In the meantime, the Conference decided to appoint a Commission of Inquiry to ascertain the facts about these fears of minorities in all parts of Nigeria and to propose means of allaying them. Another decision of importance at the Conference was the grant of regional self-government to both the Western and the Eastern Regions. Both Regions are now self-governing since August 8, 1957. The Northern Region, whose leaders had not hitherto demanded regional self-rule because they considered their region relatively backward *vis-a-vis* the other regions, asked to be granted regional self-government in March 1959. This was granted.

On November 23, 1957, a four-man Commission of Inquiry under the chairmanship of Sir Henry Willink, a former Minister of the British Cabinet, arrived in Nigeria to probe into the position and fears of minorities. As a result of this inquiry, hopes

were raised and inter-tribal feelings and animosities exacerbated. The demand for separate states filled the air. Yet in its recommendations,² published three months after, the Commission did not recommend the creation of a single new state. Instead it recommended that constitutional safeguards be written into the Constitution.

Reactions to the Minorities Report varied considerably. The Government took stringent precautionary measures. Yet, generally, the public, even in areas like the Mid-West where the disappointment was most felt, reacted calmly. One other inference from the Report of the Minorities Commission is that it clearly emphasized the assumption which underlay the successive Richards', Macpherson and Lyttelton Constitutions, namely, that the unity of Nigeria could most effectively be secured by building it on the three regional structures of North, East and West. Yet as the Commissioners rightly noted none of these existing Regions is by itself a homogeneous entity.

Another Nigerian Constitutional Conference began in London on the 29th September this year. One-hundred and fourteen delegates and advisers, drawn from the various parties, came to attend it. But there are very sharp differences of opinion among them. The N.C.N.C. and the N.P.C. are, barring minor reservations, satisfied with the Report of the Minorities Commission. But the Action Group has called it "a bad document" and has declared that it would not accept independence until minorities are safeguarded by allowing them separate states. It was decided to grant independence in 1960.

Behind any beyond the problems of unity and independence lies the more remote but just as important question of the prospects of democracy in an independent Nigeria. Much as it is hazardous to speculate on such an issue, it is heartening to note that there is general agreement in the declaration of Nigeria's chief political leaders that after independence the country should not only remain within the Commonwealth but should also preserve the essentials of parliamentary democracy.

There is no doubt about the sincerity of these declarations. Yet one must point out that intelligent opinion in the country, especially among the youths, seems to be inclining towards favouring the sort of "guided democracy" advocated by Indonesia's President Sukarno. This school of thought argues that

² See *Report of the Commission appointed to enquire into Fears of Minorities and the Means of allaying them*, H.M. Stationery Office, London, 1958.

the existing democracies themselves have passed through a prolonged stage of dictatorial government in which their country was forcibly welded into a coherent whole and that the task of nation-building is more a product of coercion than of consent. At the moment this school constitutes an insignificant minority of responsible leaders of opinion but they are growing and are likely to grow faster after independence.

To conclude, it is only fair to say that within the span of a lifetime of half a century, Nigeria has travelled a long way from the dark days of die-hard, if benevolent, colonialism to the bright days when she largely manages her own affairs. The journey has been short though the road has not been unthorny. It is indeed a proud reflection of Nigeria's political advance that her leaders have succeeded in carrying her through constitutional means to this height of her politico-economic advance.

Ghana has set the pace. Nigeria is racing hard to take over the leadership of Black Africa from her. But clearly the whole historical future of Black Africa will be determined by the way these two countries go. Without doubt, the issue of colour bar will help to influence their foreign policies, one way or the other. A call for the liberation of African peoples and racial equality has gone out from them—the most passionate and yet one of the most constitutionally couched appeals ever made in the history of modern nationalism. It is in the interests of the West to respond with sympathy and understanding to that call.