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# CONTENDING ISSUES IN THE PRACTICE OF DEMOCRACY AND FEDERALISM IN NIGERIA

**Dr Kelvin Ashindorbe**

Department of Political Science and International Relations  
Chrisland University Abeokuta, Ogun State, Nigeria  
kashindorbe@gmail.com

### ABSTRACT

*In a federal system, the levels of government must be in coordination with one another, while simultaneously functioning on an independent level. These two factors are fundamental to the sustenance of any federally designed administration. The Nigerian federal system falls short of this criterion, such that it has become contentious to categorise Nigeria as a true federal system. The sub-national units lack autonomy and the majority depend solely on federally allocated revenue to fund their administration, while internal security of the vast country depends almost entirely on poorly funded federal police. Democratisation has enabled several aggrieved groups to express their angst and displeasure with the way the country is structured. This study interrogates these contending issues in the practice of democracy and federalism in Nigeria. The study employed theoretical analysis of the concept of federalism from the perspective of the devolution of power and formulated a deductive hypothesis about the potential consequences of the concentration of power in a diverse country. It identified the prevalence of minority marginalisation, over-riding legislative power of the federal over state governments, federal dominance in the economic management of the country and unitarily structured police as contending*

*issues in the polity. To conclude, the study recommends an equitable distribution of economic opportunities, devolution of powers and the creation of multi-level policing as viable solutions to addressing these concerns.*

**Keywords:** autonomy, centralisation, democracy, economic management, federalism

## 1. INTRODUCTION

Federalism is a form of government where a political organisation participates in sharing powers and roles in a coordinated manner. Federalism is considered suitable for heterogeneous and culturally variegated countries. Wheare (1963) outlines some fundamental requisites for a true federal system, which entails the existence of at least two levels of government possessing powers divided among them on a constitutional basis. Essentially, the levels of government must simultaneously coordinate with each other and be independent. The requirement of independence of each level of government must manifest in revenue allocated and the economic management of natural resources among the different levels of government. This coordination is required to ensure that the distribution of legislative powers, between the central and regional governments, and the powers of the central and regional governments are not subject to change by the other levels of government (Smiley, 1987). The way and manner in which a federation evolved may also determine how the different levels of government play out in practice and the potential contending issues that may arise.

Three types of federations have been identified in the literature. First is the ‘coming together’ federation, which is the voluntary union of previously independent states with a common culture. Second is the ‘holding together’ federation, which is multi-ethnic a federation, is formed through a process of democratic bargaining. Third, is the ‘putting together’ federation, which is

established through a strong coercive effort by a non-democratic centralising power to put together a multinational state (Stepan, 1999). This third type of federation lacks a democratic base and, as such, is proven to be the most unstable of the federations. Additionally, this third federation started with three regions created under the 1954 Lyttleton Constitution, four regions under the Republican constitution of 1963, and presently has 36 states (Osieke, 2006).

The Nigerian system mirrors the third ‘putting together’ federation. Almost two decades since the country’s return to democracy, through four different democratically elected presidents and two different political parties, many of the issues hindering the proper functioning of the federation and deepening the substance of democracy remain largely unresolved. These are subsequently creating disaffection between the federal and central government. The foregoing provides the background and motivation to interrogate some of these salient issues bedevilling the practice of federalism and democracy in Nigeria.

## **2. LITERATURE REVIEW**

Federalism is a form of governmental and an institutional structure designed to cope with the difficult task of maintaining unity while also preserving diversity. Benz and Broschek (2013:1) refer to federalism as a “moving target” that continues to present significant difficulties on how to explore its origins and developmental patterns. Again, Wheare (1963:10) conceives it as “the method of dividing powers so that the general and regional governments are each, within a sphere, coordinated and independent”. King (1982) explains federalism as a dual concept of ideology connoting a balance between autonomy and independence and institutional arrangement, where the central government incorporates regional units into its decision-making process.

Halberstam and Reimann (2014) have stated that federal models could be as varied as the classic model in Argentina, or *sui generis* like the European Union. They may also be highly centralised, like in Italy, or marginally integrated, as in the Netherlands. There are also vertical models like Germany's, as opposed to horizontal models, like that of the United States. Also, there are models like Mexico where all component units are constitutionally equal, and asymmetric systems where power is unevenly distributed among the units, like in Malaysia. Some federal structures are operated within a parliamentary framework, like Spain, while others are presidential, like the United States of America. Others are democratic, like Canada and yet others teeter on the fringe of authoritarianism, like Venezuela. It may also operate in heterogeneous countries, like India and homogeneous nations, like Austria. Despite the variation in models of federal systems, what is constant is that federalism is a political device for distributing power between different orders of government on some basis, established by a constitution for the practical purpose of accommodating divergent opinions and conflicting demands.

The origin of Nigeria's federalism dates back to the 1914 amalgamation of the Northern and Southern protectorates by the imperial power of Britain. The federal structure began to solidify in 1946 when the Richards Constitution divided the Nigerian territory into three regions, although it remained a unitary decentralised system. Federalism was officially adopted under the 1954 Lyttleton Constitution, partly as a fallout of the intractable controversies, which came in the wake of the Macpherson Constitution, with particular reference to the 1953 motion for self-governance by parliamentarians in Southern Nigeria and the ensuing riot in the northern city of Kano. The disagreement over the pace toward independence demonstrated that the regions could co-exist only within a federal arrangement that would grant a significant degree of autonomy in each region (Oyedele, 1999). Since independence in 1960, Nigerian federalism has moved from the three-region arrangement in 1946, to a four-region arrangement in 1963 with its current 36 states with 774 Local Government Areas and one Federal Capital Territory (FCT) structure.

When reference is made to the practice of federalism and democracy in Nigeria, it is to a series of truncated periods; the longest of which is 20 years out of 58 years of self-rule. With regard to fiscal federalism, the states have become increasingly dependent on the federal government to the extent that they can no longer function without the support of the central government and, thus, compromising their autonomy and transforming them into mere appendages of the central government (Idowu & Bamidele, 2018). This reality is manifested in the consistent and systematic relegation of the derivation principle, in the distribution of resources, igniting feelings of ethnic nationalism to check perceived marginalisation and obtain equity in resource distribution (Ojo, 2014).

Ikelegbe (2004) states that the evolution of Nigerian federalism has constituted a *problematique* that is difficult to classify. Consequently, adjectives such as ‘unitary’, ‘command’, ‘militarist’ and ‘feeding bottle’ have been used to qualify it. Many factors such as the impact of the colonial legacy, military intervention, structural imbalances, centralisation of power and ethnic nationalism have invariably coalesced in a broad range of intractable challenges summed up in what has come to be known as the ‘national question’ (Ikelegbe, 2004).

Democracy, like the concept of federalism, does not have one specific definition. There are, however, certain principles and features that any definition of democracy must abide by. These are the principles that relate to the rule of law, equality before the law, the freedom of citizens to choose their leaders and fundamental freedom. The features of democracy make it possible to draw a nexus between federalism and democracy. These two concepts come into sharp focus as mutually reinforcing theoretical constructs that are synced in the dynamics of a dialectical relationship, such that the presence of democracy becomes facilitative of genuine federalism. It is thus possible to argue that, while federalism may not be a necessary condition for democracy, because there are many democracies that are not federations, democracy is however essential for genuine federalism to thrive. The point is that, it is within democracy that federalism finds its true meaning, even

though it is possible for dictatorship and authoritarian regimes to claim to be federations, genuine federalism presupposes the respect of a division of constitutional powers between two orders of governments. If all political powers in a country are concentrated under a central command, like Nigeria had under military rule and the centralising tendencies under the current democratic dispensation, it would be difficult for the federative form of the state to be anything more than a façade. The assertion of Wheare (1963) that “federalism demands forms of government which have the characteristic usually associated with democratic and free government” supports this position (as cited in Amuwo & Herault, 1998:336). In Nigeria, apart from the fact that the country was welded together without the expressed consent of the people, the colonial administration that superintended over the country when the idea of federalism was first mooted, was neither democratic nor have successive administrations that took over after independence been able to sustain the minimal gains of autonomy agreed upon in the build-up towards independence.

Federalism came to be seen and adopted as a means for a more effective political order and national integration for a highly diverse country. The issue of integration whereby the various ethnic groups would achieve a higher level of mutual trust, national identity and consciousness was the thrust of the agreement of the advocates of federalism in Nigeria. Nigerian nationalist favoured a federal arrangement that will guarantee the regions, the possibility of preserving their identity while remaining part of a united country. This ideal was cut short as the country encountered severe strain and crises during its formative years leading to the reversal of democratic evolution that would have served as sentinel of federalism. The military seized the reins of governance six years after independence in 1966 and continued with the formal structures of federalism, but there was nothing federal about military rule with a single command structure. Such autocratic and authoritarian influence is crucial to an understanding of the paradoxes, pathologies and contradictions that currently plague the system. The presidential system, as adopted in 1979 and continued in 1999, was meant to rein in centrifugal forces and serve as a unifying symbol, had also produced weak, ‘fractionalised’ and ‘clientelist’ political parties, while the adoption of First-

Past-the-Post electoral system in a centralising federal polity have yielded the unintended consequence of making it possible for a president to emerge without the support of a significant segment of the population (Ashindorbe, 2018).

While the country has devised other mechanisms to help blunt the edges of ethno-religious divisions in the polity, these mechanisms have not reached far enough, the polity thus remains perpetually unstable and the deafening voices of ethnic separatist groups have remained strident.

### **3. METHODOLOGY**

The study design is historical in approach, with an overview of the evolution of federalism in Nigeria. Specific reference was made to the principles of coordination and independence among tiers of government, and a careful examination of the theoretical principles of democracy in order to show its inherent features as corollary of federalism, was established. Content analysis of previous agitation, complaint, and criticism about marginalisation as well as pattern of thought among scholars, public analysts and stakeholders, particularly state governments as documented in books, journals and newspaper editorials were reviewed. The methodology also includes the development of themes around the recurring and/or contending issues in the practice of federalism and democracy and their deployment as units of qualitative analysis.

### **4. RESULTS AND DISCUSSION**

#### **4.1 Power Sharing: Central Government versus Sub-National Units**

Due to the multi-ethnic nature and the circumstances surrounding the creation of the Nigerian state, power sharing has necessarily been an indispensable element of the political system. Feelings of discontent and marginalisation in the distribution of power expressed by diverse groups

have created challenges which have been summed as ‘the national question’. Central to the debate are demands by marginalised minorities for the restructuring of Nigeria’s federal structure and the unambiguous delineation of governmental structures to rectify perceived structural imbalances and provide equity in the allocation of public goods and in effect address the tensions between the component units on one hand and between the sub-national units and central government on the other (Abutudu, 2010).

In the attempt to deal with the challenges associated with the national question with particular reference to ethnic and minority agitation for equity in the political space and the addressing of structural imbalances, the leadership resorted to state creation. Thus, the number of sub-national units grew from twelve in 1967 to nineteen in 1976 to twenty-one in 1987 to thirty in 1991 and finally to thirty-six in 1996. In fact, one of the major factors considered by the central government in the creation of states was to diminish the powers of any one component unit so it loses its capacity to challenge the central government. As Rustad aptly sums it up, “smaller federal units mean that each state is capable of achieving less and therefore become more dependent on the central power” (2008:13-14). This was the situation in 1967 when the central government created twelve states to check secessionist tendencies in the wake of the declaration of the Republic of Biafra by the Eastern Region.

Another factor which influenced the federal structure of Nigeria is that state creation has evolved to become a quick-fix solution for ethnic and minority agitations. Contrary to the report of the Willincks Commission which determined that state creation was not the panacea to ethnic and minority agitation borne out of perceived deprivation and fears of marginalisation, state creation has become an accepted feature of Nigerian politics. State creation in the long run causes more problems such as the creation of new minorities or majorities and thus, reinforcing ethnic divisions within the new states (Elaigwu, 2007:160-161). One fallout of the over concentration of power at the centre is that it has intensified the struggle by ethnic groups to gain control of the centre, since greater political power is tantamount to greater access to state resources (Osaghae & Suberu, 2005).

Perhaps the biggest victims in the power sharing arrangement in Nigeria are the local/municipal governments originally designed to be the nearest to the people and take care of issues unique to each locality. This ideal has been lost, today the head of a local administration unit (known as the chairman) holds office at the behest of a state governor, while the central government also actively intervenes in such issues as primary education, primary health care and a sundry of other issues that catches its fancy, violating the federal principle of subsidiarity.

#### **4.2 Issues in Legislative Power Sharing**

Under the 1999 Constitution of Nigeria, legislative powers are categorised as exclusive and concurrent. Accordingly, the exclusive legislative list has 68 items, including aviation, banking, bill of exchange, census, citizenship, copyrights, currency, customs and excise, defence, diplomatic relations, foreign affairs, immigration and emigration, incorporation of business associations, insurance, labour, shipping, armed forces, communication, prisons, railways, taxation, trade and commerce, weight and measures, wireless broadcasting and so on; while the concurrent legislative list has 12 items (Amah, 2017). The power to legislate on the exclusive list is exclusively vested in the central government and the states may legislate on the items specified in the list only to the degree expressly empowered by a federal Law.

Under the concurrent legislative list, the central government still possesses an overriding power over state governments by virtue of the over-riding clause in the constitution which states that the Federal Government and State Government both have powers to legislate on matters specified in the concurrent list, however, the federal law shall prevail and state law void to the degree of its inconsistency with the federal law (Amah, 2017). The distribution of powers here only serves to reinforce the assertion that the trajectory of federal-state relations has only served to empower the centre to the emasculation of the component units. This necessarily creates conditions which leads to acrimony in federal-state relations.

One area where this tension recently manifested is the debate around a new national minimum wage. A minimum wage is the lowest remuneration that employers can legally pay their workers within a sovereign state. In Nigeria, powers to fix minimum wage falls within the exclusive legislative list. The debate around appropriate minimum wage has dissolved into two opposing camps; with one group arguing that the idea of a single uniform minimum wage across all strata i.e. federal, state, local governments and even the private sector is not tenable as wages should be differentiated based on capacity to pay and the resource profile at the disposal of each component unit. The majority of the state governors fall within this group.

While the other camp made up of labour unions and workers counter this position by making reference to the lavish salaries and allowances of public officials and their ostentatious lifestyle. They wonder why there will be opposition to a recently agreed recommendation for an upward review of the national minimum wage from eighteen thousand naira (\$50) to thirty thousand naira (\$83.33). For this group, therefore, it is mischievous to isolate sub-national units to independently determine its minimum wage on the guise of Nigeria being a federation. These opposing arguments however conveniently ignore the equally compelling reality that most of the states and local governments are almost insolvent and bankrupt owing arrears of salaries of workers with no capacity to pay without bailout from an equally cash-strapped central government.

#### **4.3. Fiscal Federalism and the Search for Equity in Revenue Allocation**

Another area of conflict and fiercely contested issue between the central government and the component units is appropriate revenue sharing formula. The discovery of crude oil in commercial quantity in Nigeria coincided with the period when federalism was being assaulted by the centralist tendencies of military regime. Resource exploitation and distribution was thus centralised with the central government taking over the ‘commanding height’ in the economic management of the country. The centrality of the proceeds of crude oil sales as the chief source of revenue for economic development of Nigeria created a condition in which oil rent transcended both power and

authority in the course of the country's political development. Whoever controls political power invariably controls the oil rent and the leverage to dispense patronage, hence the nature of the distributive politics and federalism in place. As competing ethno-regional actors conspire against each other for the ultimate price of institutional capture, political ascendancy and control of distributive authority, federalism in the context of division of powers often times becomes the victim rather than an agency or mechanism for conflict resolution and national political integration.

The Nigerian peculiar allocation principle has established a framework where the ratio for the distribution of revenue between the three tiers of government is such that the federal government keeps the lion share of 55%, while the thirty-six (36) state governments share 35% and the seven hundred and seventy-four (774) constitutionally recognised local government areas were allocated 10% (Idowu & Bamidele, 2018). These manifest inequities in the revenue sharing formula has incapacitated state governments and reduced them to mere administrative units and appendages of the federal government. This neo patrimonial and distributive arrangement in place works to the benefit of state officials and their inner circle of associates and these groups cut across ethnic, religious, and gender divide. The fallout from this absurd arrangement is a situation where there is a continuous agitation for the creation of more states, ostensible to carve out new centres for distributive politics even when many existing states are neither viable nor productive in terms of their ability to be self-sustaining outside central allocation of resource. States governors routinely wait for the monthly allocation from the federation account in order to pay salaries of workers with little or nothing left to carry out capital projects.

The Governor of Ekiti State in the south western part of the country has described Nigeria's variant of federalism as "feeding-bottle federalism" depicting a scenario where state governments are perpetually hooked to the central government for financial nutrients and nourishment (Kayode, 2013). No doubt this sharing formula has provoked acerbic and combusive agitation and clamour for "resource control" and fiscal federalism especially

from the oil rich delta region where the protagonists sufficiently feel dissatisfied and short-changed by the exiting federal allocation framework. Resource control sums up the struggle by minority ethnic groups of the oil producing Niger Delta region for social justice and greater control of the crude oil revenue obtained from their communities (Suberu, 2001).

This issue is so hotly contested that while the Niger Delta states clamour for the derivation principle as the main criteria for revenue allocation, the prevailing criteria for revenue sharing remain as equality of states, need, population and landmass. The derivation component of the sharing formula went from as high as 50% in the 1960s to as low as 1.5% in the 70s and 80s, before being reviewed upward to 3% in 1992 and finally to 13% in 1999 (Suberu, 1999). Agitation for an upward review met stiff resistance, not minding the fact the 1999 constitution sets 13% as the minimum and not the ceiling. As such, Tamuno (2011), contends that 13% derivation was nothing more than deprivation by up to 87%.

#### **4.4 Policing and Internal Security Management**

The constitution places control of the military and all related security outfits including the Nigeria Police under the control of the central government. Nigeria thus operates a unique federation where all the agencies of coercion are under the control of a single individual-the president. Although the police operate within the boundaries of the states, they are not responsible to the governor of the states but rather to the president through the inspector general of police resident at the capital in Abuja (Eme & Ede, 2009). The state governors who are statutorily designated as chief security officer of their respective states have no control over officers and men serving within their jurisdiction. This aberration the governors argue has reduced their capacity to respond adequately to security challenges within their states leading to the demand for the creation of state police to be responsible to and under the control of the respective federating units.

Testing the hypothesis that federalism is the constitutional division of powers and authority between orders of governments which are separate, independent but coordinated, the structure of policing in Nigeria does not follow the establishment of a multi-layered policing framework. The unitary and sole federal police structure in place in Nigeria is a post-1966 military creation. Before then, some regional governments and native authorities maintained their police forces alongside the federal police and this arrangement worked (Tamuno, 1970). Presently, the country is under policed, the ratio of officers in Nigeria to the general population is abysmal. With a population of 180 million citizens, Nigeria has 350,572 police personnel, a significant percentage of these men are attached as guards to holders of public office and some wealthy private citizens (The Guardian, 2018). Numerous lives have been lost to vandals and gangs because of police inefficiency and poor capacity. The claims that state governors are the chief security officers of their respective states, as coordinate power bearers, is not supported in actual practice. Though the state governors may lend financial and materials support to federal police formation in their respective states, they can nonetheless hardly issue orders to a commissioner of police in their states whose allegiance is first to the inspector general of police who appointed them; while the inspector general of police himself holds office only at the pleasure and dictate of the president of the country. Nigeria thus has a unique aberration in place such that while the state governors are theoretically chief security officers of their respective states, they however have very limited control and authority over the police on which they nevertheless expend substantial funds.

The argument against state police has often been framed around the cost of funding. It is argued that states cannot afford the cost to raise and maintain a full-fledged police force that will require barracks, training, equipment, personnel emolument including pension. If poorly equipped and ill-motivated federal police are failing in its duty to track crime and enforce the law, there is no guarantee that similarly under-resourced state police will not suffer the same fate. There is the perception of fears that with such a security apparatus at the beck and call of a state governor, abuse will be inevitable as

such powers will be deployed to hunt, oppress and hound out of town political opponents.

#### **4.5 The Judiciary and the Dispensation of Justice in Society**

The Nigerian constitution assigned an overarching role to the National Judicial Council (NJC). This body chaired by the Chief Justice of the Federation is saddled with overseeing the conditions of service and other ancillary matters relating to judicial officers both at the federal and state levels. Though section 271 (1) of the 1999 constitution recognises the state governor as the appointing authority of the Chief Judge of a state, the NJC is also empowered by the same constitution to recommend to the governor from among the list of persons submitted to it by the state judicial service commission persons for appointment to the offices of the chief judges of the states. Going by the express provision of the constitution, the NJC's powers are limited or restricted to making recommendation and not imposition. In practice there are cases and scenarios where the NJC with the collaboration of outside forces, seek to subvert the provisions of the constitution and attempt to foist their preferred nominees on state governors especially those governors considered to be unfriendly or hostile to federal authorities. According to a constitutional lawyer and human rights activist, Mike Ozekhome, in a true federation, it is the responsibility of the specific state and not the NJC to decide on who qualifies to the position of chief judge or judge in a state (Ozekhome, 2014).

In established federations like the United States of America, each state has its own hierarchy of courts from the lowest to the Supreme Court. Only matters of fundamental rights and interpretation of the provisions of the constitution that concern the whole country are entertained at the supreme court of the United States of America. Comparatively, in Nigeria there is a single national supreme court which has led to a situation where there is an avalanche of cases pending as long as decades at the highest court, the delay in dispensing justice is a major challenge in administration of justice in Nigeria.

## 5. CONCLUSIONS AND RECOMMENDATIONS

This paper argues that the course of federalism and democracy has not been helped by the legacies of colonialism and military rule that administered the country as a unitary state. The military through years of (mis)governance balkanise the country into smaller units called states, first in an attempt to stave off the secessionist movement in the 1960s and subsequently, in response to an elite-driven demand for state creation and cry of marginalisation. While there have been attempts to address some of the challenges and contending issues bedevilling the country, these attempts have been superficial and have not reached far enough in order to bring about any desired change. Little wonder then the country has been bedevilled with monumental security challenges since the return to civil rule in 1999 - from the militia group known as the O'dua People's Congress (OPC) in the Southwest to the Movement for the Actualisation of the Sovereign States of Biafra (MASSOB) in the Southeast, to the movement for the Emancipation of the Niger Delta (MEND) in the minority region, and now, the most virulent and vicious group known as Boko Haram in the North.

The emergence and mushrooming of these extremist groups, regardless of the criminality embedded in their mode of operation, all underscore a strong disavowal with the iniquitous system and a *status quo* that has benefited a few at the expense of the majority. Democratic peace dividend will require a dramatic and radical overhaul in the institution of government from the current pseudo federal practice to a robust form that will guarantee real autonomy to the federating units.

It is the contention of this study that the factors that breed continuous political instability in Nigeria are not only historical, but are more often than not, structural and systemic. The difficulties and dangers of the present are a culmination of decades of administrative ineptitude and elite delinquency. An unambiguous delineation of governmental structures to rectify perceived structural imbalance and devolution of powers is recommended in order to

address the tensions between the component units on one hand and between the sub-national units and central government on the other. Devolution of powers from an over-weight central government will go a long way in giving substance to the intent and practice of federalism.

This is more crucial because insecurity for instance is almost always first and foremost a local issue that if ignored, snowballs and spirals out of control. State police with personnel drawn from people living within a community with a better knowledge of the locality are better positioned not just for intelligence gathering but also to detect and respond swiftly in a familiar environment. Therefore, there is the need for state governments to take a measure of security control over the territory where they govern especially in the light of the palpable state of insecurity the country is presently grappling with. Also, restructuring of the judiciary will see every state in Nigeria having its hierarchy of courts up to the state supreme court. It is only when there are conflicts in decisions at state supreme courts and in matters of constitutional interpretation that there will now be a need to appeal from those state supreme courts to the supreme court of Nigeria. In the final analysis, solutions and answers to the present challenge must begin from a change in the leadership recruitment process that throws up unprepared and accidental leaders.

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