



Article

A Symbiosis of Constitutional Development and the Federal Imperative in Nigeria.

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MOVER, David Omeiza.

**Department of Political Science,
Ahmadu Bella University, Zaria, Nigeria**

Abstract

The main thrust of Nigeria's constitutional development history has been geared towards promoting a viable federal system of government for the country. Indeed, except for the Hugh Clifford's constitution of 1922, all other constitutions operated in Nigeria in one way or the other; either proposed; or promoted a federal system of government for the country. Ironically, the federal system engendered by successive Nigerian constitutions unwittingly complicates the institutionalization of a viable constitutional framework for the country; this is evidenced in the agitations for resource control and the so called return to "true federalism ", the attempt to impose religious laws in some northern states of the country, agitations for rotational presidency (zoning) and other centrifugal tendencies; which challenged the constitutional framework of the country. This paper argues that a somewhat symbiotic relationship has over the years evolved between Nigeria's constitutional development history and the federal imperative in the country. Furthermore, controversies' resulting from the symbiosis of constitutional development and federalism in Nigeria is jettisoned by the establishment of appropriate conceptual frameworks of the concepts of constitutions and federalism.

Keywords: Constitutions, Federalism

Introduction

Constitutions, in whatever form they exist are a central part of all states. They embody statements intended to define the relations between the rulers and the 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 (Anifowose and Enemu, 1999: 157). The necessity of a constitution for every state arises from the need to curb the powers of government by a fundamental law, to restrain the government on behalf of the individuals and limit the vagaries of present and future generations. Indeed, as Mahajan (2000) notes: "every community entitled to the name of a state must have a constitution that is, a collection of norms by which the legal relations between the government and its subjects are determined and in accordance to which the power of the state is exercised". As is to be expected however, the provisions of constitutions continue to be the object of debate and controversy; with issues like who should be the framers of the constitution, how it should be framed, what type of constitution should states adopt and even what provisions should be embodied in a constitution as the sources of such controversy.

Corresponding Author:

Mover, David Omeiza. Department of Political Science, Ahmadu Bello University, Zaria. Email: damoveh@yahoo.com

In recent years in Nigeria there has been; agitations for resources control and the so called return to "true federalism", the attempt to impose religious laws in some northern states of the country, agitations for rotational presidency (zoning) and other centrifugal tendencies; which challenged the constitutional framework of the country.

The main thrust of Nigeria's constitutional development history as shall be seen in the subsequent sections of this paper, has been geared towards promoting a viable federal system of government for the country. Indeed, except for the Hugh Clifford's constitution of 1922, all other constitutions operated in Nigeria in one way or the other; either proposed or promoted a federal system of government for the country. Ironically, the federal system of government which successive Nigerian constitutions have sought to promote unwittingly complicates the institutionalization of a viable constitutional framework for the country. This is evident in the emergence of the centrifugal tendencies earlier mentioned. By critically establishing appropriate conceptual frameworks of the terms involved, this paper attempts to put Nigeria's constitutional development history and the federal system of government it has engendered in a proper perspective. The paper is divided into four parts. Following this introduction is an examination of the concepts: constitution and federalism. The third part of the paper examines Nigeria's constitutional development trajectory and finally the last section is the summary and conclusion.

Constitutions and Federalism: A Conceptual Clarification

In a broad sense, a constitution is a set of rules; that seek to establish the duties, powers and functions of the various institutions of government, regulate the relationship between them, and define the relationship between the state and the individual (Heywood, 2002: 292). The term constitution is also used more narrowly to refer to a single authoritative document (a written constitution) which aims at codifying major constitutional provisions that constitute the highest law of the land. In another submission a constitution is simply defined as a collection of norms and standards according to which a country is governed. A constitution defines the conditions for the exercise of legitimate power, who shall exercise political power, how they shall exercise their powers and the limits of these powers (Mahajan, 2000). Indeed, the constitution of a state may be a deliberate creation on paper, effected by some assembly or convention at a particular time. It may be found in the shape of a document that has altered in response to the requirements of the time and age; it may also be a bundle of separate laws assuming special sanctity of being the fundamental law of the land; or again it may be that the bases of a constitution are fixed in one or few fundamental laws of the land, while the rest of it depends for its authority upon the force of custom (Johari, 2003:259-260).

In effect, a constitution may be written (contained in a single document) or unwritten (inherent in the customs and tradition of the society). Britain affords a peculiar case where the constitution is not in the form of, a comprehensive document but in an assemblage of laws, institutions and customs. It should be noted that constitutions may also be classified as rigid or flexible depending on the method of its amendment. While a flexible constitution is one which can be amended without any lengthy or difficult process, a rigid constitution is one which requires some lengthy or difficult process of amendment with such a process usually stated in detail in the constitution itself.

Traditionally, constitutions are seen as important for two reasons. Firstly, they are believed to provide a description of government itself; and secondly, they are regarded as the linchpin of liberal democracy. It is however important to note that while constitutions aim at laying down a framework in which government and political activity are conducted, strictly speaking, very few constitutions in the world

have been entirely successful in this respect. Indeed, inaccuracies, distortions and omissions can be found in the operation of all constitutions. Even where great care has been taken to overcome some of such inadequacies and distortions, constitutions need to be applied, interpreted and enforced. Hence, the notion of constitutionalism as an integral aspect of the application of a constitution.

Constitutionalism as a term has definite implications. It means essentially limited government, a system of restraints on both rulers and the ruled, it is bound up with the notion of the rule of law; embracing the idea that a government should not be permitted to do whatever its officials please but should conduct itself according to equitable and agreed procedures (Mahajan, 2000). The purpose of the restriction on the freedom of action of governments is to safeguard fundamental area of freedom for its citizens. Constitutionalism should protect human rights, such as free speech, free press, due process of law etc. Constitutionalism is thus government based on rules rather than caprice and arbitrariness (Mahajan, 2000). It should also be noted that to design and adopt a constitution is to prescribe among other things, implicitly or explicitly, general or first principles about the good society to which a community so constituted should conform. Furthermore, all constitutions contain elements that are autobiographical and correspondingly idiosyncratic; different historical contexts have generated different emphasis (Jinadu 1990). No constitution can therefore be static. Indeed, constitutions have to change with the passage of time in order to adjust to the changing needs of the people.

Many methods are adopted to develop a constitution. Experience shows that in every country, certain conventions emerge with the passage of time. These conventions become necessary to "give flexibility to dry bones of law" as embodied in the constitution (Mahajan, 2000). Although these conventions may not be written, they are considered as part and parcel of the constitution and effort is made to avoid their violation. Probably the most important method of developing a constitution is by amendment. Since constitutions cannot be permanent, they cannot provide for all times to come. It will be too much to expect that the framers of a constitution will be like prophets who can foresee the future and embody in the constitution all that future generations will require. A viable constitution must therefore be Darwinian in structure and practice (Mahajan, 2000).

In the case of Nigeria two basic notions of a constitution have emerged from the country's exercises in constitutional choice (Jinadu, 1990). First there is the notion of constitution as an ethico-cultural arrangement which encapsulates the way of life of a people in the sense that it is concerned with the normative goals or aims for which they have constituted themselves as citizens into a political community. Secondly, there is the notion of the constitution strictly as a legal document which defines the structure of power and the corresponding institutional sources or bases of authority within the Nigerian state (Jinadu, 1990). These two notions of the constitution have always been reflected in the design of Nigerian constitutions, although the ethico-cultural notion was more implicitly than explicitly stated until the adoption of the 1979 constitution.

As earlier stated the main thrust of Nigeria's constitutional development history as shall be seen in the following section has been based on the principle of federalism. Federalism is a system of government intended to reconcile national unity and power with the maintenance of state rights. Hamilton (2000) defines a federal system as an association of states to form a new state. According to Montesquieu, a federal system of government is a convention by which several similar states agree to be members of a

larger one; while K.C Wheare (1964) refers to the federal system as a method of dividing powers so that the general and regional governments are each within a sphere coordinate and independent.

Federalism is generally believed to be a system of government that could better take care of the problems of pluralism among the people of a state. The United States of America which is considered the foremost modern federal state for instance adopted it to accommodate the imminent pluralism of a group of independent states agreed to come together into one country merging most of their pre-existing sovereignty, but protecting themselves by reserving under their own control certain powers which they had enjoyed in the past (Price, 1975: 58). This was the case for Switzerland when the separate cantons in the neighboring alpine valleys decided to join forces to secure their continued joint independence, and also in Australia, when the separately administered British colonies around the coast of the vast island continent decided to pool their resources (Price, 1975). In a differing circumstance, some modern federations like Canada, Belgium, India and Nigeria are countries which at a certain stage of their historical development opted for federalism to accommodate the obvious plural configurations among the people. Federalism in the latter case rather than being purposely for achieving the benefits of unity to the separate existing units, was as a result of the recognition of the fact that their peoples were so diverse in culture, language and interests that it would be impossible for them to be harmoniously administered by one central government (Price, 1975:59). Federations, in effect; are products of constitutional arrangements. It should however be noted that federalism means different things to many different countries. Varieties exist in what constitutes the differences among the federating units and the ways and manner of allocating powers between the central government and the sub-units. The concept of federalism therefore spreads through the whole distance in the continuum between extreme unitarism and confederation; depending on the degree of sovereignty allowed to the subunits vis-a-vis the central government. While federal systems may vary across space, a particular federation may also vary with time. Indeed, in this context the trajectory of Nigeria's constitutional development history has over the years unwittingly altered the structure of the country's federal system.

The Nigerian federation is composed of an extremely diverse population of over 140 million people divided into at least 250 ethnic groups. The country is also divided between Muslims, mainly resident in the north and Christians who populate the south east and parts of the south western part of the country. There is also a significant class division based on income level creating a high degree of inequality. These various plural characteristics interact in different ways and are usually exploited to engineer conflicts. Issues bordering on marginalization and neglect have often led to large scale conflicts as typified in the youth restiveness in the Niger-Delta and the sporadic ethno- religious conflict that re-emerge in various parts of the country. As Ikejiani- Clark (2004) and Omotola (2006), have opined, the challenges confronting the Nigerian federal system are not unconnected to issues of poor constitutionalism.

Nigeria's Constitutional Development Trajectory: the Symbiosis of Constitutional Development and the Federal Imperative

A somewhat symbiotic relationship has over the years evolved between Nigeria's constitutional development history and the federal imperative in the country. Indeed, the challenges towards the institutionalization of a viable constitutional framework for the country has largely emanated from the dynamism of the federal system which successive Nigerian constitutions have engendered. The following historiography of Nigeria's constitutional development is indicative.

Hugh Clifford Constitution of 1922

The first formal constitution introduced in Nigeria was the Clifford constitution of 1922. The constitution established a new legislative council which served the colonial government in an advisory capacity. The jurisdiction of the legislative council covered the whole of the southern protectorate. The legislative council consisted of 26 officials (23 ex-officio and three nominated), 4 elected members and nominated non-official members that varied between 13 and 17. Six of the non-official members were Europeans nominated to represent the commercial interest. The most significant aspect of the 1922 constitution was the embodiment of the principle of elections. The elective principle which provided for four Nigerian to be elected into the legislative council (3 from Lagos and 1 from Calabar) stimulated the formation of political organizations in the country such as the Nigerian National Democratic Party (NNDP). Such organizations provided a more effective vehicle for expressing grievances and aspirations of Nigerians. Till date the 1922 Constitution lasted longest in the history of Nigeria.

One major defect of the 1922 Constitution however, was the exclusion of the northern region from the legislative council on the flimsy reason that the country was too large, coupled with poor communication facilities and ethnic diversity. Indeed, some have argued that the failure to integrate properly the northern and southern parts of the country posed a problem to the cause of national unity in Nigeria (Ndoh and Emezi, 1997). Another defect of the constitution was the absence of Nigerians in the executive council which was separated from the legislative council. The constitution could be said to have been an imposition; and thus alien to Nigerians as there was no consultation with the natives before it was imposed. All these weaknesses of the 1922 Constitution attracted serious criticisms to it from the indigenous people who had become politically more conscious. The close involvement of Nigeria in the Second World War, and international call for self determination and governance stimulated considerable political awakening in Nigeria. With the formation of the NCNC in 1944, Nigerians began to call for a review of the 1922 Constitution to enable them participate more in the discussion of their own affairs. Eventually the 1922 Constitution was replaced with the Richards' constitution of 1946.

The Arthur Richards Constitution of 1946

Sir Arthur Richards succeeded Sir Bernard Bourdillon in 1944 as the Governor general of Nigeria.

In December of the same year, he published proposals for a new constitution which according to him was designed to promote the unity of Nigeria, provide adequately for the diverse elements within the country and secure greater "participation of Nigerians in their own affairs (Olusanya, 1980: 524). As a corollary, the Richards constitution came into force on 1st January 1947. The constitution established a new legislative council with jurisdiction to cover the whole country. The membership and scope of the council was enlarged. Out of 41 members, 28 were non-officials who were nominated by the governor. This non-official majority widened the basis of representation.

However, as Nwabueze (1982:44) noted the representation was a "semi representative one" as not up to half of the members were elected by Nigerians. Greater expression was however accorded to local opinion through this non-official majority and the establishment of regional councils which also had non-official majority whose members was to be elected by the native authorities. Franchise for the four elected members remained the same except that the income requirement was reduced to fifty 50 pounds. Another significant attribute of the Richards constitution of 1946 was that three regional houses of assembly were established for the northern, eastern and western regions thereby laying the foundation for the federal structure of the country. In the north and western region however, a house of chiefs was established in

addition to the regional houses of assembly. While it has been argued that the Richards constitution was significant in the sense that for the first time since 1923, the northern and southern parts of Nigeria was brought under a uniform administration, others have argued that the constitution encouraged and enforced the concept of regionalism which marked the beginning of the process of fragmentation in the Nigerian federation (Ndoh and Emezi, 1997). As the architect of the 1946 constitution Bernard Bourdillon justified:

The regional structure (which eventually metamorphosed to a federal system) which was introduced by the constitution was done on the grounds that the northern region could not speak English and were unfamiliar with parliamentary procedures, and also on the grounds that a single unitary body would be too large and time wasting, coupled with the fact that regional councils could promote a wider consciousness which would be the necessary pre-requisite for the growth of national consciousness (cited in Ndoh and Emezi, 1997).

In spite of the advancements of the 1946 constitution it was received with great hostility especially from Nigerian nationalists. Apart from being an imposed constitution without the consultation of the indigenous people it did not give the nationalist the greater participation in the whole process of government and administration which the Nigerian nationalist wanted. The principle of nomination of members was also opposed because the members were obligatory to the governor rather than to represent the public. The limited franchise which was still four was also criticized. Eventually the 1946 constitution was replaced with another one in 1951.

The 1951 Macpherson Constitution

Following his arrival in Nigeria as Governor General, Sir John Macpherson set up a select committee of the legislative council in March 1949 to examine the problems of introducing a new constitution. Consultations were made at the village level with a general conference made up of all non-official members of the legislative council and representatives of regional councils. Regional conferences also took place at Ibadan Enugu and Kaduna respectively where it was agreed that a federal system- of government should be adopted (Ndoh and Emezi, 1997). As a corollary a constitutional drafting committee headed by the chief secretary, Sir Hugh Foot as well as an all Nigerian constitutional conference met in 1950 under the chairmanship of the Attorney General Sir Gerald Howe, and all recommended a federal system consisting of three regions, with Lagos as an independent municipality. The regions of the country ceased to be administrative regions but became political regions with powers to pass legislation only effective within their own boundaries. Indeed, this development was a major step in the evolution of the Nigerian federal system.

The main features of the 1951 Constitution include the establishment of a central legislature (house of representatives) made up of 148 members, 136 of whom were to be elected by the Nigerian members of the regional legislatures, and the establishment of council of ministers to formulate policies and direct executive actions. The constitution also vested the regions with executive and legislative powers; powers to make laws for the peace, order and good government of its area of jurisdiction. Although the inhabitants of the regions had for the first time been allowed some measure of participation in the making of their laws, their voice had been weakened by the indirect character of the elections. Similarly, although the autocracy of the governor was substituted with the rule of the executive councils, majority of whose members were drawn from the elected members of the legislative houses, the position of these elected

members was seriously weakened by the exercise of reserved powers; conferred upon the governor in his discretion, and his power to veto a bill passed by the legislature or to give force of law to a bill rejected by it. The governor could still act in certain cases without consulting the ministers and even in all cases act against their advice if he thought it expedient in the interest of public order, public faith and good government (Nwabueze 1982: 51). Other defects of the constitution include lack of uniformity in the electoral system.

Despite the advances made in the federal arrangement of the country by the 1951 constitution and the fact that efforts were made towards incorporating the views of Nigerians, it was still criticized by the nationalist as being so much of a compromise. Nnamdi Azikiwe for example criticized the constitution as not providing adequately for the ethnic differences and linguistic basis of the country, while Obafemi Awolowo criticized the imbalance created by having 3 unequal regions knit together by a strong central legislature (Ndoh and Emezi, 1997). The fact that the central ministers (executive) were to be selected from among the members of regional legislatures also made the ministers to feel loyal to their regions rather than the center leading to inter-regional frictions. Indeed, the advances made in the federal arrangement of the country by the 1951 constitution seemed to have ushered in the era of ethnic nationalism and reinforce regional divisions. This continues to be the bane of Nigerian politics. The emergence of regionally based political parties (the Northern People's Congress – NPC and the Action Group -AG) in the late 1940s/50's and other ethno- religious and regional agendas of recent years are indicative. Eventually, a constitutional conference was held in London in 1953 and later in Lagos in 1954. This informed the enactment of the Lyttleton constitution of 1954 under the governorship of Mr. Oliver Lyttleton.

Lyttleton Constitution of 1954

On May 20th 1953, the colonial secretary of state Mr. Oliver Lyttleton informed the British House of Commons about problems of the federal system in Nigeria and called for redrafting of the Nigerian constitution to provide for greater regional autonomy. A constitutional conference therefore met in London between July and August 1953 under Oliver Lyttleton. The major issues discussed and recommendations made centered on the consolidation of the federal system of government, introduction of exclusive and concurrent list of subjects, establishment of the principle of collective responsibility, regionalization of the civil service, revenue allocation to be based on the principle of derivation and status of Lagos as an independent municipality (Ndoh and Emezi, 1997). The 1954 constitution which was a consolidation of the federal system of government ensured that the three regions had their own separate executive powers and enjoyed a large measure of autonomy. The constitution gave residual powers to the regions establishing Nigeria as a federation of three regions with Lagos as the federal capital territory. However in the case of a conflict federal laws prevailed over the regional. Regional governors ceased to be members of the federal council of ministers, as well regional legislative members ceased to be members of the federal legislature. Full ministerial responsibility was ensured. The centre and regions shared legislative powers -reserved powers to the centre and residual powers to the regions. The absence of a prime minister however weakened the central administration. The measure of autonomy given to the regions which were imbalance tended to result in ethnicity, tribalism and differences in the political developments of the country. For example while the western and eastern regions sought and got internal self government in 1956, it took the northern part there more years to get internal self government in 1959. Indeed the constitution also brought to the fore the minority problems in the country. Such groups

such as Calabar-Ogoja Rivers State Movement in the eastern region, the Benin-Delta State movement in the western region and the Middle belt movement in the western region emerged. As a result a conference decision in 1957 established a minority's commission (the Willinks commission) which came into existence on August 18 1958. The Willinks commission called for provisions to be made in the constitution for the creation of more states. Eventually, the constitution was replaced by the independence constitution of 1960.

It should be noted at this point that the successive colonial constitutions of Nigeria beginning with the 1946 constitution successfully established a federal system of government for the country; in which if not for the continued presence of the colonialists, the regions enjoyed a significant degree of autonomy. In the post independence period however, the balance of power in the federal equation became tilted in favour of the centre.

Independence Constitution of 1960 And The Republican Constitution of 1963

The independence constitution of 1960 retained most of the provisions of the Lyttleton constitution. The Queen of England remained Nigeria's constitutional monarch; represented by the Governor General. The final court of Appeal for Nigeria was the Judicial Committee of the British Privy Council. These provisions, which were still applicable in "independent" Nigeria, led to agitation for change. The agitations culminated in a constitutional conference held in Lagos from 25th -26th July 1963 where Nigerian political leaders resolved that Nigeria should become a Federal Republic. The republican constitution of 1963 was therefore passed into law by the Federal parliament on 19th September 1963. By the republican constitution, the Queen of England ceased to be Head of State of Nigeria and the Supreme Court of Nigeria became the final court of appeal. Indeed, the 1960 (independence) and the 1963 (Republican) constitution were basically the same. The only differences were the provisions for a ceremonial President in 1963 in place of the Queen of England and the judicial appeals system which terminated with Supreme Court rather than the Judicial Committee of the British Privy Council (Sagay,). The constitutions also retained the parliamentary system of government and laid down, procedures for the creation of more states.

However, by 1966 some of the provisions of the 1963 constitution were suspended and supplemented with decrees and edicts following the coup d etat of 15th January 1966. When Ironsi came to power in July 1966, he introduced a unitary system of government with centralized civil service, a system which was vehemently opposed by the northerners who feared southern domination. Consequently, another coup which brought General Yakubu Gowon to power was executed. Gowon established a constitution drafting committee to draft a new constitution for the country. However, it was the General Murtala/Obasanjo regime which came to power following a coup on 13 February 1976 that accomplished the task of producing another constitution for the country.

The 1979 Constitution

By the time the 1979 Constitution was introduced, the military had changed the structure of Nigeria's federalism. From a federation of three regions with relative autonomy in 1960, Nigeria became a federation of 12 states under a powerful central government in 1979. The 1979 constitution was written by a constitution drafting committee made up of 49 members. A draft of the 1979 Constitution was debated by an elected Constituent Assembly; with one-third of the members appointed by the incumbent military regime. The 1979 Constitution for the first time in the history of Nigeria was based on executive

Presidential system. While the parliamentary system which was abandoned acknowledged the supremacy of the parliament, the presidential system introduced by the 1979 constitution was based on the supremacy of the constitution and on the doctrine of separation of powers between the three arms of governments. It vested in the president tremendous amount of power where he was no longer subject to the vagaries of a vote of no confidence which could force him out of office.

Another central provision of the 1979 constitution that had implications for the country's federal structure was its incorporation of the principle of federal character to reduce the fear of minority ethnic groups. Yet, after over thirty years of its introduction there are still doubts in some quarters whether the federal character principle has actually allayed fears of marginalization and domination. Indeed, some (Ayoade, 1998, Omoruyi 1986, Ibrahim 1986) have argued that the federal character principle was the product of the contradiction between the ethno-moral debate and a politico-moral balance. The federal character principle according to these scholars represented an instrument of eclectic redistribution of bureaucratic positions and industrial locations.

The 1989, 1994 and the 1999 Constitutions

The 1979 Constitution of the Second Republic was terminated abruptly in 1983 by the Military which paved the way for another 16 years of Military Rule. During this period, the Military attempted to promulgate 3 other constitutions: the 1989, 1994 and the 1999 constitutions.

The 1989 Constitution initiated by the Babangida administration was to come into existence following a seemingly endless transition to civil rule program. The constitution retained the federal structure of the country, Presidentialism, and defined Nigeria as a two party state. However, this constitution never came into existence due to the abortion of the Babangida transition program. Similarly, by 1994, a constitutional conference was convened by the Abacha administration to discuss another constitutional framework for the country's existence. The recommendations of the Abacha constitutional conference include: the creation of additional states, a change in the revenue allocation formula, the creation of geographical zones and the rotation of key executive and legislative offices among the zones of the federation. However, up till the time of General Sani Abacha's death in office, the constitution was never promulgated into law. In 1999, the General Abdulsalami Abubakar's government, through Decree No. 24 of 1999 promulgated the 1999 constitution of the Federal Republic of Nigeria. The 1999 constitution of the federal republic of Nigeria came into effect on May 29th 1999 following a hurriedly conducted transition to civilian rule program conducted by the Abubakar Abdulsalam regime. The constitution remained essentially the same with the 1979 constitution. It retained the federal structure of the country and continued to emphasize the federal character principle. However, the constitution like that of 1979 was severely criticized as being imposed on Nigerians by the military. Indeed, while the 1999 constitution represented a legal document for the existence of Nigeria, its legitimacy has been questioned. The preamble for example; is said to tell a lie about itself claiming that the document was put together by the people of the Federal Republic of Nigeria when in reality; it is generally not seen as a document resulting from the collective consent of the people.

Grey Areas in Nigeria's Constitutional Development and the Federal Imperative

The challenge of constitutional development in Nigeria; manifests in so many ways; generating feelings of exclusion, deprivation, marginalization and dispute of the existing federal order. The plural configuration of the Nigerian state makes the federal option imperative. Yet, the federal system has continued to contend with crisis and controversy due to the inability to institute a viable constitutional

framework which effectively accommodates the interests of the diverse population of the country. Indeed, the problems of Nigerian's constitutional development history especially in relation to the country's federal structure revolves around issues of power sharing (including resources) among the federating units; which has essentially not been through an open, transparent and participatory process. The most significant feature of Nigeria's post independence constitutional development history is the changes successive constitutions have entrenched in the balance of power in the federal equation. While then pre-independence, as well as the 1960 and 1963 constitutions established a federation with a significant degree of autonomy to the regions, the successive constitutions imposed by the military entrenched the shift in the balance of power in favour of the centre. This development continues to generate crisis for the Nigerian state; as evidenced in the recurring debate over a viable revenue allocation formula for the country and the tenure of the presidency and governors of the country. Other grey areas in Nigeria's constitutional development history includes: issues bordering on the indigene- settler divide, the location of local governments in the federal equation and the issue of zoning of key political offices in the country. These issues are examined in the following section.

A. Revenue Allocation

Until Nigeria's independence, revenue allocation - the most contentious aspect of the country's federal system remained the responsibility of the colonial masters.

TABLE 1. SUMMARY OF REVENUE ALLOCATION PRINCIPLES IN NIGERIA (1947-2003)

S/No	YEAR	AUTHORS/ COMMISSION	PRINCIPLE
1.	1947	Philipson	a. Derivation b. Even progress
2.	1951	Hicks Philipson	a. Derivation b. Need c. National interest
3.	1954	Chick	a. Derivation b. Fiscal independence
4.	1957	Raisman	a. Derivation b. National unity c. Fiscal independence
5.	1964	Binns	a. Derivation b. Fiscal independence c. National interest
6.	1968	Dina	a. Equality of states b. Population c. Derivation
7.	1977	Aboyade	a. Equality of access to development opportunities b. National minimum standard for national integration c. Absorptive capacity d. Independence revenue efforts e. Fiscal efficiency
8.	1981	Okigbo	a. Minimum responsibility of government b. Population c. Social development d. Internal revenue factor (declared ultra by the supreme court)

Source: Dunmoye. R. A (2002), Resource Control: Which Way Forward? The Nigerian Social Scientist. Vol. 5 No. 1 Pp. 49-53.

As in the foregoing table, the colonial state set up the Philipson commission in 1947 to formulate the administrative and financial system to be adopted under the Richards constitution. The 1951 Macpherson's constitution led to the inauguration of the Hicks- Philipson's commission in the same year, while the Chicks commission was set up in 1953 in anticipation of the Lyttleton's constitution of 1954. In 1958, the Raisman commission was appointed in anticipation of Nigeria's independence. After independence, the Binn's commission headed by an expatriate was also inaugurated in 1964 to find solution to the endemic problem of revenue allocation in Nigeria. Other Committees inaugurated to look into the revenue allocation formula for Nigeria include: the Dina Commission of 1968, the Aboyade Technical Committee of 1977, the Okigbo Presidential Commission of 1979 and the T.Y Danjuma Fiscal Commission of 1988 (Akinsanya and Ayoade, 2005). All these committees at various times recommended the adoption of various revenue allocation principles including: derivation, even progress, need, national interest, equality of states, geographical peculiarities, population etc yet, the issue of how to share revenue between the constituent parts of the Nigerian federation continues to be a major problem for the Nigerian state. Federal dominance, particularly in terms of finance has pitched the centre against the federating states on one hand, and specifically against the oil producing states on the other.

While the federating states as a whole have consistently reacted to the over-centralization of fiscal powers in the hands of the federal government purportedly because they are saddled with more developmental responsibilities to the people than the federal government, and because the impacts of their responsibility are more felt by the people, they make a case for increasing their share of funds from the federation account than the centre. This reality forms part of the centre in the agitation for resource control which has challenged the constitutional framework of Nigeria. Indeed, many have described the "centralization" of Nigeria's fiscal federation as a distortion. Yet, experiences indicate that the theory and practice of federalisms in recent years does not totally abnegate the tendency towards centralization; especially in the area of finance and economic planning. If federations are seen from this pragmatic standpoint, it becomes clear that what is more important is a deliberate effort for institutionalizing an inclusive constitutional framework that integrates the entire elements of Nigeria's diverse population. Other controversial issues relating to Nigeria's fiscal federation has to do with whether the states should be subject to the same fiscal process with the federal government. For example are the federating states compelled to pay their civil servants the same salaries with federal employees? Or are states bound to comply with agreements between the federal government and federal workers? The standoff between some state governments in the southern part of the country with their respective state universities over an agreement between the federal government and workers of federal universities in 2010 resulted in an indefinite closure of state Universities; and is indicative of complications resulting from the inability to institute definite constitutional provisions with regards to fiscal processes between the central and state governments.

A. Tenure of Presidents and Governors

The tenure of the President and Governors of Nigeria has also in recent years been the object of much constitutional debate and controversy. According to clauses 135 (1) and 180 (11) (d) of the 1999 constitution of Nigeria, the President and the Governors of Nigeria are subject to a maximum of two terms of four years each. However, in 2001, the all party committee under ex governor Clement Ebiri recommended in the 2001 constitutional amendment bill a five years term, then another five years after an interval between the first and second terms. Similarly, the National Assembly joint committee on constitutional review in its report clause 142 (1) (2) and 187 (1) (2) recommended a single term of five

years for the office of President and Governors. In 2003, the third term phenomenon in which there was a recommendation for a third term of four years for the President and Governors crept up surreptitiously in the report of the national assembly joint committee on constitutional review. While the third term agenda was justified as necessary for the completion of ongoing projects, it was exposed as self serving and fraudulent for an incumbent President or state governors to propose or accept extension of tenure contrary to what obtained when they were elected. In any case, reviewing the two terms of four years allowed by the Nigerian constitution is premature. Indeed, prior to the fourth republic the two terms Presidency not been operational. While the first republic was terminated in a bloody coup in 1966 following the fraudulent general elections of 1964, the Shagari administration also did not complete its two terms as it was terminated in another coup in December 1983.

C. Indigene/Settler Dichotomy

The indigene-settler divide is at the centre of the citizenship crises in Nigeria. There are three bases of citizenship in Nigeria. These are citizenship by birth, registration and naturalization. The 1963 constitution of Nigeria was the most integrative on the basis of equality it accorded to all citizens in section 29, sub section 1. It was possible under this provision to enjoy the status of indigene within a region on the basis of continuous residence, which was one year for all other regions, except the north which was three years. During the first republic and up till the 1970s, the relevance of the indigeneity criterion was strongest in the northern states due to the scarcity of skilled indigeneious manpower and the strong belief that Nigerianization of the civil service should not be equated with southernization (Dunmoye, 2008). However, subsequent constitutions have shown serious ambivalence in their treatment of citizenship rights; particularly in relation to the indigene-settler dichotomy. For instance, section 25 of the 1999 constitution states that the following persons are citizens of Nigeria by birth:

- I. Every person born in Nigeria before the date of independence, either of whose parents or any of whose grandparents belong or belonged to a community indigeneious to Nigeria.
 - II. Every person born in Nigeria after the date of independence either of whose parents is a citizen of Nigeria
 - III. Every person born outside Nigeria either of whose parents is a citizen of Nigeria
- The federal character principle contradicts the foregoing provisions of the 1999

Constitution. It emphasizes that:

The composition of the government of the federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or other sectional groups in that government or any of its agencies.

The introduction of the federal character principle, especially in the appointment of federal ministers, made the issue of indigeneity very crucial. Section 147 (7) of the 1999 constitution states further that "provided that in giving effect to the provisions aforesaid, the President shall appoint at least one minister from each state, who shall be an indigene of such state. The ambivalence of the 1999 constitution on the

issue of citizenship is also brought to the fore in section 15, sub section 3 which states that: for the purpose of promoting national integration, it shall be the duty of the state to:

- I. Provide adequate facilities for and encourage free mobility of people, goods and services throughout the federation.
- II. Secure all residence rights for every citizen in all parts of the federation
- III. Encourage inter marriage among persons from different places of origin or different religious, ethnic or linguistic association or ties.

The emphasis on residency and indigeneship by the constitutions at various times encourages the indigene-settler divide and complicates the issue of citizenship in the federation. Indeed, the fundamental issue of "when a settler becomes an indigene" is not addressed by the constitution.

D Location of Local Governments in The Federal Equation

Strictly speaking, local governments are not the constitutional responsibility of the federal government. However, in recent years the federal government has circumvent the rights and powers of the states to create new local government areas by withholding federal allocation to those states that created new local government areas. This anomaly has created serious problems for effective governance in the country. Section 2 (2) of the 1999 Constitution of Nigeria, declares that Nigeria shall be a federation consisting of states and a federal capital territory; and Sub-section 3 goes on to list the 36 states of the federation. The states therefore constitute the federating units; implying that there are two constitutionally recognized tiers of government. If local governments are therefore under the state's it should not be just in principle, Nigeria is not a federation of local government areas but of states.

E. Zoning of Political Offices

Given the heterogeneous composition of the Nigerian state and the need to maintain a stable federation, the issue of zoning has arisen supposedly to put in place formal and informal ways to ensure fair sharing of political offices. Formally, successive Nigerian constitutions emphasize the federal character principle in the composition of the government and the conduct of its affairs. Informally, some political parties adopted the policy of zoning for the rotation of key political offices across the six geo political zones or across the northern and southern parts of the country. However there have been disagreements over the implementation of the zoning arrangement

Conclusion

The main thrust of Nigeria's constitutional development history has been geared towards promoting a viable federal system of government for the country. Ironically, the federal system of government which successive Nigerian constitutions have sought to promote unwittingly complicates the institutionalization of a viable constitutional framework for the country. With recurring issues like agitations for resource control, the tenure of President and State governors, the indigene-settler divide, location of local governments in the federal equation and rotational presidency or zoning, the search for a viable constitutional framework for the country appears arduous and elusive. This paper attempted a review of Nigeria's constitutional development history and the federal system of government it has engendered. While the nature of the federation engendered by successive constitutions in Nigeria continues to be the object of controversy and debate; particularly in light of its centralizing tendency, emphasis should be

made on being more pragmatic towards understanding the more fundamental issue of institutionalization a viable constitutional framework for the country.

The fact of Nigeria's constitutional development is that the successive constitutions did not sufficiently reflect the wishes of Nigerians; as not all groups or classes in the federation have been involved in the process of formulating the constitutions. While the colonial governments significantly influenced the constitutional making process during the colonial period, the Nigerian military imposed the post-independence constitutions of Nigeria. Thus, the crisis confronting the Nigerian federation derives from the inability to institutionalize an integrative constitutional framework in the country. It is important to accept the fact that no constitution is perfect; and all constitutions are "works in progress". However, the success and efficacy of any constitution depends on the political leadership and good governance.

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