COVENANT UNIVERSITY NIGERIA

TUTORIAL KIT
OMEGA SEMESTER

PROGRAMME: POLITICAL SCIENCE

COURSE: POS 422

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POS 422: POLITICS AND LAW IN AFRICA

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QUESTIONS

1. **Critically evaluate the several factors that have been adduced for the failure of the post-colonial African states.**

2. **Critically discuss the failure or the success of the judiciary in the Fourth Republic**

3. **Critically discuss the interactions between politics and law with specially focus on Africa.**

4. **Compare and contrast colonial and post-colonial practice of leadership**

5. **Discuss extensively the several types of colonial rule in Africa and the factors that aided colonialism in Africa.**

6. **Evaluate the effects of the imperialist states on contemporary politics in Africa.**

7. **Discuss the nature and the features of law in the pre-colonial African societies.**

8. **Discuss the role of citizenship in promoting good governance**

9. **Examine the connection between good governance and democratization experiments in Nigeria, using the case study of the Fourth Republic politics.**

10. **Critically evaluate the limits of politics in the context of democracy.**

11. **Discuss the two factors that explain the interaction between the state and law.**

12. **Discuss the fundamentals of democracy vis-à-vis the Nigerian State.**

13. **Discuss the concept of Military Rule/One Party State in Africa**

14. **Outline and discuss the damages or the good military rule has done to most African States**

15. **Discuss the interaction between Law and Politics in Nigeria in context of the Nigerian State**

16. **Discuss the obstacles to development in Africa**

17. **Discuss the nature and character of the Military government.**

18. **Outline and discuss both positive and negative impacts/effects of colonialism on African societies.**

19. **Discuss the concept of constitutionalism**

20. **Discuss the factors that can promote good governance in Africa.**

MODEL ANSWERS IN ALTERNATE SEQUENCE (ODD NUMBERS)

1. **Critically evaluate the several factors that have been adduced for the failure of the post-colonial African states.**

■ The colonial state was absolute and arbitrary

■ Political independence only brought changes in the composition of state managers

■ The state continued to be totalistic in scope(statist economy)

■ The state continued to present itself as an apparatus of violence

■ Its narrow social base was not broadened

■ Just like the colonial state,it continued to rely on coercion for compliance rather than authority

■ All these were so because political independence in Africa was short of being the neroic achievement that was touted, but a convenience deradicalization by accommodation and integration of the political elites

■ These elites desirous of retaining power, were not interested in broadening the social bases of state power nor serving the general interests of the people

■ The only change that occurred, was the proliferation and intensification of conflicts within the nationalist coalitions

■ The nationalists movements had been a coalition of disparate groups united by common grievance against colonial oppression

■ Thus, solidarity weakened as the reality of independence dawned

■ Who controls the enormous power of state as the colonialists recedes, created tension and conflicts among factions of the nationalist movements

■ The forces of centrifugalism within the coalition became prominent as political competition arises from mutual alienation

■ More value was placed on capture of political power as the inevitability of pulling apart within the nationalist coalition became manifest

- Along with this was the fear that gripped factional members of the consequences of losing to rivals
- It was this that elevated the premium placed on political power
- Given these scenario, the rival elites has no choice but to politicize national, ethnic and communal formations in their quest for power
- This weakening of a cross national and ethnic solidarity was at a great cost
- This is because it engendered strong divisions and exclusivity in the society that further intensified political competition
- This tendency reinforced the use of state power to strengthen the material base of these ruling elites so as to sustain their hold on power
- The result is the manipulation of primordial division which promoted outbreak of conflicts across the length and breadth of Africa.
- **But why has the African state failed to deliver?**
- First is that the inherited state at independence was a violent and undemocratic and privatized structure
- The state was not designed for efficient delivery of services
- The state was insensitive to local needs and values
- It imposed taxes, levies, fees and laws at will without consultation
- Its primary concern was the maximization of profit and extraction of surplus to satisfy the interest of metropolitan state and dominant classes
- It relied on extreme force and used its military power to visit violence on African communities without hesitation
- Its economic, political and social programme were informed by a pathological fixation on satisfying the greed of Europeans merchants and consumers
- This state structure was not dismantled at independence
- Therefore the post-colonial state lacked autonomy and legitimacy
- It relied on manipulation and intimidation
- It became an instrument of accumulation for a weak capitalists class
- It was this character of the state that turned it into an arena of struggle between groups
- Their concern being how to penetrate it and use it to support all sorts of primordial claims

3. **Critically discuss the interactions between politics and law with specially focus on Africa.**

- Simply put law is the output of politics and politics operate within the confines of law.

- In this sense we can say that law and politics are twin concepts that affect one another.

- Law and politics in this discourse is not limited to the national realms but also extends to the international arena

- In which case, what are the basic characteristics between national and international law and politics.

- The law functions in relation to politics in three basic aspects, namely as a goal, a means or an obstacle.

- First, politics can define certain predominantly legal values or institutions as its goal.

- In this case the political understanding of the same values or institution becomes almost identical to an authentic legal understanding of the same values or institution (democracy)

- Second, politics can comprehend the law merely as a means for the fulfilment of certain political interest

- In this case politics is neutral in its attitude towards the law (i.e. electoral process)

- Finally politics can interpret law as an obstacle on the way toward the realization of certain political goals. In this situation either politics prevails over law, or vice versa.

- In the first case politics effectuates its solutions at the expense of rule of law, while in the second case the autonomy of law is preserved through the decisions of the highest courts or by other actions taken by lawyers, intellectuals, association, organizations and the public in order to stop illicit acts of political actors.

- Law and politics create their own particular picture of reality. Sometimes those picture overlap, sometimes they differ

- But the central question to answer in this discourse is what relationship exist between the politics and law?

- In answering this question, the appropriate approach suggest that we simply identify any two attributes of politics and see how these attributes represent or are expressed by law.

- For example, sovereignty and government (population, territory).

- A critical observation clearly shows the existence and reality of law.

- In other words, all attributes of politics have legal characteristics, for instance the sovereignty of the state represent the supreme and overwhelming powers of the state
- In this sense, state power operate over a given territory, the powers of that state are both ultimate, decisive, final and universal.
- It also means that the powers of that state over its territory are of lasting legal implications.

  In the legal arena, sovereignty is not only of political relevance but it represents the legal expression of the state's existence

5. Discuss extensively the several types of colonial rule in Africa and the factors that aided colonialism in Africa.

a. Economic Companies: European nations early in colonial adventure allowed establishment of private companies that were granted large territories to administer in Africa formed by Businessmen interested in exploiting natural resources companies set up systems of taxation and labour recruitment

2. Direct Rule
Model used by the French, Belgians, Germans and Portuguese
    -centralized administration (urban centre
    -assimilation (civilize African societies)
    -did not negotiate governance with indigenous African rulers/governments
    -indigenous authorities was subordinated
    -divide and rule policies that weakened indigenous power networks and institutions
3. Indirect Rule
- used primarily by the British
- use of indigenous African rulers within framework of colonial administration
- more cooperative model than direct rule
6. Settler Rule
- colonialism where Europeans imposed direct rule on their colonies
- significant numbers of immigrants settled in colonies
- Settlers planned to make colonies permanent home
- Settlers demanded special political and economic rights and protection
- -security and prosperity for settlers on economic exploitation and political oppression of African population
- -settler colonies include South Africa, South/Northern Rhodesia (Zambia/Zimbabwe), Angola, Mozambique, South West Africa Namibia)
- -these settlers were from Holland, Britain, Germany and Portugal

Factors that aided colonialism

- Colonialism is a political system in which an external nation takes complete control of a territory in another area of the world
- 19th century was a **time of industrialization in Europe**
- Which meant that **the motivation for colonialism was to seek raw materials and market**
- Another motivation for colonialism **is the competition between European nations** (wars, colonial expansion led to scramble for Africa 1885-1910)

- **Another motivation for colonialism is racial Hierarchy**> many Europeans viewed themselves as the most advanced civilization in the world and some saw it as a mission to enlighten and civilize people in rest of the world(feeling of racial superiority and responsibility- see Rudyard Kipling's Whiteman Burden)
- **Christian missionary activity lend support and legitimacy**> European control provide political environment that would facilitate missionary activity
- **Another motivation for colonialism is willingness of African leaders to sign treaties** for various reasons including benefit to gain from European alliances

7. **Discuss the nature and the features of law in the pre-colonial African societies.**
a. Emphasis on Conciliation and Compromise

b. Emphasis on General Principles

c. Group Responsibility

d. Infrequent use of informal Enforcement Procedures. Legally sanctioned Self-Help

e. The Morality Question

9. **Examine the connection between good governance and democratization experiments in Nigeria, using the case study of the Fourth Republic politics.**

Elements. Good governance comprises the existence of effective mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences. Its essential characteristics are:

(a) *Participation.* All men and women should have a voice in decision-making, either directly or through legitimate intermediate institutions that represent their interests. Such

broad participation is built on freedom of association and speech, as well as on the capacity to participate constructively.

(b) *Rule of law.* Legal frameworks should be fair and enforced impartially, particularly the laws on human rights.

(c) *Transparency.* This concept is built on the free flow of information. Processes, institutions and information should be directly accessible to those concerned, and enough information should be provided to render them understandable and monitorable.

(d) *Responsiveness.* Institutions and processes should serve all stakeholders.

(e) *Consensus orientation.* Good governance should mediate differing interests in order to reach broad consensus on the best interests of the group and, where possible, on policies and procedures.

(f) *Equity.* All men and women should have equal opportunity to maintain or improve their well-being.

(g) *Effectiveness and efficiency.* Processes and institutions should produce results that meet needs while making the best use of resources.

(h) *Accountability.* Decision-makers in government, the private sector and civil-society organizations should be accountable to the public as well as to institutional stakeholders. This accountability differs depending on the organization and whether the decision is internal or external to an organization.

(i) *Strategic vision.* Leaders and the public should have a broad and long-term perspective on good governance and human development, together with a sense of what is needed for such development. There should also be an understanding of the historical, cultural and social complexities in which that perspective is grounded.

11. Discuss the two factors that explain the interaction between the state and law.

Two broad reasons have been given as explanations for the dependence of the state on the reality of law;

1.Technical and organizational factors

2. Political Factors

Technical Factor

- Law defines the competence of state organ

- This is to promote precise and coordinated workings of the machinery of state
- The intension here is to ensure, preserve and sustain order
- Again the introduction and implementation of law is placed as the base of state existence and serves as litmus text
- This provides avenue for assessing the activities of government.

Political Factor

- Politically, state need law to define relationship between government officials, branches of government and the ordinary citizens.
- This is crucial to sustaining the rule of law.
- Most importantly law is needed to empower and delimit all category of citizens both ordinary and state officials.
- The state also requires law to control and contend intra and inter class contention arising from conflict of interests and issues of property relations (minimum wage and labour law, contract laws).
- On this premise, laws form the basis for regulating all sorts class struggles.
- For instance, the military which represents one of Nigeria's most outstanding ruling classes is best put under check using the instrumentality and logic of law for ensuring that while pursuing its professional interest, it does not engender instability or undermine the component existence of the Nigerian state
- The third factor has to do with the concept of legitimacy.
- In order for government to have legitimacy that government must be seen to be averagely linked to the rule of law.
- The state therefore requires legitimacy rooted in law to justify its claim to power
- Finally to be seen as a neutral public umpire, the state itself need to acquire the prestige of legitimate lawful authority via the promulgation of laws which must appear presumably to be in the interest of all.

13. Discuss the concept of Military Rule/One Party State in Africa

- The decades of the late 1960s up to the 1990s was a period replete with profligacy of 'bigmanism' in Africa.

That was the period when almost all of Africa except Botswana and Mauritius were dominated either by a military or one-party dictatorship.
The questions to draw from here are as follows;
How did this scenario arise? What were the conditions that warranted the development? What philosophical bases sustained this tendencies? And what were the nature of politics and law under this dispensation?

- No doubt, the colonial experience cannot be gleaned aside when any issue of social life in Africa is discussed

- That is to say therefore that the phenomenon of bigman and personalized rule is conversely related to the character of the colonial state.

- This state was violent, undemocratic and privatized and was not constituted to deliver services

- It combined the powers of the three arms of government and remained insensitive to local values and needs

- It imposed taxes, levies and fees at will without consultation

- In fact the economic, political and social program were tailored only to ingratiate European greed

- This state structure was not dismantled at independence, instead was Africanized and handed over to carefully nurtured political elites that were only hungry for power

- This state has limited legitimacy and lacked hegemony

- The social forces that inherited power had a narrow range of interests which made it difficult for it to be endeared with any veneer of legitimacy

- The implication here is that government continue to rely on violence and coercion which ultimately delinked it from the society-making mobilization for development extremely impossible.

- This state which was unable to emerge as a relatively autonomous force became the primary instrument of accumulation for a weak capitalist class (marginalized by colonial economy)

- The struggle that ensued centred on how to penetrate it and use it to support primordial claims which contributed to the fragility and instability of the state

- This made it easy to find excuses for subverting the constitution directly and indirectly

- Welcome to a new era of military domination and one party state in Africa

- Inevitable as this development is, one party state or military intervention were foisted on African people in the name of national unity

- Dissent was suppressed with utmost violence

- In the countries where one party state was imposed such as Tanzania, Zambia, Zimbabwe, Kenya, Gabon, Ivory Coast, all political activity was to be conducted by or under the auspices and control of the party

- In the constitutions, declaration such as the one that reads; '*all the provision of the constitution shall be pursued subject at all times to the jurisdiction of the party*' are very prominent.

- This is a ridiculous appropriation of powers by a single party controlled by an individual and his cronies

- The same with countries where the military became dominant such as Nigeria,Ghana,Benin,Uganda,Zaire (Congo DR)

- In these countries, the constitutional processes suffered because they were suspended by the military interlopers who governed by decrees

- Most often outer clauses were introduced to restrict judicial intervention

- The brutal nature of these regimes, ensured that they do not brood any kind of opposition, most of whom were imprisoned, killed or exiled

- The press is gagged either through incorporation or repression via decrees such as decree 2 and 4 in Nigeria

- In some countries like Nigeria, transition to civil rule programme were instituted as a legitimating ploy, more as to entrench the regimes than to inaugurate a civilian democratic dispensation

- In some others, such as Benin (Kereku), Gabon (Bongo) and Liberia (Doe), the military leaders transmuted into life presidents through bogus elections

- In all, the dynamics of the international system and politics of the cold war did much to perpetrate and sustain this development

15. Discuss the interaction between Law and Politics in Nigeria in context of the Nigerian State

- The view that politics and law are twin concepts that reinforces each other has truly reflected in the Nigerian polity.

- Nigeria is a diverse country that was created by British colonialism

- Before now, political and legal development were at varying stages of development in the different societies that constitutes Nigeria.

- In the Northern part of the country, legal and political developments have attained high level of sophistication due to the influence of Islam

- In the south, a legal and political systems that kept society in cohesion were operating in the different societies ranging from highly centralized, semi-centralized to stateless societies.

- But colonialism imposed new values and ways of life, creating a state that was built on exploitation and designed not to serve the needs of the people

- Though, the North of the country and south of the country were amalgamated in 1914 the regions were not really together

- The Native Authority Ordinance and the administrative style of indirect rule localized politics and limited avenues for Nigerians to interact and understand themselves

- The impact of these was most visible in the **politics of decolonization**, as the country was polarized along ethnic line

- Parties took up ethno-regional identity and the major parties made the regions a closed shop

- Control for the centre turned into a bitter rival contestation between the major parties and by implication the major ethnic groups

- Bickering and disagreements created tension

- These gave the military the excuse to upset the first constitutional government in Nigeria

- Other developments led to a civil war, which among other things sustained the condition and justification for a prolonged military rule

- The impact of military rule was most profound in the Nigerian polity in many ways

- For instance, the structure of Nigerian federalism, revenue allocation and the frequent constitutional making processes

- The repressiveness, arbitrariness and high handedness of the military left its mark on the political culture and the reluctance of the military leaders to vacate office polarize the polity

- But in 1999,the country finally transited to democracy, thus changing the political and legal dynamics in the country.

- A civilian constitutional democratic government, meant that quite a lot of changes were bound to occur in the perception and way things were done in Nigeria

17. Discuss the nature and character of the Military government.

The manifestation of this character is clearly shown in:-
- Arbitrariness

- Lack of accountability

- Lack of representation and consultation

- Command and obey syndrome

- Intemperate language

- Impunity

- Total absence of debate

- Intimidation of civil rights activists

- Repression of popular forces

- Absence of rule of law and due process

- Emasculation of the judiciary through ouster clauses

- Indeed the military made the most impact in shaping the character of the post-colonial Nigerian state

19. Discuss the concept of constitutionalism

Constitutionalism revolves around the twin issues of individual rights and limited powers of government. This makes room for rule of law, separation of powers, periodic elections, independent, judiciary and the right of private property. Therefore constitutionalism is a prerequisite for every functional nation-state.
But what is a constitution?
-Can be referred to as a power map.
-it delineates concerns on ways to apply Hobbesian concept of covenant.

-it could be basic constitutive process
-code of conduct to which public behaviour should conform
-a program of social, moral, political or cultural existence/ideal policy should strive

Constitutions normally reflects the specificity of particular societies. But in doing this, lessons and experiences can be drawn elsewhere. Constitutions therefore must reflect historical experiences, culture, tradition and hopes. Its dynamism has to reflect the past, present and anticipate the future. This makes constitutions an instrument of development, not just a document (it has to serve the people).

- For constitution to work, it has to be inclusive in that the people must understand it and take part in making it
- When such happens, then the people will be willing to identify with it
- Thereafter we can say that the constitution is valid and legitimate
- From the foregoing, can we confidently assert that constitutions in Africa are valid and legitimate?
- Many constitutions in Africa are valid but not legitimate. Valid in the sense that it correctly confers powers on certain persons who are implementing it
- But not legitimate because it preclude the people who do not accept it. Even constitution that articulates democratic values and principles but lacks popular participation suffers on the legitimacy criteria and may not succeed to generate development
- Therefore, a democratic constitution is a necessary condition for the development of a democratic constitutionalism.
- This is because democratized constitutional process confers legitimacy to the document
- Therefore constitutions apart from asserting the sovereignty of the state should also provide basis for controlling state power.
- -Form a basis of involving the people in the political process;
- -It should articulate the aspiration of all communities and individuals in society
- A firm understanding brings us to the issues of constitutionalism which implies that constitution cannot be suspended, circumvented or disregarded by political organs of government
- That a constitution can only be amended by procedures appropriate.
- That public authority can be legitimately be exercised only in accordance with the constitution
- That there should be no extra-constitutional government
- No exercise of public authority by any person or institution not designated pursuant to the constitution
- No continuation in office beyond the term specified
- Constitutionalism connotes a living document accessed, understood, owned and deployable by the people in defence of individuals and collective rights in democratic enterprise
- All the aforementioned has been the bane of Africa.
- The African experience has been constitutions made by 'technical committees' which does not give room for a process led constitutional system.