

CHALLENGES OF INCORPORATING AND ENFORCING A BILL OF RIGHTS IN THE CAMEROONIAN CONSTITUTION

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1. Introduction

Cameroon has gone through several constitutional changes since its independence in the aftermath of the Foumban Conference of 1961, a plebiscite of February 11th led to the suppression of the existing two Prime Minister portfolios and the creation of the position of Vice-President.² The advent of the United Republic of Cameroon augured the birth of the June 2, 1972 Constitution. Thereafter, recommendations of the so-called Tripartite Conference that took place from October to November 1991 formed the basis of the 1996 Constitution. It is noteworthy that from the Federal Constitution of the independence years to the recent amendment of April 2008, the place of fundamental rights in the Cameroonian legal order remains a matter of concern.³

The purpose of this contribution is threefold: (1) define constitutionalism; (2) show the centrality of constitutionalism in any given system; and (3) offer a cursory analysis of the universality of human rights. Based on examples drawn from the United States of America and the Republic of South Africa, my discussion coalesces around the amended version of the Cameroon's 1996 Constitution. It is the contention of this essay that Cameroon should clearly and unequivocally integrate socioeconomic and political rights in its constitution, as well as adopt definite measures for their enforcement by state organs. To sustain my argument, I give a brief appraisal of democratic change and human rights

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² J Benjamin West, *Cameroonians: The Minority in a Bi-cultural State* Les Presses de L'Université de Montréal, Canada (pp. 159 -162).

³ See the 1996 Amendment to the 1972 Constitution of Cameroon (<http://www.camlaw.org/LaconstiE.html>) accessed 26 February 2008.

from the prism of constitutional jurisprudence before discussing the applicability of the universality of human rights to Cameroon.

2. Democratic Change in Constitutional Jurisprudence

Based on John Locke's "theory of government" and the republican ideology espoused by the Founding Fathers of the American republic, constitutionalism rests on the fundamental postulate that government can and should be legally limited in its powers, and that its authority depends on its observing these limitations.⁴ Equally stated, constitutionalism refers to the fact that a government should derive its powers from a written constitution. By restraining government powers to those enshrined by the supreme law of the land, constitutionalism limits coercion and abuse of powers in two ways.

The first mechanism is the restriction of state power through the division of labor between various state agencies. Initially coined by Montesquieu as "separation of powers," this procedure gives room for certain forms of power to be exercised only by certain institutions in accordance with set procedures.⁵ In the formative days of the Enlightenment, Montesquieu constructed a naturalistic approach of various forms of governments to justify how public authorities might be preserved from corruption and serve the common good. The French scholar argued that despotism "could best be prevented by a system in which different bodies exercised legislative, executive, and judicial power, and in which all those bodies were bound by the rule of law." Needless to say, the separation of powers had an enormous impact on constitutional and liberal political theory.

⁴ John Locke (1690), *Two Treatises of Government* (various editions) especially Book II, Chapters XI-XIV (1690); Ronald Dworkin, *Freedom's Law: The Moral Reading of the American Constitution*, (Cambridge: Harvard University Press, 1996). On more on constitutionalism, see Stanford Encyclopedia of Philosophy, <http://plato.stanford.edu/entries/constitutionalism>.

⁵ Montesquieu (Baron de), *The Spirit of the Laws*, tr. Thomas Nugent, ed., F. Neumann (New York, 1949); *Persian Letters*, trans. C. J. Betts, (Harmondsworth UK: Penguin Books, 1973); Robert Shackleton, *Essays on Montesquieu and the Enlightenment*, ed. David Gilman & Martin Smith (Oxford: Voltaire Foundation at the Taylor Institution, 1988); Carrithers, M. Mosher, and P. Rahe, eds., *Montesquieu's Science of Politics: Essays on The Spirit of the Laws*, Lanham MD: Rowman & Littlefield, 2001; Anne Cohler, *Montesquieu's Comparative Politics and the Spirit of American Constitutionalism*, Lawrence KA: University Press of Kansas, 1988.

The second-widely used restraint mechanism is the inclusion of Bill of Rights in national constitutions. This is generally a clear restatement in the corpus of the constitution of specific rights that everyone ought to have vis-à-vis the state.⁶ Aside from the fact that the foundation of liberty, freedom, and peace are all buried in a Bill of Rights, the thrust of the matter is that the government may not use its powers in a way that violate any of the listed fundamental rights.⁷ In some progressive systems like South Africa, the Bill of Rights is also enforceable against private individuals in accordance with the “horizontal theory.”⁸ All in all, if associated rights such as constitutional supremacy, justiciability and entrenchment are left out, then the limitation on the power of government will be ineffective.⁹

In spite of their history based on unequal race relations, South Africa and the United States of America stand among the two nations that have made considerable achievements in the codification, adjudication, and implementation of the Bill of Rights. Both countries can boast of well outlined and defined Bills of Rights that work effectively in the legal and political landscapes. It remains, therefore, to be seen how Cameroon could borrow from such experiences.

3. Universality of Human Rights and the Cameroonian Constitution

The basis of the universality of human rights is best stated in the Preamble to the Universal Declaration of Human Rights (UDHR), which proclaimed it to be:

“ [a]common standard of achievement for all peoples and nations, to the end that every individual and every organ of society shall strive by teaching and education to promote respect for these rights and freedoms and by

⁶ Historically, the whole theory of Bill of Rights emerged out of the English Bill of Rights of 1689, an Act of the Parliament titled “*An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown*,” (1 Will. & Mar. Sess. 2 c. 2). Alongside the Magna Carta (1215), the Act of Settlement (1701, 12 & 13 Wm 3 c.2), and the Parliament Acts (1911, 1949), the Bill of Rights or Declaration of Rights, as it came to be known, formed the stronghold of the British judicial system and was later on adopted by other countries.

⁷ Floyd A. Harper, *Liberty: A Path to its Recovery* Irvington-on-Hudson, N.Y. Foundation for Economic Education, 1949

⁸ Alfred Cockrell, “Private Law and the Bill of Rights: A Threshold Issue of Horizontality,” in *Bill of Rights Compendium*, (Durban: Butterworths, 2001), p. 3A – 318.

⁹ Johan De Wall, Ian Currie & Gerhard Erasmus, *The Bill of Rights Handbook*, (Juta & Co Ltd 2001), p. 7.

progressive measures, national and international, to secure their universal and effective recognition and observance.”¹⁰

Some scholars have contended that universality is drawn from various principles of natural law, morality, philosophy or anthropology.¹¹ The starting point according to Barney Pityana, ex Chairperson of the South African Human Rights Commission, is that all cultures and systems have standard rules or practices which show respect for human beings, and that norms of natural justice govern humankind and the community of civilized nations.

The Constitution of Cameroon of 1996 does not have any Bill of Rights. Though the fundamental law refers to political and socioeconomic rights, rights to development and peace, these rights are all buried in the preamble rather than outlined in a well organised Bill of Rights. This situation is deplorable in so far as fundamental freedoms do not always have the importance and protection they deserve. As result, civil and political rights, prison conditions, torture, and the electoral process, for instance, remain wanting. As far as socio economic rights are concerned, the enjoyment of the rights to housing, healthcare, drinking water, and education is hindered by the principle of “progressive realisation”.

Having regard to this legal loophole, there is need for the National Assembly to fully and unequivocally integrate the Bill of Rights into the body of the Cameroonian Constitution. This will go a long way in the promotion and defense of the rule of law. This process will entail, arguably, the upholding of accompanying guarantees such as constitutional supremacy, justiciability, non

¹⁰ UN General Assembly Resolution 217A (III) of 1948, adopted by 48 votes for with none against and 8 abstentions.

¹¹ Y. Ghai, “Universalism and Relativism: Concretising the Debate,” (unpublished paper distributed by the International Council on Human Rights Policy, Geneva, June 1999), C. Brown, “Universal Human Rights: A Critique,” *International Journal of Human Rights* 1(2)(1997)41-65, all quoted by Barney N. Piyana, “The Challenge for Culture for Human Rights in Africa: The African Charter in a Comparative Context,” in M. Evans and Rachel Murray, *The African Charter on Human & Peoples’ Rights The System in Practice*, 1986-2000, (Cambridge University Press, 2002), p. 219.

interference with legislative debates, and entrenchment, thereby establishing a good governance platform for the protection of the individual against the state.

4. Conclusion

The aim of this contribution was to argue for a need for a constitutional reform especially the introduction of a Bill of Rights in the Cameroonian constitution. At the outset, constitutional reform alone is not the panacea for democratic change and the rule of law. Having regard to the Cameroonian context, additional steps that should be taken include the establishment of the Constitutional Court, an independent electoral body, as well as other institutions provided by the Constitution. Moreover these institutions must be manned by people of good will and integrity. Only such an approach could save the country from constitutional chaos and disorder.