

## **Aristotle on Constitutionalism: A Critical Appraisal**

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**Abstract:** The moral evaluation of political power is justifiably a central subject in political philosophy. In its most important manifestation, political power is found in the state with its laws and government, which are formally and for the most part effectively supreme over all the other rules, institutions, and persons in any society. Political philosophy deals with the criteria for bringing this supreme instrument of political control under moral scrutiny, by subjecting them to moral requirements concerning their sources, limits, and purposes. This paper critically examines Aristotle's idea of constitutionalism as an alternative model to Plato's utopianism. It explores the interrelatedness of the concepts of constitution and constitutionalism. It attempts an exposition of Aristotle's political philosophy with particular attention to his analysis and understanding of the rule of law. Methodologically, this work employs the qualitative research method; it is descriptive and adopts a textual analysis of both primary and secondary texts. The epistemological value of this work consists in its provision of a clear basis for understanding and analysing state power and its applications. It posits, in conclusion, that a just law is indeed a proviso or *conditio sine qua non* for establishing and maintaining a just socio-political order or an ideal state. It recommends that the theory of constitutionalism, which constitutes the hallmark of Aristotle's politics, should be given a faithful application in the Nigerian body-politic.

**Keywords:** Aristotle, Constitutionalism, Critical, Appraisal

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### **I. INTRODUCTION**

It is one thing for a State to have a constitution and quite another thing for it to be thoroughly governed in accordance with the spirit and provisions of the same constitution of the land and other statutes that are recognized by it. The major theme of this paper is constitutionalism in Aristotle's political philosophy. It is indeed a central concept in the domain of government and politics in every political setting or, at least, all well-developed democracies around the world. It is important to note that the subject matter of political philosophy principally revolves around the notion of the state – its evolution, organization and purposes. Accordingly, political philosophers seek answers to questions such as these: What is the state and why should it be obeyed? What ends should it serve and how can it be structured to achieve these ends? What are the proper limits on state authority and when may citizens refuse to obey it? How should the state relate to other organizations in society? What is justice and how best can it be guaranteed? What is the essence of liberty and equity? Where is sovereignty to be located? (cited in Enemuo 61). Analysing and determining the moral limitations to the powers of the state over its citizens, that is, what constitutes the ideal limitations on state authority and when citizens may refuse to obey it, if they ever should, are among the gamut of important issues in political philosophy.

It is the thinkers' reasoned answers to questions such as the foregoing that constitute political ideas or philosophy. These views are naturally influenced by the personality of the thinker and the socio-political context within which he lives. In other words, political philosophy evolves, in the main, from specific times, personalities, places and often in the context of specific social and political crises. Indeed, as Chimezie Okereke has rightly noted, "Every thinker, even the most abstract, is deeply influenced by the circumstances of his day" (11). On his own part, William Lawhead outlines the fundamental and vexing questions which social and political philosophy seeks to address: What is the ideal political state? What is the purpose of the state? What makes a government legitimate? What are the proper limits of a government's power? Is civil disobedience ever justified? If it is, under what conditions is it? (xxx). These and many other thought-provoking questions are the major preoccupations of political philosophy. At any rate, political philosophy is concerned with the place of man in organized society, especially the problem of civil disorder and how best to institute man and secure his happiness and privileges as a social being (Jaja 1). These problems, generally referred to as the crises of the state, constitute the burden of political philosophy. Thus, the principle of constitutionalism in Aristotle's political theory is an articulation of his convictions that proper and smooth governance of the state requires a functional marriage between moral and legal dimensions of justice.

## II. THE MEANING OF CONSTITUTION

Constitution refers simply to the whole body of fundamental laws, customs, conventions, principles, rules and regulations according to which a particular government of a country or an organization operates (qtd. in Anyaele 128). The constitution, therefore, specifies the working of a government or an organization, the functions of its officials, the rights and duties of its citizens or members. Remi Anifowose defines constitution as:

...a collection of norms or standards according to which a country is governed. It contains statements intended to define the relations between rulers and ruled, the basic institutional framework of government, the rights and duties of citizens, and many important procedures to be followed in connection with those matters (157).

The constitution defines the conditions for the exercise of legitimate power; who shall exercise political power, how they shall exercise powers and the limits of these powers. By their very nature, constitutions everywhere are regarded as embodying the fundamentals of the political system. These fundamentals have the force of law, which is enforceable by the institutional agencies of the state. As a result of the complex nature of modern day governments, the use of constitution in order to spell out the functions and relationship among the branches of government has become a *desideratum*.

Furthermore, Henry Nnadozie succinctly states the statutory roles, functions or importance of a constitution as follows:

- i. A constitution specifies the *modes operandi* of a government or an organization.
- ii. It states the ideological direction of any government.
- iii. A constitution performs the function of stating the type of party system that a country will operate.
- iv. It maintains political stability by specifying the mode of changing the government peacefully and declaring any violent means like coup d'état unconstitutional.
- v. A constitution names the organs of government and specifies their functions and relations to one another.
- vi. It stipulates the rights and duties of citizens
- vii. A constitution is the document that specifies the types and characteristics of government either unitary, federal, presidential or cabinet system of government a country can adopt.
- viii. The constitution ensures that no organ of government should exceed the powers allocated to it.
- ix. A constitution serves as a symbol of nationhood and sovereignty.
- x. It protects the rights and liberties of individuals in a country.
- xi. The constitution specifies the mode of seeking redress when one's individual rights are infringed upon.
- xii. The constitution stipulates the form of civil service whether independent or political appointments that should be adopted in a country.
- xiii. The constitution specifies the rules under which people of a country are to be governed.
- xiv. A constitution prevents leaders from becoming too powerful and dictatorial (129-130).

In sum, a constitution is the basic or fundamental laws of the land. It is the sum total of formal and informal rules, conventions and practices by which a society is governed. It is indeed the article of faith in the realm of politics and governance. It is "a nation's basic law. It creates political institutions, assigns or divides powers in government, and often provides certain guarantees to citizens" (Edwards, Wattenberg, and Lineberry 592).

### 3.1 The Nature and Character of Constitutionalism

The term constitutionalism means that the powers of government should be defined and limited by the dictates of the body of the fundamental laws of the land known as the constitution. That is to say that the actions and activities of government and its officials should be in line with the provisions of the constitution (Anyaele 148). James Maduabuchi rightly states that "Constitutionalism means adherence to the letter and spirit of the constitution, that is, those who govern should govern according to the dictates of the law. Constitutionalism denotes the supremacy of the law" (34).

The import of the above definition is that the notion of constitutionalism is logically derived from the fundamental assumptions and ideals of constitution and the rule of law. Thus, the constitution outlines the different organs and tiers of government, their functions and their relationship to each other. It also specifies the rights and obligations of the citizens. This view is expressed by Uzochukwu Njoku and Anthony Dimkpa, who state that "The Principle of Constitutionalism is not constitution in itself but limits government and individual actions and activities according to constitutional restraint" (54). It states that nobody, no matter how highly

placed, is above the law and that the law is no respecter of persons. Jim Unah adumbrates that “This principle of constitutionalism empowers the judiciary to declare any action that conflicts with the constitutional provision as null and void and ultra vires. It also grants individuals the chance to challenge any action of government viewed as unconstitutional in the law court” (71).

It is obvious therefore that, in both principle and practice, the idea of constitutionalism entails the legal justice and, in many instances, limitation in the exercise of functions, fundamental human rights, popular sovereignty, and judicial independence. In practice, those conditions promote compliance with, or adherence to, the provisions of the constitution.

### **3.2 Aristotle on the Concept of Constitutionalism**

Aristotle’s conception of constitutionalism stems from his disdain for Plato’s communism which culminates in the latter’s choice or preference for the philosopher ruler. This, in Aristotle’s view, constitutes and represents a sort of utopia which is inherently unrealistic. Thus, Aristotle’s analysis and understanding of constitutionalism is basically a reaction or response to Plato’s political idealism which finds expression in his option of the rule by one who has acquired philosophical knowledge. Aristotle disagrees with Plato’s understanding of the mechanisms for establishing an ideal state which, for the former and contrary to the latter’s commonly known views, has to be founded on the constitution and the respect for it. It is against this backdrop that Eberechukwu Akonye aptly remarks that, “Where Plato would rely on the Rule of men, Aristotle would rely on the Rule of Law or what would be called *Constitutional Law*” (59). It should be noted, however, that even Plato in his later work, *Laws*, realized the need for a set of laws (constitutions) in the administration of justice within the state.

Constitutional rule in the state is closely connected, also, with the question of whether it is better to be ruled by the best man or the best laws. Aristotle accepts supremacy of the law as a distinctive mark of a well ordered state and not merely as an unfortunate necessity (Sabine and Thorson 100). His argument is that Plato is mistaken when in the *Statesman*, he makes government by law and government by wise ruler’s alternatives. Mel Thompson notes that, “Even the wisest ruler cannot dispense without law because the law has an impersonal quality which no man, however good, can attain” (29). As opposed to the rule by persons, however perfect, Aristotle prefers constitutional rule, for it not only checkmates arbitrary power, but also ensures accountability in public offices. This view underscores Aristotle’s conceptualization of a constitution not just as a form of government or a set of norms, but as a way of life, because it determines the moral character of a state.

Aristotle accepts constitutional rule “not as a concession to human frailty but as an intrinsic part of good government and therefore a characteristic of an ideal state” (Aristotle 99). In his own estimation, a good state must be ruled by, or according to, law. Thus, Aristotle’s main focus is on the best practicable state or constitution. Joseph Omoregbe writes that:

While Plato held onto the supremacy of knowledge in government Aristotle held onto the supremacy of law. He did not agree with Plato that knowledge alone without law, could produce a good government, there must be law. For him, in matters of government, law is more important than knowledge. If the question is asked: “Is it better to be ruled by the most learned and virtuous man or by the best constitution – the best law? Plato would answer” “By the most learned and virtuous man”. But Aristotle would answer: “By the best law – the best constitution” (15).

Aristotle is categorical and straightforward that a rightly constituted law is the final authority, and that personal authority is only desirable if for some reason. It is easy to codify laws to meet all general contingencies (Mukherjee and Ramaswamy 120). For Aristotle, “The rule of law is preferable to that of a single citizen: even if it be the better course to have individuals ruling, they should be made law-guardians or ministers of the laws” (146). Aristotle’s ideal state is characterized by constitutionally-based order. The enactment of laws and its judicious application in the governance of the state reduces reckless and unfair exercise of power, since they are impersonal as compared to rule by a single person. Aristotle’s commitment and firm belief in constitutionalism manifests in his aphorism that, “Man when perfected is the best of animals, but when separated from law and justice, is the worst of all” (446). He further contends that, “Law is reason unaffected by decrees” (100). The antithesis of constitutionalism is totalitarianism, that is, government by the unrestrained will of rulers. Regardless of the actual form or effectiveness of restraints, it assumes limitations on government as opposed to arbitrariness of rulers. It asserts that there are fundamental limits which must be observed in the relationships between rulers and ruled (Okafor 56). There are limits beyond which no just government can go.

Furthermore, Ben Nwabueze emphatically notes that:

A constitutional government is one that represents constitutionalism. The attributes include respect for the rule of law and liberty, separation of powers and a system of checks and balances, toleration of the opposition, press freedom, fearless, independent judiciary, as well as the accountability, responsibility and responsiveness of government to the people (12).

The implication of the above remark is that constitutionalism presupposes the balance or equilibrium between the stipulations of the constitution and the extent to which the government applies such dictates. It entails total compliance with the conventional provisions of the fundamental laws of the land, which are basically codified and regarded as the constitution. It thus follows that constitutionalism engenders the protection of fundamental human rights (in as much as those rights are enshrined in the constitution), the sanctity of separation of power operating *vis-à-vis* the political doctrine of checks and balances, with a view to subjecting the preponderance or dominance of one organ of government to some measure of control. In the same vein, Nwabueze further adds that:

Constitutionalism is thus government based on rules rather than caprice and arbitrariness. It is the essential attributes (sic) of a government conforming to the dictates of a settled constitution. While constitution is the chasis, the skeleton or essential frame of orderly government, constitutionalism is the process of orderly government involving a system of effective, regularized restraints on the exercise of political power. The goal of constitutionalism is constitutional government (11).

Aristotle expresses his deep commitment to the workability of constitutional rule by proposing three fundamental theses portraying the authenticity of constitutionalism in the operational workings of government and politics *vis-à-vis* the application of state power. First, it is rule in the public or general interest as distinguished from a factional or tyrannous rule in the interest of a single class or individual. Second, it is lawful rule in the sense that government is carried on by general regulations and not by arbitrary decrees, and also in the vaguer sense that the government does not flout standing customs and conventions of the constitution. Third, constitutional government means the government of willing subjects as distinguished from a despotism that is supported merely by force.

#### IV. CONCLUSION

In this paper, we have argued that constitutionalism is the total compliance with, or adherence to, the dictates of the constitution. Aristotle's view on constitutionalism is that a just and an ideal state is one ruled by the provisions of a just law, and not the governance of a supposedly wise or learned or virtuous ruler of Plato's *Republic*. Constitutions that promote the general well-being of the governed are true or good, according to Aristotle, whereas those that infringe on the rights and negate the interests of the ruled are bad or perverted. In the final analysis, Aristotle believes that sincere application of the rule of law is a precondition for attaining an ideal state – the most suitable socio-political order. Given the pervasive lure of absolutism to most holders of governmental powers, the doctrine of constitutionalism serves to limit governmental power and to define the legitimate latitude of powers to be exercised by those who hold public office and exercise political authority. It is a check on arbitrariness in the exercise of political power.

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