

UNIVERSITY OF NAIROBI

Institute Of Diplomacy and International Studies

"Federalism and Ethnic Conflicts: A Comparative study of the Federal system in Germany and Nigeria." ¹

JOSHUA ODERO ASETO

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Supervisor:

Professor Joshua D. O. Nyunya

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A Research Project submitted in partial fulfillment of the requirements for the Degree of Masters of Arts in International studies

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
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DECLARATION

I **Joshua Odera Aseto** hereby declare that this research project is my original work and has not been presented for a degree in any other university.

Signed.......... Date.....^{1st} NOVEMBER 2011.....

Joshua Odera Aseto

This project has been submitted for examination with my approval as University Supervisor;

Signed.......... Date.....11/17/2011.....

Professor Joshua D. O. Nyunya

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ABSTRACT

The purpose of the study was to compare federalism in Nigeria and in Germany with an aim of establishing how multi-ethnicity affects a federal system. There is also no agreement among scholars on a consistent relationship existing between federalism and the rise or decline of ethnic problems with some purporting that federalism promotes the rise in the frequency and intensity of ethnic problems and others purporting that it leads to a decline in the frequency and intensity of such problems.

Study findings indicated that in as much as multi-ethnic federal states may have problems which are unique to their situation; it would not be in order to conclude that federalism cannot function well in such states. If there is decentralization of resources and powers to the states, if there is democracy and transparency in governance, if the intergovernmental relations between the different tiers of the Federation are clearly worked out so as to minimize conflicts, then federalism would work perfectly well in Multi-ethnic states. Another finding was that conflicts can never be entirely solved, since they are inherent in the federal system as such. As soon as power is divided between different levels of government, tension is created and conflicts will arise. This is even made worse by unfair division of resources in the case of different ethnic groups in a federal system. Solving such conflicts in an adequate, i.e. effective, efficient, equitable and legitimate way implies elaborating possibilities for reform on the basis of the fundamental historic, cultural and Constitutional parameters of a particular federal system.

ABBREVIATIONS

- USSR** – Union of Soviet Socialist Republics
- USA** – United States of America
- O.A.U** – Obafemi Awolowo University
- ACIR** – Advisory Commission on Intergovernmental Relations
- US** - United States
- PAP** - Poverty Alleviation Programme
- PEP** - Poverty Eradication Programme
- APC** - Arewa People's Congress
- ZSVS** - Zamfara State Vigilante Service (ZSVS)
- ATR**- African Traditional Religions
- CDU** - Christian Democratic Union
- CSU** – Christian Social Union
- SPD** - Social Democratic Party of Germany
- EC** - European Community
- EU** - European Union
- VAT** - Value Added Tax
- DM** – German Marks
- GDP** - Gross Domestic Product

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CHAPTER ONE

1.0. Introduction

After the end of the cold war era, one of the greatest challenges to world security and order, emanate from multi-ethnic states. Ethnic cleavage and regional competition has emerged as a major source of conflict in such states. This problem is not only confined to the so called third world states in Africa, but is also faced by western democratic states that have been known for their long-term stability. Varying solutions have been proposed by scholars as part of the search for solutions to this problem. The suggestions range from strong unitary dictatorial regime-as a means to suppress emerging ethnic nationalisms to ethnic based federalism-as a means of accommodating ethnic interests.

Federalism is considered by many as an effective way of reconciling unity and diversity and many have reasoned that federalism would compensate for the nation-state's inability to meet modern political, economic and strategic demands without at the same time threatening the special interests of the constituent parts. Federalism as an instrument of balancing the tension between universalism and particularism has drawn more attention in pluralistic societies. There is a drift in reaffirmation of ethnic identity as a means of determining the public life of a society.

Ethnic autonomy or ethnic federalism is accepted among indigenous minorities in Canada, Finland, Bangladesh, and Japan to ensure fair representation in national governance. The venture to ethnify federalism might be regarded as a pragmatic solution but still prone to critique. Some scholars see real danger in ethnic autonomy, and claim that in some cases it sows discontent among the other groups that live in those areas. Countries like Kenya have been reluctant to entrench

federalism in their constitution due to the fear that it might further divide the already charged different ethnic groups leading to further ethnic tensions and conflict.

Designing and maintaining of federal institutions by large and ethnically complex countries remains a major challenge as they have to manage powerful cleavages based on territorial, ethnic or in some cases religious identities. As such, countries like Nigeria and Indonesia face the fundamental question of whether they can hold together as one country.

In the creation of a federal arrangement, two types of approaches are used, depending on factors such as; the heterogeneity or homogeneity of ethno-linguistic structure, socio-economic and political systems of the subjects of a federation.¹ Some writers argue that ethnicity should be the basis of a federation, while others consider the territorial principle as the basis, irrespective of ethno-cultural factor. The federal arrangements that exist in the world today fall under either of the two categories. Nigeria, India, former USSR among others are known to have a federal arrangement based on ethnic principle, while USA, Germany and Brazil are among countries known to have a territorial basis of arrangement.

1.1 Statement of the Research Problem

In adopting Federalism, many countries believed that they would avoid the extreme of overcentralisation, seemingly implicit in unitary governments as well as the risks of disintegration which continually threatened multilateral economic and military communities. Such a system worked for political craftsmen in earlier times; now it was to be extended to the needs of the

¹ K. Sharma. *Multi-Culturalism and Ethnicity in Global Context*. (1987), pp.34.

prevailing times. With time, however, whereas many Europeans continued to regard political federation as a practical and realizable goal in the not-too-distant future, Africans came more and more to question the system's capacity to create lasting unity and to solve the basic challenges of development. Federalism thus became suspect on utilitarian grounds: it had failed in both East and West Africa to provide an easy formula for enlargement or stability. Consequently, despite similar aspirations for unity, Africans and Westerners viewed differently the question of federalism's utility under modern conditions. Thus, despite efforts to devise Federal systems in Nigeria, Mali, East Africa, Ethiopia, the Congo Republic, and the very special case of Central Africa, the results have not been notable for their enduring qualities.

Federal systems in Africa have remained operative for relatively brief periods of time, followed by fissure into separate, sovereign parts or movement towards unitary systems. Federalism has proved brittle; it has disintegrated in the face of pressures beyond its capacity for reconciliation, making way for more centralized forms of government—either within the existing state framework or within the parts that composed the federal state. What accounts for the fragility of federalism under African circumstances? Why is federalism unable to rise to the African challenge at this time? An understanding of the reasons for this failure may help to avert dysfunctional attempts at nation and region-building in the future as well as to provide important insights into the nature of the African political process generally.²

The preponderance of scholarly work on this issue in Africa and elsewhere suggest that federalism is not consistently related to the promotion or settlement of ethnic problems. Yet, federalism continues to be viewed by some leaders of minority groups in Africa as a solution to, and

² Rothchild, Donald. *The Limits of Federalism: An Examination of Political Institutional Transfer in Africa* Cambridge University Press (1966) Vol. 4, No. 3

by some leaders of majority groups as a cause of such problems. Why would they advocate or oppose something which has not proved to consistently cause or solve ethnic problems?

This paper is three-fold: First, to test briefly the thesis advanced by many scholars that federalism does not consistently cause or solve ethnic problems in Africa; second, to account for both the inconsistent impact of federalism and for the persistence of its advocates and detractors; and, third, to explore the implications of the test and its explanation for the building of general knowledge about the relationship between federalism and ethnic problems.

1.2. a. General Objective of the Research

The general objective of this research is to explore the relationship between federalism and ethnic conflicts.

1.2. b. Specific Objectives of the Research

The objectives of this research will be to:

- Explore federalism as a way of decentralizing both political and economic power
- Explore the relationship between federalism and ethnicity in pluralistic and monolithic federal states

1.3. Justification of the study

The study is informed by the fact that ethnofederalism, a federal political system in which component regions are intentionally associated with specific ethnic categories, has frequently been recommended by scholars as a way of reconciling democracy and ethnic difference.³ Many of the world's most geopolitically important states-including Canada, India, Nigeria, and Russia-have adopted ethnofederal structures. China and Pakistan, while not democracies, also have nascent ethnofederal structures.

However, there is division among social scientists. Some, focusing on cases like Czechoslovakia, the Nigerian First Republic, the USSR and Yugoslavia, have highlighted ethnofederalism's state-dissolving potential.⁴ Others have called attention to such countries as India, Switzerland, and Spain, thus dwelled more on what they see as ethnofederalism's capacity to support democracy in divided societies.⁵ A few have advanced explanations for variation, but none purport to have solved the puzzle entirely. Federalism is also associated in some cases with a rise in the frequency and intensity of ethnic problems and in other cases with a decline in the frequency and intensity of such problems. That is, there is no agreement among scholars on a consistent

³ A federal state is any state with (A) a federal constitution, as specified by Riker (1964) to be "federal if (1) two levels of government rule the same land and people; (2) each level has at least one area of action in which it is autonomous; and (3) there is some guarantee (even though merely a statement in the constitution) of the autonomy of each government in its own sphere"; and (B) at least enough democracy that the concept of regional autonomy has some meaning, including direct popular election to state organs of the highest level of territorial governance unit below nationwide state organs.

⁴ On the postcommunist cases, see Brubaker 1996; Bunce 1998; Bunce 1999; Crawford 1998; Laitin 1998; Lapidus 1992; Leff 1999; Roeder 1991, 1999; Slezkine 1994; A. Smith 1992; Suny 1993. On African cases, see Mozaffar and Scarritt 1999; Wamala 1994. On Canada, see Meadwell 1995. For a treatment of important problematic incentives generated by ethnofederalism generally, see Snyder 2000a.

⁵ See also Brass 1992.

relationship existing between federalism and the rise or decline of ethnic problems. All these inform the academic justification of this study.

Why does policy change occur more quickly in some nations than in others? In addition to obvious hypotheses involving resources, opportunities and demands, does federalism enhance the likelihood of policy change? This paper thus joins the debate over the impacts of federalism on public policy.

The overall aim of this research is to have a better understanding of federalism, its structure, how it functions, its successes and failures and its role in promotion and sustenance of international peace and security.

1.4. Literature Review

The review will cover literature on federalism, with emphasis on literature of Federal republic of Nigeria and of Federal Republic of Germany. Literature on the structure and functioning of these Federal systems has also been reviewed with the intention of establishing the differences in the success story of the different Federal systems.

1.4. a. The Federal system and Decentralization

Federalism is characterized by an irrevocable division of power between the central government and the component units (e.g., states, regions, provinces, and cantons). This division is a product of a constitutional compact (foedus) between the two units of government neither of which, acting alone, can amend (or revoke) the compact. Put differently, while unitarism involves

centralization and decentralization of power because both imply "the existence of a central authority, a central government ... [which] can decentralize or recentralize if it so desires,"⁶ federalism involves both centralization/decentralization and non-centralization. This is so because the central government in a Federal system can decentralize or recentralize in its sphere of jurisdiction, but matters on which the states make final decisions cannot, in theory, be centralized. This point is well made by Elazar who argues that non-centralization best describes intergovernmental relations in Federal systems.⁷

Daniel Elazar says that if a political system is established by compact and has at least two 'arenas,' 'planes,' 'spheres,' 'tiers' or 'levels' of government, each endowed with independent legitimacy and a constitutionally guaranteed place in the overall system, and possessing its own set of institutions, powers, and responsibilities, it is deemed to be federal.⁸ To apply this definition to determine whether a state has a Federal system we must be able to locate a compact. Presumably, this is a constitution or a constitution-like document. The problem in Africa is that such formal agreements may exist but may not guide behavior. This was the case in Kenya in the immediate post-independence period. Elazar seems to recognize this problem when he amends his definition by saying that the structure of federalism is meaningful only in those polities where the processes of government reflect federal principles and that determining whether federal principles guide 'the processes of government' may pose problems and lead to a variety of interpretations.

⁶ Daniel J. Elazar. *Federalism vs. Decentralization: The Drift from Authenticity*. Publius: The Journal of Federalism 6 (Fall 1976): pg. 13.

⁷ Ibid

⁸ Daniel Elazar. *The Role of Federalism in Political Integration*: in Elazar. (1979), pp. 29-30

However, there are varying degrees of definitional elucidations given to the concept of federalism by most scholars. While Rodee, Christol, Anderson and Greene⁹ defined federalism as “a constitutional division of governmental power between the national and the constituent units,” to Friedrich¹⁰ federalism is a union of group united by one or more common objectives but retaining their distinctive group being for other purposes... it unites without destroying themselves that are uniting and it is meant to strengthen them in their group relations. Along this same analytical plane, Akindele once defined a federal state as a political entity or country where powers and indispensable decisions are exercised and made at two or multilateral levels of government in accordance with the strict mutually agreed constitutional provisions of the country concerned.¹¹

It could be reasonably argued that these positions formed the basis of Kolawole's¹² claim that “federalism is anchored on consentient relationship” and, that of Eleazar that federalism can exist only where there is considerable tolerance of diversity and willingness to take political action through conciliation even when the power to act unilaterally is available.¹³

These complexities have affected the thinking of various scholars on the concept vis-à-vis their theoretical constructs on it and its applicative subject matter. This explains why Akindele once opined that the concept of federalism, because of many tomes already written on it has not been free

⁹ Ibid. 1983:52

¹⁰ Ibid. 1963:585

¹¹ Akindele, S.T.: *Intergovernmental Relations in Nigeria: A theoretical Appraisal of the involvement of local Government* in A.M. Awotokun, (1995) (Ed): *New Trend in Nigerian Local Government*. Ife:OAU Press/ Dept. of Local Government Studies O.A.U (1995a:). (chapter 23) Pp. 137-145

¹² Ibid. 1986:1

¹³ Eleazar. (1968) pg. 360

from the problem of definitional pluralism... In other words... it is not an exception as far as the problems of definition are concerned.¹⁴

It equally explains Idahosa and Aghahowa's¹⁵ claim that, there is no agreement among writers on a single definition of the term "federalism". These contestations notwithstanding, the basic characteristics peculiar to all federal political arrangements have been theoretically packaged by scholars of repute within the scholarship of political science, international relations and related disciplines.

Whatever their shape, federal institutions are, by definition, devices to limit the center and the range of federal decisions. The questions of what should be decided, where, and by whom, are at the heart of the matter. To put it in more traditional terms, how much sovereignty for whom?

1.4. b. Ethnic Conflicts

There is extensive literature on the meaning of ethnicity, nationalism, conflict and associated concepts. Soren Bollerup and Christian Christensen¹⁶ note that the concept of conflict is contested. They argue that the main distinction is between those who advocate a broad definition of conflict, including both latent and manifest conflict, and those who advocate a narrow definition encompassing only manifest conflict. Their definition is simply that conflict is 'perceived divergence of interest'... A national conflict, then, involves conflict between two or more nation-groups.

¹⁴ Akindele, S.T.

¹⁵ (1997:151)

¹⁶ Soren Rinder Bollerup and Christian Dons Christensen. *Nationalism in Eastern Europe. Causes and Consequences of the National Revivals and Conflicts in Late-Twentieth-Century Eastern Europe* (NY: St. Martin's, 1997), p. 3

Although such conflict involves many possible issues, the distinguishing feature is the adjective which precedes it.

On his part, Rudolfo Stavenhagen¹⁷ argues that the term 'ethnic conflict' covers a wide range of situations. He argues that ethnic conflict as such, does not exist. What does exist, according to him, is social, political and economic conflict between groups of people who identify each other in ethnic terms: color, race, religion, language, national origin. He says that very often such ethnic characteristics may mask other distinguishing features, such as class interests and political power, which on analysis may turn out to be the more important elements in the conflict. According to him, when ethnic differences are used consciously or unconsciously to distinguish the opposing actors in a conflict situation - particularly when they become powerful mobilizing symbols, as is so often the case - then ethnicity does become a determining factor in the nature and dynamic of the conflict.

John Coakley¹⁸ makes a similar point when he argues that the phenomenon of ethnicity has been used to cover a range of types of political conflict that are differentiated not merely by the dynamics of competition between rival groups but also by the very significance of ethnicity itself. According to him, the reality is that the same label is used as an umbrella for a great diversity of types of conflict.

Richard Caplan and John Feffer¹⁹ suggest that the key to nationalism's elusiveness seems to be its lack of clear objective criteria. All such criteria race, language, and territoriality can be shown

¹⁷ Rodolfo Stavenhagen. *Ethnic Conflict and Human Rights. Their Interrelationship: in Kumar Rupesinghe, ed., Ethnic Conflict and Human Rights* (Tokyo: The United Nations University and Oslo: Norwegian University Press, 1988), p. 17.

¹⁸ John Coakley, p. 3.

¹⁹ Richard Caplan and John Feffer. Introduction in Caplan and Feffer, eds. *Europe's New Nationalism, States and Minorities in Conflict* New York: Oxford University Press. 1996), p. 9.

to apply in some particulars, but not in all cases. One method of avoiding this quandary has been to stress the subjective nature of nationalism. This tendency is often an outcome of defining the concepts in instrumental or situational terms, rather than in primordial ones. That is, as a socially determined identity rather than a biologically determined one.

Still, the definitions differ over "markers," i.e., over the set of traits defining the identity. These may include history, language, caste, race or a combination of them. Different terms are used for identities that vary in their inclusiveness. For example, the political scientist James Coleman²⁰ defined nationalism as a consciousness of belonging to a nation (existent or in the realm of aspiration) or a nationality, and a desire, as manifest in sentiment and activity, to secure or maintain its welfare, prosperity, and integrity, and to maximize political autonomy. He suggested that four types of nationalism might be distinguished on the basis of the inclusiveness of the identities involved: Pan-African nationalism, Nigerian nationalism, regional nationalism and group nationalism.

The politician Leopold Senghor suggested that there were only two types of identities distinguished by their inclusiveness, fatherlands and the Nation. He argued in a manipulative and colorful way that the Nation groups' fatherlands in order to transcend them. Far from rejecting the realities of the Fatherland, the Nation will lean on them, or more precisely, will lean on their virtues, their realistic character, and therefore on their emotional strength. It will unite the virtues of the fatherlands or most often will choose those virtues which, by reason of climate, history or race, have a common denominator or a universal value. Once realised, the Nation forges a harmonious ensemble from its different provinces: a single country for a single people, animated by the same

²⁰ James Coleman, *Nigeria, Background to Nationalism*. Berkeley: University of California Press, (1960). pp. 425-427

faith and striving toward the same goal... the Nation is superior to the Fatherland on the level of humanity, and even of efficiency. It distills the values of the latter, sublimates them by transcending them. If the Nation is a conscious determination to reconstruct, the State is its major means.

The academic Ivo Duchacek²¹ used different terms in describing what Senghor called the Nation and fatherland. He said that devotion to one's geographically determined area, its values and inhabitants, is called nationalism, and on a subnational level, local patriotism. People's allegiance to subnational communities, territorial or functional, is usually less intensive and less unconditional than their devotion to the national community.

The variety of conceptions of "ethnic" and of "problems" is obvious. John Breuilly²² asked himself why there is such confusion over the concept of nationalism and replied that it is partly because some of the terms themselves are difficult to define precisely. But above all that it is because the term 'nationalism' is used too widely and covers many and different kinds of things i.e. that it is used to refer to ideas, sentiments and politics, yet these are distinct kinds of things which do not stand in any necessary relationship to one another.

1.4. c. Ethno-federalism

Federalism which may be identified as territorial based or ethnic based has come to be seen as the best alternative to promote the management of conflict prone multi-ethnic societies. Even those who extend sharp criticisms against this form of government admit that federalism, when

²¹ Ivo Duchacek, *Comparative Federalism, The Territorial Dimension of Politics*. New York: Holt, Rinehart and Winston, (1970), pp. 21-22

²² John Breuilly. *Nationalism and the State, Second Edition*. Chicago: University of Chicago Press, (1994), p. 420.

properly implemented, has more often than not proved to offer tools for the better governance of supranational institutions and has facilitated effective decision making in complex systems and promoted democracy.

In principle, relating federalism to multi-ethnicity and evaluating its success as a balance between unity and diversity involves a number of factors. In particular, how the boundaries of member states are drawn up and how powers are distributed horizontally as well as vertically. Moreover, the institutional set up should be examined if it represents a structure of diversity or at least minority accommodation providing institutional and political power which democratically command loyalty to the common state. How far federalism, in particular ethnic federalism practically solves problem of multi-ethnicity is yet to be seen.

1.4. d. Federalism in Nigeria

Despite being a federal state, Nigeria still depends on a highly centralized and monolithic oil economy for its survival. Federalism has been a subject of long academic inquiry and political debate in Nigeria. Its history, functioning, design and restructuring have elicited creative and heated discussions, and a lot of scholarly attention.

In his book, *Federalism and ethnic conflict in Nigeria*, Suberu²³ carefully demonstrates how, with the creation of more and more states in Nigeria, politics has tended to be recentralised around the tripolar ethnic cleavage of Hausa versus Yoruba versus Igbo, and even more ominously, around bipolar cleavages of North versus South, Christians versus Muslims.

²³ Suberu T. R. *Federalism and Ethnic Conflict in Nigeria*. United States Institute of Peace. (2001).

Although the Federal Republic of Nigeria has persisted since 1954, its “federalness” has undergone many changes. Since the periods of its decline correspond with periods of military rule, some scholars argue, that changes in the nature of ethnic problems during such times may have little to do with federalism. Yet, even during periods of civilian rule, federalism’s impact appears ambiguous. A few incidents are indicative: During the First Republic, the Northern Region’s dominance over the two and then three southern regions produced resentment against the Hausa/Fulani. Political struggle was organized during that period around ethnically based political parties, partly as a result of the shape of the Federal system. The 1966 killing of Igbo people in the North and the Biafran secession resulting in a great loss of life were not prevented by federalism.

The creation of new states brought to the fore many grievances minority ethnic groups had suppressed under the domination of the three large ethnic groups whose domination was assured by the size of the initial federal units. The effort to introduce the notion of “federal character” as a means of overcoming an aspect of the ethnic problem appears to have done more to exacerbate than solve it. Roberta McKown²⁴ made a similar observation, suggesting that federalism has served only to provide a structure for the exacerbation of ethnic and regional conflict. He says that it may be possible that federalism is appropriate for moderate amounts of diversity, but not the extremes to be found in Africa. Donald Horowitz contends that federalism’s impact was not consistently harmful: “the Nigerian evidence shows that federalism can either exacerbate or mitigate ethnic conflict. Much depends on the number of component states in a federation, their boundaries, and their ethnic composition.”²⁵

²⁴ McKown, p. 306.

²⁵ Donald Horowitz, *Ethnic Groups in Conflict* Berkeley: University of California Press (1985). p. 603.

Abeyasinghe Navaratna-Bandara observes that "The Nigerian example shows how a central government may use devolution as a political instrument to weaken the political strength of ethno-regionalism..."²⁶ More than thirty years ago Don Rothchild²⁷ described the way leaders used federalism for a variety of purposes. Jenny Robinson contends that federalism is "first and foremost a political project clearly associated with transforming the character of state power and with asserting certain types of political subjects as central."²⁸

When the founding fathers of Nigeria opted for a federal system of government in 1954, as opposed to a unitary system, it was a conscious decision designed to protect the diversities and identities of the federating units. They agreed to establish a central government that unites them, while simultaneously agreeing to retain their independence in order to safeguard their respective diversities. However, the basic tenets of federalism that defined the federal structure of Nigeria between 1954 and January 1966 have been jettisoned in favour of a unitary structure robed in federal colours with time. The challenge, therefore, is for Nigerians to return to the principles of federalism. The status quo, as enshrined in the Constitution of the Federal Republic of Nigeria, 1999, is not sustainable.

²⁶ Abeyasinghe Navaratna-Bandara. *The Management of Ethnic Secessionist Conflict, The Big Neighbour Syndrome* (Aldershot, U.K.: Dartmouth Publishing Co. Ltd., 1995), p. 23.

²⁷ Donald Rothchild. *The Limits of Federalism: an Examination of Political Institutional Transfer in Africa*. *Journal of Modern African Studies*, Vol. 4, No. 3 (November 1966), pp. 284-285.

1.4. e. Federalism in Germany

German federalism is a case in itself. Some scholars have even raised doubts as to whether the German state can be labeled as a Federal system.²⁹ One reason for this can be found in the constitution. The writers of the constitution deemed federalism so important that they included the provision that the Federal Republic of Germany shall be a democratic and social federal state, among the few elements that are not amendable under any circumstances. Federalism has long become a part of the Germans' political culture. Often, they refer to their own country simply as "die Bundesrepublik" - the Federal Republic. This shows how central the concept of political decentralization has become for them. The constitution assigns legislative power mainly to the Federal government, whereas the states (Länder) are, in most cases, responsible for implementing the law. Moreover, the Federal system is embedded in a society with centralised organizations of interest³⁰ in a highly developed welfare state, in an increasingly Europeanized economy, and in a political culture that emphasizes national unity and uniform living conditions in all regions.³¹ Territorial diversity and competition between decentralized governments, which are often said to characterize a truly Federal system, are not supported. Even so, the division of power, decentralization, and the participation of Land governments in national policymaking are basic features of German federalism.

²⁸ Jenny Robinson, *Federalism and the Transformation of the South African State*, in Graham Smith, ed., *Federalism: The Multiethnic Challenge*. London: Longman, (1995), p. 275.

²⁹ Kenneth Wheare, *Federal government*, 4th ed. (London: Clarendon Press, 1963), p. 26; Heidrun Abromeit, *Der verkappte Einheitsstaat*. Opladen: Leske & Budrich, (1992).

³⁰ Peter Katzenstein, *Politics and Policymaking in West Germany: The Growth of a Semi-Sovereign State*. Philadelphia: Temple University Press, (1987), p. 15

³¹ Konrad Hesse, *Der unitarische Bundesstaat*. Karlsruhe: C. F. Muller, (1962).

The 16 federal states in Germany have substantial authority. The citizens of the states do not only elect their own state parliaments, who then choose their own state governments headed by veritable prime ministers. Importantly, these politicians wield genuine political power. They are responsible for all affairs pertaining to culture, internal security, the media, local government and regional taxation. In addition, the "Länder" have a significant say in national affairs.

Germany has a bicameral legislature. However, the members of the Upper House are not elected on a national level. The Federal Council, as it is called, is more like the Senate in the United States, representing specific regions. In the legislative practice, a majority in the "Bundesrat" has the right to block all laws that directly or indirectly affect the interests of the regions. According to estimates, more than fifty percent of federal legislation is conditional on approval by the regional entities.³²

1.4. f. Comparative Federalism

The Federal governments in both Nigeria and Germany are forms of indirect federal administration involving a constitutional arrangement whereby the state governments implement federal policies and laws under the supervision of federal officials. Although the states may have a free hand in the manner of implementation, this must be done within the ambit of norms prescribed by the center.

Unlike the case in Nigeria which has a highly centralized federation in which the federal center has enormous political and economic powers, with an apparently suffocating hold on the

³² By Dr. Ronald Meinardus, the former resident representative of the Friedrich Naumann Foundation Philippines and Gerhard Raichle in their article *Liberalism and Federalism*

states, the sixteen federal states in Germany have substantial authority. The citizens of the states do not only elect their own state parliaments, who then choose their own state governments headed by veritable prime ministers but most importantly, these politicians wield extensive political power. They are responsible for all affairs pertaining to culture, internal security, the media, local government and regional taxation. In addition, the "Länder" have a significant say in national affairs.

The Federal Republic of Germany is a classic example of a system that serves the end of mega-decentralization. Its federal institution is not committed to solving problems of race, nationality, or religion. Nor can the new Turkish minority in the Federal Republic of Germany realistically hope to be upgraded as subjects of territorial units that could be considered as federal subsystems. Other institutions must serve their particular interests.³³ On the other hand, the federal structure in Nigeria is meant to safeguard national or ethnic identity. It is a nation whose leaders have constantly tinkered with a colonial federal legacy that sought to balance the country's three major ethnic groups. According to Suberu the structure of thirty-six sub-federal states helps contain local ethnic disputes, diffuses the power of the three major Hausa-Fulani, Igbo and Yoruba ethnic groups and prevents absolute domination of the nation's smaller minorities. He argues that not only does it sometimes create a state-based identity to compete with ethnic affiliation; but that multi-state federalism provides a functional framework for economic distribution that avoids the unitary excesses of other African multiethnic states.³⁴

³³ Ehrlich Stanislaw. *Theoretical Reflections on Federations and Federalism* (source: *International Political Science Review / Revue internationale de science politique*, Vol. 5, No. 4, *Pluralism and Federalism*. Sage Publications, Ltd (1984), pp. 359-367)

³⁴ Rotimi N. Suberu. *Federalism and Ethnic Conflict in Nigeria*. Washington, D.C: Institute of Peace Press, (2001). p. 206.

1.5. Theoretical Framework

Various contending theories have been propounded by scholars in their attempt to analytically bring into clearer perspectives the nitty-gritty of federalism as a structural mechanism for the governance of men within various polities that form part of the physiology of global political community. These theories have variously highlighted the components inherent in federalism as does the attention they deserve, in that: the actual sorting out of functional tasks among different levels of government is a perennial source of tension and uncertainty in most federalism.³⁵

A theoretical framework based on human needs approach of International Relations has been chosen not only to explain the distribution of economic and political resources in federal states, but also help us understand how inequality in this distribution deprive needs satisfaction for certain ethnic groups leading to anti-social personal and group behaviour.³⁶ Humans need a number of essentials to survive. According to the renowned psychologist Abraham Maslow and the conflict scholar John Burton, these essentials go beyond just food, water, and shelter. They include both physical and non-physical elements needed for human growth and development, as well as all those things humans are innately driven to attain. Rejecting the use of violence to stop violence, conflict resolution approaches look at the roots of conflict in order to address them properly for a long, stable and sustainable peace. According to Burton, the needs most salient to an understanding of destructive social conflicts were those for identity, recognition, security, and personal development. Over time, however, he tended to emphasize the failure of existing state systems to satisfy the need for identity as the primary source of modern ethno-nationalist struggles.

³⁵ Advisory Commission on Intergovernmental Relations (*ACIR*) (1980).

³⁶ Daniel J. Christie. *Reducing Direct and Structural Violence: The Human Needs Theory*, in: *Peace and Conflict*, Journal of Peace Psychology, No. 3(4), (1997), p. 315-332

Institutions and political structures often frustrate ordinary and well organised needs leading sometimes to aggressive responses. The theory would help us understand the fundamental needs, such as individual and group identity, how they are compulsive and are sometimes pursued even at the cost of physical violence. It will help us try to reconcile if federal institutions help resolve conflicts and if it helps state institutions adjust to human needs.

Human needs are a powerful source of explanation of human behaviour and social interaction. All individuals have needs that they strive to satisfy, either by using the system, acting on the fringes or acting as a reformist or revolutionary. Given this condition, social systems must be responsive to individual needs, or be subject to instability and forced change (possibly through violence or conflict).³⁷

The Seville Statement on Violence, written by twenty leading scientists from around the world, in Seville, Spain, on 16 May 1986, concluded clearly that 'violence was not human nature.'³⁸ It convincingly argued that violence was not genetic, and was simply a social construct, an invention.³⁹

³⁷ Roger A. Coate and Jerel A. Rosati. *The Power of Human Needs in World Society*. ed. Roger A.Coate and Jerel A. Rosati, ix. Boulder, CO: Lynne Rienner Publishers, (1988).

³⁸ Seville Manifesto,

http://portal.unesco.org/education/en/ev.phpURL_ID=3247&URL_DO=DO_TOPIC&URL_SECTION=201.html

³⁹ In Seville Statement five propositions were elaborated upon: "(1) It is scientifically incorrect to say that we have inherited a tendency to make war from our animal ancestors; (2) it is scientifically incorrect to say that war or any other violent behavior is genetically programmed into our human nature; (3) it is scientifically incorrect to say that in the course of human evolution there has been a selection for aggressive behavior more than for other kinds of behavior; (4) it is scientifically incorrect to say that humans have a 'violent brain'; and (5) it is scientifically incorrect to say that war is caused by 'instinct' or any single motivation." Ibid. See also David Adams, 'The Seville Statement on Violence: A Progress Report', *Journal of Peace Research*, Volume 26, Number 2 (1989), pp. 113-121.

There is widespread embracement of federalism as a form of political arrangement. The reasons for the same have been advanced with varying degrees of specificity. According to Wender,⁴⁰ the underlying assumption that federalism provide opportunity for mutual understanding of the terms of cohabitation by the federating units acts as one of the catalysing factors of the spread of the federal idea. Schmitt contends that this spread has equally been tied to the fact that federalism has emerged as a means of accommodating the growing desire of people to preserve or revive the intimacy of small societies, and the growing necessity for larger combinations to mobilise the utilization of common resource better.⁴¹

Finally, much can be said to the usefulness of Human Needs Theory in working with violent conflict. Firstly, it has wide applicability. While some see it merely as a tool to be applied in prevention or post-conflict peace-building it can also be used in mediation in violent conflicts and in reconciliation efforts. Equally, it can be applied in all levels of society, for intra- and interpersonal conflict, inter-group conflict and in an international setting. Secondly, it focuses on the source of conflict, looking at how best the parties can have their needs met, and those of others. Finding strategies to meet underlying needs, we may be able to reduce the use of expensive peacekeeping, peace enforcement and creating of buffer zones. Thirdly, Human Needs Theory emphasises common humanity. In a world context where differences are accentuated, Human Needs Theory attempts to unify human beings from different regions and cultures, creating a common understanding of who

⁴⁰ Wender G. *Forward (to) Constitutions and Federalism*. Lagos: Friedrich Ebert Foundation. (1997).

⁴¹ Schmitt, N. *History of Constitutional Making: European and Australian Experience*. In: *Constitution and Federalism*. Lagos: Friedrich Ebert Foundation. (1997). Chapt. 2, p.19-72

we are and how others need and feel the same way we do. Sandra Marker also notes a fourth advantage, in that Human Needs Theory points out that human needs are non-negotiable.⁴²

1.6. Hypotheses

The study will test the following hypotheses:

- Federalism promotes decentralization of resources
- Ethnofederalism solves the problem of multi-ethnicity by reducing tribal and racial cleavages
- Federalism functions well in monolithic states

⁴² Sandra Marker. *What Human Needs Are. In Beyond Intractability*. August 2003
<http://www.beyondintractability.org/m/human_needs.jsp>.

1.7. Operationalization of terms

Auftragsverwaltung – delegated administration

Bundesbahn – Federal Railways

Bundesrat – the assembly of the representatives of the Land governments

Bundesrepublik – Federal government

Bundesstaat – federation

Bundeswehr – Armed Forces

Confederal – It refers to the process of (or the event of) establishing a federation

Consocial techniques – cooperative mechanisms

Decentralization – the authorisation of dependent agencies to make decisions of a regional and local character

Deutscher Bund – German Confederation

Einheitsstaat – unitary state

Einspruch – suspensory veto

Ethnofederalism – a federal political system in which component regions are intentionally associated with specific ethnic categories.

Flachenstaaten – area-states

Gane – 32 party districts established by the Nazis

Ganleiter – head of the districts (Gane) established by the Nazis

Gemeinden – municipalities

German Reich/ Deutsches Reich – official name for Germany from 1871 to 1945

Gemeindeverbände – administrative unions

Kreis/ Stadtkreis/ Kreisfreie Stadt – County borough

Kreise – subdistricts

Kreisrat – an executive committee

Land (plural *Länder*) –The Weimar Constitution used the term '*Land*' plural '*Länder*' to designate the federal states and this terminology has been retained by the Basic Law.

Landkreis – subdistrict/ rural county

Landrat – county director/ an elected council

Landerrat – Länder Council

Mittelstufe – intermediate level of authority.

Norddeutscher Bund – Northern Federation

Oberkreisdirektor – executive officer

Oberpräsident – a governor

Politikverflechtung – a system of interlocking politics.

Regierungsbezirk – government districts

Regierungspräsident – district president

Reich Governor/Reichstatthalter –

Reichsrat – The assembly of the Land governments

Selbstverwaltung – local self government

Stadtstaaten – city states

Unterstufe – lower level of authority

Verwaltungsrat – the Executive Council

Verwaltung als eigene Angelegenheit – autonomous administration

Wirtschaftsrat – The Economic Council

Zweckverbände – unions with specialized functions

Zustimmungsgesetze – consent laws

1.8. Methodology of the Research

The study will draw from relevant empirical studies the bulk of which will be secondary data from the literature and theoretical work. The data collected will facilitate the analysis of the role of federalism in the reduction or alleviation of ethnic conflicts in pluralistic states. The data will further help in the comparative analysis of the effectiveness of federalism in monolithic versus pluralistic states with Germany and Nigeria being the points of reference. Germany is considered as a monolithic federal state because the Turkish constitute a very minority group, and because the Federal Republic is more concerned with mega decentralization of resources and power as opposed to the case of the Federal Republic of Nigeria, which is seen by many as serving the purpose of safeguarding ethnic identity.

The secondary sources of information will include journals, articles, magazines, newspapers, books, statistical abstracts, public documents, periodicals and other such literature that shall be deemed adequate in giving appropriate information. All the relevant findings and data shall be collected, recorded and analysed. Particular emphasis will be laid on the Federal Republic of Germany and Federal Republic of Nigeria with the aim of comparing the two.

1.9. Scope and Limitation of the Study

The study covers federalism and ethnic conflicts and particularly federalism in Nigeria, federalism in Germany and a comparative analysis of the two. Federalism in Nigeria gives a peak into its history, which is subject to debate with five strong views surrounding the subject. It further expounds on its compatibility with military rule, impact on economic development, how multi-ethnicity affects its functioning and its relation to the general organization of the Federal Republic of

Nigeria. Federalism in Germany, which is linked to a strong tradition of regional government dating back to 1871, introduces the subjects of the changes in the development of the German federal system, the land governments as well as their powers and that of the federation, the financial system and the constitutional allocation of expenditure and responsibilities. A comparative analysis of federalism in Nigeria and Germany focuses on federalism and decentralization in both countries, ethno-federalism and the multi-ethnicity which reveals Nigerian federalism as based on ethnic and not geographical diversities as is the case in Germany and lastly, federalism in monolithic and pluralistic states.

This study is also bound to have limitations. Federalism is an area which has been covered widely as such there is lots of literature the same. Availability of a wide variety of materials about the subject will affect the choosing of the information to be used in this research in terms of what information to rely on, its credibility and depth. It will also mean spending a lot of time in selecting and analysing the desired information. Apart from that, this study will also not cover fully the solutions to the problems that may arise and affect the functioning of federalism. Whatever mechanisms are applied, power conflicts can never be entirely solved since they are inherent in the federal system as such.

CHAPTER OUTLINE

Chapter one will be an introduction to the research problem citing the background to the research problem, statement of research problem, objectives of the research, justification of the study, literature review, theoretical framework, hypothesis, and methodology of the research.

Chapter two will entail the background study of Federalism and Conflict. This chapter will look at the history of Federalism, its advantages and disadvantages and link it to conflict.

Federalism in Nigeria as a case study will constitute the third chapter. This chapter will look at the history of federalism in Nigeria, its structure, how it has functioned and its strengths and weaknesses. Of particular interest in this chapter will be the ethnic orientation of the Nigerian Federal state. The time line for the federalism Nigeria under interrogation in this thesis is between 1960 and 2010

The case study of Germany as a federal republic will be the fourth chapter and lots of attention will be paid to the time period between 1949 to date.

Chapter five will entail a critical analysis of Federal systems in Nigeria and Germany. Here the structure and functioning of both systems will be analysed, their strengths and weaknesses compared and contrasted and their relation to conflict drawn.

The final chapter, chapter six, will entail conclusions and recommendations.

CHAPTER TWO

2. BACKGROUND STUDY OF FEDERALISM AND CONFLICT

2.0.: Introduction

Much research in the past few decades has been devoted to how states can most effectively manage ethnic and linguistic diversity within their borders. Broadly speaking, leaders in democratic countries have two competing strategies that they can employ to best govern their citizens—integration or accommodation. The former seeks to create a polity, which has one overarching language, culture, and identity, dismissing the idea that diverse minority ethnic and linguistic groups should have some degree of privileged political status that distinguishes them from the majority. The latter tries to accommodate diversity by establishing institutions, which allow minority groups to participate in politics collectively and coexist with the majority group. Although there are many types of institutions that represent the accommodation or consensual school of thought (such as proportional representation, minority veto, etc.), one such institution is multinational, incongruent, or ethno-federalism, which is a form of federalism that draws the boundaries of one or more of its states around a minority group, giving a minority group a majority status in at least one State.

2.1. Understanding Federalism

The literature on federalism is not in agreement about what "federalism" is and what it constitutes. There are different perceptions of federalism. Whether one's conceptualization of federalism grows out of a sociological and, thus, group-based notion of governance, an institutional orientation to the importance of federal structures, or an intergovernmental perspective of public

administration, the analysts' initial assumptions about federalism tend to frame most subsequent questioning about its relationship to political representation. Second and related to the first, experts on federalism do not agree on the countries that should be classified as Federal systems. Finally, questions about political representation and conflict are just some of the many lines of inquiry within research on federalism. Many analytical assumptions taken as a given in one literature are not as fully developed in the other, even in areas where the two substantively overlap.

A popular point of departure for most federalist scholars, especially those of the legal-constitutional genre, is to differentiate federalism from unitarism. In general terms, a unitary system has only one effective and determinate level of government - the central government. Territorial (local administrative) subunits of government are determined by, and subordinate to, the central authority, the relationship being one of a revocable delegation of power to the territorial units by the central authority. Federalism is characterized by an irrevocable division of power between the central government and the component units (e.g., states, regions, provinces, and cantons). This division is a product of a constitutional compact between the two units of government neither of which, acting alone, can amend (or revoke) the compact. Put differently, while unitarism involves centralization and decentralization of power because both imply "the existence of a central authority, a central government ... [which] can decentralize or recentralize if it so desires,"⁴³ federalism involves both centralization/decentralization and noncentralization. This is so because the central government in a Federal system can decentralize or recentralize in its sphere of jurisdiction, but matters on which the states make final decisions cannot, in theory, be centralized. This point is well

⁴³ Ibid

made by Elazar who argues that noncentralization best describes intergovernmental relations in Federal systems.⁴⁴

William H. Riker most clearly articulated the institutional approach to the study of federalism. In addressing federalism, he defined Federalism as a political organization in which the activities of government are divided between regional governments and a central government in such a way that each kind of government has some activities on which it makes final decisions.⁴⁵ He elaborates in some of his other work the precise constitutional elements that distinguish federal and non-federal states. He argues that a constitution is federal if two levels of government rule the same land and people, if each level has at least one area of action in which it is autonomous, and if there is some guarantee (even though merely a statement in the constitution) of the autonomy of each government in its sphere.⁴⁶ Riker's formal-legal approach emphasizes the key institutional elements of federalism in creating conditions for self-rule and shared rule. In determining typologies of states, Riker, therefore, focuses on the constitutionally prescribed division of authority between the government of the federation and the governments of the member units. Riker, and others sharing this institutional perspective on federalism, view these institutional conditions as boundaries within which politics occurs in a Federal system

In their essay entitled, *A Political Theory of Federalism*⁴⁷, Jenna Bednar, William N. Eskridge, Jr. and John Ferejohn argue that Federalism recognizes the existence of sovereign

⁴⁴ Ibid

⁴⁵ William H. Riker. *European Federalism: The Lessons of Past Experiences*. p. 101.

⁴⁶ William H. Riker. *Federalism: Origin, Operation, Significance*. Boston, MA: Little, Brown and Company. (1964), p. 11.

⁴⁷ Jenna Bednar et al. *A Political Theory of Federalism*. (1999).

authority in any circumstances in which a governmental unit has a reliable prospect of asserting its assigned authority and defending it when it is challenged. According to them, a state can have sovereign authority if circumstances are such that it exercises jurisdiction in some domain and is not, for reliable reasons, ever challenged (or is only rarely challenged) by the national government or other states. This circumstance might be based either on the existence of a normative structure enforcing compliance with sovereignty claims or, in the case of structural federalism, on the balance of resources held by the governmental units, on alliances among political or social forces, or on constitutional arrangements that permit provincial actors or institutions a direct voice in the formation of national majorities, making the formation of such majorities impossible without the concurrence of the provinces or their political agents. This condition has two parts, one focusing on the government with a sovereignty claim and the other, on the governmental units surrounding it. For a government to be sovereign in a domain it must be sufficiently decisive to assert a claim in that domain. Also, it must be the case either that the claim is rarely challenged or, if it is, that the claiming government can usually make its claim stand. In the case of federal arrangements, much of the bite in this definition will arise from the fact that, because of the structural division of powers within the national government, provincial sovereignty claims are rarely challenged. As a consequence, nonjuridically sovereign provinces can usually exercise their powers unchallenged. The danger to provincial sovereignty comes from the assertion of national preemptive power, and the challenge is to regulate the exercise of that power procedurally or structurally.

An apparent mechanism for regulating national preemptive exercises of power is to make it difficult for the national government to act without the acquiescence of the states. One can imagine numerous mechanisms for achieving this goal, though many of the mechanisms, such as a state liberum veto, are too costly to the polity's overall well-being (recall the political demise of Poland in

the early modern period). Less costly mechanisms would include giving the states formal or functional control over membership in at least part of the legislature, requiring some kinds of national legislation to be ratified by a majority of the states, vesting implementation of national programs in state officers, and so forth. Precisely which mechanisms are best suited for the particular polity may be a relatively ad hoc matter. In some cases, political traditions may evolve in the place of institutional provisions to fragment authority. For example, in Canada, voters generally "balance" their national representation by electing candidates from an opposing party to provincial office.⁴⁸

When dual federalism prevailed, the distinction between unitary systems and Federal systems was fairly easy to make. Dual federalism is best described in the words of U.S. Chief Justice Roger B. Taney: "The power of the general (central) government and the state, although both exist and are exercised within the same territorial limits, are yet separate and distinct sovereignties, acting separately and independent of each other within their respective spheres."⁴⁹ K. C. Wheare, Arthur MacMahon, Geoffrey Sawer, and others who adopted the dual model to distinguish federal from unitary systems argue that, while the constituent units in a unitary system are subordinate to the central authority, those in "true" Federal systems are not (or ought not to be). As Ronald Watts puts it, "what distinguishes federal from other forms of government is that neither the central nor the regional government is subordinate to the other as in unitary or confederal systems."⁵⁰ It is for this reason that Wheare regarded as not truly federal, states like India and Nigeria (pre-1966) where the constitution empowered the central government to intervene in the states at periods of crisis or

⁴⁸ Brian Gaines

⁴⁹ "Chief Justice Taney in *Ableman v. Booth*, cited in D. Elazar. *Federal-State Collaboration in the 19th Century United States*. *Political Science Quarterly* 79, (1964). p.133.

⁵⁰ Ronald L. Watts. *New Federations: Experiments in the Commonwealth*. (London: Oxford University Press, 1966), p. 355.

emergency, thereby implying state subordination."⁵¹ This position has been criticized for being too inflexible; however, even Wheare agreed that where such interventionary powers are not invoked habitually, the system remains federal in practice.

Nevertheless, even the assumed non-subordination of constituent units is no longer a strong point in many federations today. The emergence of "intergovernmental consultation," "cooperative federalism," "organic federalism," "new federalism," and even "military federalism," all of which involve increasing collaboration between federal and state authorities,⁵² has brought in its wake, a recognition of the leadership and policy-shaping responsibilities of the central government. This development has been propelled by numerous factors, two of which deserve to be mentioned here.⁵³

First, there has been a rapid expansion in the scope of matters of central responsibility. As federations (and indeed all other governmental systems) have moved from the era of the law – and – order state to one of functions – the welfare and service state – there has been an urgent need to formulate common policies and to reduce to the barest minimum, different practices in the states. The onus for doing so has fallen on the central government whose growing fiscal powers helped to equip it for this task.

⁵¹ See K. C. Wheare. *Federal government*. 4th ed.; London: Oxford University Press, (1967).

⁵² A good summary of these developments is provided in L. O. Dare. "Perspectives on Federalism," Readings on Federalism. ed. A. B. Akinyemi, P. D. Cole, and W. Ofonagoro. Lagos: Nigerian Institute of International Affairs, (1979), p. 26-35.

⁵³ Other factors include the "militarization" of states to meet international political exigencies and the overriding need for nation-building. For the factors making for increasing centralization in federations, see Daniel J. Elazar, "The Shaping of Intergovernmental Relations in the 20th Century," *Annals of the American Academy of Political and Social Science* 359 (May 1965); M. B. Danielson et al., *One Nation, So Many Governments* (Lexington, Mass.: Lexington Books, 1977); David Walker, "American Federalism in a Transitional Era," *Readings on Federalism*, pp. 336-351.

This accounts for the second factor, namely, the financial ascendancy of central governments, which has made the states their dependents. Central governments have been able to exert varying forms of control over the states, especially through grants-in-aid. In Nigeria, for example, about 80 percent of the states' annual budgets is provided by the Federal government, which also initiates and coordinates the execution of all major projects under the National Development Plans.⁵⁴ In the United States, where decentralization and state and local government autonomy remain time-honored traditions, New Federalism of Richard Nixon witnessed a rapid growth of federal intervention in matters belonging to the states and the localities. This was matched by an increased revenue allocation from the Federal government to the states, and by an increased allocation of conditional and non-conditional grants to supplement state and local revenues and solve such problems as pollution and drug abuse.⁵⁵

In discussing Federalism, MacMahon distinguished between "indirect federal administration" systems in the European federations of Germany, Switzerland, and Austria, and "direct federal administration" in the United States.⁵⁶ Indirect federal administration, he argued, involves a constitutional arrangement whereby the state governments implement federal policies and laws, usually under the supervision of federal officials. Although the states may have a free hand in the manner of implementation, this must be done within the ambit of norms prescribed by the center. This arrangement was also found in Nigeria's military federalism in which state military governors were appointed by the Head of State and were expected (naturally, as soldiers) to execute his orders.

⁵⁴ See S. E. Oyovbaire. *Federalism in Nigeria*. London: Macmillan. (1985). p. 162-200.

⁵⁵ See Danielson. *One Nation, So Many Governments* and A. H. Birch. *Federalism, Finance and Social Legislation in Canada, Australia and the United States*. Oxford: Clarendon Press, (1955) for a comparative analysis of early trends in these federations.

⁵⁶ Arthur W. MacMahon. *Administering Federalism in a Democracy*. New York: Oxford University Press, (1972), p. 22-27. On the concept of "administrative federalism," see Sawyer. *Modern Federalism*, pp.128.

Direct federal administration on the other hand, involves direct implementation of federal laws and policies by federal officials in the states, usually in collaboration with state officials.

In view of the considerable overlaps between unitary and federal practices today, many students of federalism hesitate to strictly distinguish between them, preferring instead to assert that any system is more or less federal or unitary. Certainly, this cannot be so because, as one author has pointed out, "To make empirical comparisons between human organizations... one cannot ignore or omit stipulations or conventions which draw a determinate line between the institutions to be compared."⁵⁷ There will, therefore, continue to be a need to distinguish federal from unitary systems as precisely enough as possible. Perhaps the best way to do this is to adopt the legal-constitutional approach formulated by Wheare and others. This approach takes the quintessence of federalism to be the conformity that the constitution and its practice have with certain federal principles.⁵⁸ These include; among others, a written constitution that divides power between two units of government neither of which can unilaterally amend it, an independent supreme court that serves as final arbiter in all constitutional disputes, financial self-sufficiency of each unit of government commensurate with its allotted functions; a separation of powers between the executive, legislature, and judiciary; non-subordination of one unit of government to the other; a constitutional clause that prohibits secession by any of the constituent units; and a constitutional provision that matters not belonging to

⁵⁷ King, *Federalism and Federation*. p. 78.

⁵⁸ Cf. Wheare, *Federal government*; and A. W. MacMahon, ed., *Federalism: Mature and Emergent*. New York: Russell and Russell, (1962).

the exclusive or concurrent legislative lists (i.e., the residual powers) should be the preserve of the regional (state) governments.⁵⁹

One point that is clear though, is that decentralized governmental structures offer many advantages over more unified forms. Rational choice theories of politics explain why a decentralized system would best satisfy popular preferences in a polity containing heterogeneous individual preferences.⁶⁰ Borrowing from Charles Tiebout and Gordon Tullock, one can suppose that if 60 citizens in a centralized polity prefer policy A and 40 prefer policy not-A, the polity will adopt policy A, but with 40 dissatisfied citizens (provided that the practice of A in one region is compatible with 'not A' nearby). A decentralized polity will usually end up with fewer dissatisfied citizens. For example, where 50 citizens in the first province favor policy A while 10 oppose it, and 30 citizens in a second province favor non-A with 10 favoring A, each province can adopt different policies, leaving only 20 (rather than 40) dissatisfied citizens. If there is mobility within the polity, citizens can move between the two provinces, and even greater satisfaction is achieved under the decentralized arrangement.

The political economy of decentralization may be understood either normatively or positively. As a normative theory it counsels the adoption of policy formation processes that take advantage of scale economies and that permit citizens to sort themselves among jurisdictions according to their tastes for public services. Decentralization permits the allocation of decision

⁵⁹ This last "principle" is not a hard-and-fast one. In India, Canada, and Venezuela, for example, residual matters are allocated to the central government. What is important is that the constitution provides for the locus of residual powers, not that they should be located in any one particular place.

⁶⁰ Early works of great consequence include Buchanan & Tullock (1962); Hirschman (1970); Tiebout (1956); Tullock (1969). Important recent works include Ostrom (1991); Oates (1972); Peterson (1981); Trebilcock (1983).

making authority to take account of the economic characteristics of the goods and services being produced. It permits the choice of governmental units capable of internalizing externalities in service provision and recognizes that this usually will entail having different units provide each good or service and that taxation be organized at the national level (to ensure that allocational decisions are not tax induced).

As a positive or predictive theory the political economy of decentralization foresees jurisdictions arising in a manner that responds to technical production and distribution characteristics of the particular public services in question. One would expect the temporary emergence of special districts, each dedicated to producing one kind of public service, and each shifting its size and structure as technical conditions changed. Which jurisdictions actually emerged would depend on contingent technological and population characteristics. One would also expect to see a degree of flux in governmental units as technologies and tastes varied over time. However, in establishing jurisdictions, the framers of a decentralized arrangement might well reflect linguistic and ethnic differences insofar as these differences affect economic or political transactions costs. It may turn out, therefore, that for some nations; ethnically based jurisdictions will be employed in order to economize on these costs.

These arguments apply directly to multi-ethnic situations. For example, decentralized institutional arrangements make it possible for German, French and Italian citizens of Switzerland to enjoy the benefits of nationally provided services and a common market and, at the same time, to live in relatively homogeneous communities. The self-sorting described above permits individuals and families to make locational decisions based on considerations of ethnic or linguistic identity as well as on economic prospects. Insofar as ethnic identity carries with it preference-related content, such sorting will support the provision of characteristic cultural goods and services associated with

various ways of life. The reason is not that policy preferences are likely to be more diverse in such states, but that some policy preferences are likely to be bound up with deeply felt identities. If people place a substantial enough weight on ethnic or linguistic identity, the political-economic theory might predict a relatively stable institutional structure based on these identities. The ethnic communities may not be the optimal scale to provide certain services but they may provide a sufficient improvement over more national arrangements so that they have some sticking power. Multi-ethnic states may therefore be able to approach the generic incentive problems of decentralization in a distinctively productive way.

However, although political-economic theories of decentralization show how improvement over centralized regimes is conceivable as well as beneficial, they ignore a central practical difficulty with constructing and maintaining regimes of this sort. That is, the constituted agents of a decentralized regime, the national and sub-national governments will have strong incentives and many opportunities to cheat on the arrangement. The national government will constantly be tempted to increase its own power relative to the provinces and, indeed, to shift to the provinces some of the costs of national programs. The provinces, in turn, have incentives to push costs off onto neighboring states as well as to trespass on national values. Cheating in these ways not only undermines the advantages of the decentralized arrangement, but also threatens the viability of the state itself, by inducing the constituent governments to engage in defensive activities aimed at protecting their decisional spheres. These dangers seem especially keen in multi-ethnic polities.⁶¹

⁶¹ The fact that a politics of "identity" is involved in such states makes the stakes of opportunistic behavior higher than they would otherwise be. That it is a province dominated by members of one ethnic group that is dumping costs onto a neighbouring area may add heat to resentment and dispute. Conversely, the fact that identity politics makes the stakes high, may permit the establishment of credible restraints on opportunistic behavior that would not generally be available. The fact that otherwise mundane disputes might escalate into deeply felt grievances and be implicated in tragic histories may restrain participants from careless infringements on the claims of their neighbours. The examples that come to mind most easily are, of course, cases in which these restraints failed — in

Anticipation of such failure may make the benefits of decentralization politically unavailable at the outset: regions, tribes, or states, acting rationally, will refuse to enter into a federal arrangement on the grounds that there is no credible machinery for enforcing it.⁶²

Genuinely federal institutions must be credibly robust against both national and provincial aggrandizements of power. That is to say, federal arrangements must represent a commitment by the parties generally to refrain from trespassing on the rights of their federal partners. How might this commitment problem be solved or managed? The obvious way to manage this problem is to list independent courts to force both the states and the national government to respect jurisdictional boundaries. But it has always been difficult to convince skeptics that courts can be made sufficiently independent to provide robust guarantees of their rights. Indeed, insofar as courts are institutionally dependent on other national institutions, they will be tend to be seen as creatures of the national government with little real authority to checks its powers on important matters. And, if national courts are not created, state level courts would be vulnerable to an analogous suspicion. For this reason judicially enforced federalism, by itself, is probably unworkable.⁶³

Alternatively, a better way to address the issue proceeds in two steps. First, head off opportunism by the national government by fragmenting power at the national level, thereby incapacitating national authorities from invading state authority by making it difficult for a national

Lebanon, Northern Ireland, Somalia, Yugoslavia, etc. -- but successful cases, or better, successful periods of time, must be much more frequent.

⁶² Bednar called the foregoing dilemma "The Federal Problem" -- a durability problem that all federal arrangements face. See Bednar 1998a.

⁶³ The antifederalist Brutus offered another criticism of such a system. In his view national courts were probably completely uncontrollable and that the U.S. Constitution essentially created a system of government by courts. If Brutus is right about this B if neither the national nor state governments can threaten judicial independence B then judicial federalism might be more workable that we argue. In order for judicially-maintained federalism to work, the courts must be adequately motivated to draw and enforce federal boundaries.

will to form or be sustained over time.⁶⁴ This fragmentation may be accomplished through a formal system of separation powers and a system of checks and balances that make the formation of majorities difficult. But fragmentation may also be achieved in other ways as well, such as devising an electoral system that limits the capacity of political parties to coalesce. In any case, the fragmentation of national power that inhibits national incursions on state powers also limits the capacity of the national government to interfere with the courts. This permits the second step: employ politically independent courts to prevent the states from exceeding their own authority.

For decentralization to be a credible solution to political problems, it must somehow be supported as an equilibrium in one of these three ways. The first two methods involve reliance on a rule of law to enforce decentralized practices, either through explicit rule enforcement, or compliance with normative expectations. The last involves the balancing of political opportunities and incentives to stabilize decentralized administration.

One assumption made in this paper is that federal institutions provide some groups and individuals greater access to the system and that it awards some privileged access points within the system. Moreover, federalism presents groups and individuals with a variety of agents and institutions to whom they may appeal. In both federal and non-Federal systems, political actors use political institutions strategically. When governmental authorities overlap in Federal systems, principals and agents must choose not only the arena within which to compete but also strategies.

⁶⁴ Note that while fragmentation is effective at the national level, it probably cannot be counted upon to provide insurance against opportunistic behaviour at any sub-national level. This is essentially the point that Madison argued in *Federalist 10*. Smaller governments are more susceptible to majoritarian capture that can overwhelm internal checks. Furthermore, the national government is comprised of the provincial interests; each region is represented at the national level. However, no region contains representatives from the other regions or the national level; the success of fragmentation depends upon conflicting interests on the federalism question, a condition that fails at the regional level.

This complexity makes the representation processes and the holding of elected agents politically accountable substantially different in Federal systems.

The economic justification of federalism should be well known. Government action may be required to resolve those market failures associated with informational asymmetries, externalities, and wholly decentralized decision making over public goods. However, public goods in particular vary in their characteristics, which, in turn, may require different treatments by different levels of government. For example, if the demand for such a particular government service varies with geographic location, if some public good is more efficiently produced locally, if the externalities associated with its provision and consumption have a limited geographic domain, if there are reasons for believing that information about the demand and supply of public services is necessarily more evident to local and regional polities than to national ones, or if economies of scale in the production of such goods can be realized adequately at subnational governmental levels, then the decentralized decision making that is assumed to characterize federalism – decision making that encourages competition among political subunits and the monitoring of public officials by those directly affected by their actions – allows for a more appropriate treatment of public policy.

On the other hand if there are significant externalities in consumption and production that cuts across political geographical boundaries, or if there are extensive economies of scale, then the treatment of 'market failures' by a more unitary government can, in principle at least, better resolve market failures. The ideal federalism, then, is one that allocates the responsibilities of the state across levels of government according to rational criteria. Moreover, because technology, taste, and our understanding of things are never static, the decentralization and political competition that federalism allows offer the possibility of designing a state that can, in principle, at least move back and forth between acting in a centralized versus a decentralized way, and that makes such

adjustments over time and across issues according to fixed democratic rules, especially those safeguarding individual rights.

The political justifications for federalism are somewhat varied and they include allowing minorities – ethnic, religious, linguistic, or otherwise – the autonomy they often demand as ‘payment’ for their acquiescence to the coercive powers of the national government, allowing for the protection of the rights of those minorities as well as the rights of all others in the federation, and allowing for local and regional control of purely local and regional matters so as to discourage the alienation that people might feel from a more distant and seemingly less controllable central government. In theory at least federalism allows individuals to join those with whom they share similar tastes for government services, thus opening the door to a general level of welfare – and, presumably a degree of satisfaction with political institutions – unavailable to a unitary state. Federalism also is intended to allow for the decentralization of conflict, a mechanism whereby political barriers are established so as to preclude purely regional conflicts from disrupting national politics. Finally, those political entities who would form or join a federation may not be willing to abrogate their political authority wholly, and a degree of regional autonomy is often the only compromise that allows the establishment of a viable state in lieu of uncoordinated action.

2.2. Federalism and Ethnic Conflict

Virtually every modern nation-state is to a greater or lesser extent ethnically divided. This frequently implies a potential for various forms of conflict - from armed conflicts to autonomist movements and political segregation along ethnic lines.

There are wide range of debates among scholars and often misperceptions and controversies in an attempt to understand ethnicity and related concepts. M. Gudina in his book on "Competing Ethnic Nationalisms and the Quest for Democracy" expresses the problem of defining the concept. He contends that 'ethnicity' and 'nationalism' are particularly elusive terms to define. He argues that the attempted definitions are either ideologically informed or limited to local situations and hence lack universal meaning and application.⁶⁵

In a similar manner, W. Sollors, starts his book "Beyond Ethnicity" with two quotations one of which is Howe's. Howe says "No one quite knows what ethnicity means: that is why it is so a useful term"⁶⁶

Having seen the problem of defining such a politically sensitive term as ethnicity, the wide range of existing definitions flow from how ethnic groups are perceived by the existing theories. According to M. Koenig there are three theories with regard to ethnicity, namely primordialism, Constructivism and instrumentalism.⁶⁷

Primordialism consider ethnicity as a permanent characteristic of individuals and communities having features such as religion, culture, social organization or language which are considered to be objectively "given". As it is deeply rooted in historical experience it has to be properly treated as a given in human relations. According to this theory a community having a

⁶⁵ M. Gudina. *Competing Ethnic Nationalisms and the Quest for Democracy*. (2002). p. 20.

⁶⁶ W. Sollors. *Beyond Ethnicity*. (1996). p. 1.

⁶⁷ M. Koenig. *Democratic Governance in Multi-cultural Societies*. (1999). p. 24

distinct culture, religion or language (or other forms of social organization) qualifies for an ethnic group without recourse to a subjective element attached to being a member of an ethnic group.⁶⁸

Constructivism, on the other hand, argues for the inclusion of additional subjective element as an important aspect of ethnicity. This theory regards ethnicity as constructed from dense webs of social interactions and hence a group attitude about its custom, decent or even physical structure forms an important aspect of ethnicity.⁶⁹

Instrumentalism focuses more on the process of political mobilization and manipulation by which social groups are constituted on the basis of ethnic attributes such as nationality, religion, race or language. In this view, ethnicity has little independent standing outside the political processes in which collective ends are sought.⁷⁰ This theory is criticized as short-sighted by M. Gudina as it seem to overlook the possibility that marginalized ethnic groups resort to ethnicity in self-protection and to ensure their survival in the face of real domination and exploitation.

Quoting S. Nabudere, M. Gudina suggests a balanced view providing two aspects to ethnicity: positive and negative. The positive side of ethnicity, which he refers 'post-traditionalism' is a form of ethnic identification which is forward looking in that it tries to cope with modernity whilst defining ones identity for needs of stability and self-definition.⁷¹ Class manipulation and mobilization of ethnic sentiments for purely narrow and self serving interest of minority elites is the negative aspect according to him.

⁶⁸ Ibid

⁶⁹ Ibid

⁷⁰ See also T. Makkonen. *Identity, Difference and Otherness: The Concepts of 'people', 'Indigenous People' and Minority' in International law.* (2000). p. 24-25.

⁷¹ Ibid

Many countries have found themselves engulfed in chronic ethnic tensions in the recent history that has often erupted into violent conflicts. In Africa, for example, in addition to the human costs, these conflicts have contributed to the further depletion of the meager financial resources of some countries. They have also disrupted economic activity and contributed to the region's growing marginalization in the global economic system by discouraging the flow of foreign capital into the continent.

The conditions leading to these conflicts are many and vary from country to country. However, there are at least three common general factors. One is the state-building process in Africa. As in most other countries, political boundaries of African countries are arbitrary in the sense that they rarely correspond to ethnic boundaries. In contrast to most countries in other regions of the world, the creation of African states is relatively recent. The formation of the present-day Ethiopian state, for example, was not completed until the advent of the 20th century. More important, neither the colonial state, which created most African countries, nor the postcolonial state made serious attempts to develop conditions that foster state building.

The second related common factor is bad governance. Self-serving dictators who pay little attention to the broad social interests of their populations govern or have governed many African countries. The most notorious of such dictators, Mobutu Sese Seko, Siad Barre, Idi Amin, and Miriam Mengistu, fostered ethnic and clan conflicts by manipulating ethnic relations in an attempt to fragment opposition to their regimes. Many others have either mismanaged ethnic relations or failed to develop a vision for building multination states with a degree of state neutrality to allow ethnic entities some level of autonomy. Instead, they coerce minority ethnic groups to assimilate to the dominant culture. By suppressing political freedoms and divergent viewpoints, such leaders denied

their countries the opportunity to develop alternative visions and political arrangements for integrating different ethnic groups.

The third common factor is the excessive extroversion of African economies, which undermines the development of economic interdependence among different ethnic groups, regions, and economic sectors in African countries. Because of its inability to rectify the internal economic fragmentation and become an agent of development and empowerment of its citizens, often the state is viewed as an alien force to be ignored or evaded.

In the nineteenth-century Western Europe, according to Joseph Rudolph and Robert Thompson, "the most common causal element giving rise to the urge for autonomy" was the aggravation of a peripheral ethnic group's marginality in, or exploitation by, the state system to which it belongs.⁷² During periods of economic prosperity in the more recent rise of peripheral nationalisms, Peter Gourevitch has found that those most likely to support ethnic political movements are disadvantaged ethnic groups drawn by the opportunity or promise of expanded resources.⁷³

In an attempt to resolve chronic ethnic conflicts some countries have instituted federal arrangements along ethnic lines. This has led to Ethnofederalism, a federal political system in which component regions are intentionally associated with specific ethnic categories, being recommended

⁷² Rudolph and Thompson. *Ethnoterritorial Movements and the Policy Process: Accommodating Nationalist Demands in the Developed World*. Comparative Politics 17, (April 1985), 292. See also Ernest Gellner. *Thought and Change*. Chicago: University of Chicago Press. (1969). p.147-78; Michael Hechter. *Internal Colonialism: The Celtic Fringe in British National Development*. London: Routledge and Kegan Paul, (1975). p.1536-1966.

⁷³ Gourevitch. *The Reemergence of Peripheral Nationalisms: Some Comparative Speculations on the Spatial Distribution of Political Leadership and Economic Growth*; Comparative Studies in Society and History 21(July 1979), 303-12, at 319-21. See also Donald L. Horowitz. *Patterns of Ethnic Separatism*; Comparative Studies in Society and History 23 (1981), 165-95

by policy makers as a way of reconciling democracy and ethnic difference. Many of the world's most geopolitically important states- including Canada, India, Nigeria, and Russia-have adopted ethnofederal structure.

However, social scientists remain divided. Some, focusing on cases like Czechoslovakia, the Nigerian First Republic, the USSR, and Yugoslavia, have highlighted ethnofederalism's state-dissolving potential.⁷⁴ Others, usually calling attention to such countries as India, Switzerland, and Spain, dwell more on what they see as ethnofederalism's capacity to support democracy in divided societies.⁷⁵ A few have advanced explanations for variation, but none purport to have solved the puzzle entirely.

According to the social scientist advocating for ethnofederalism's state-dissolving potential, ethnofederal systems with a core ethnic region (One ethnic region considered "clearly dominant" in population because it contains at least 20 percent more of the union wide population than the next largest region or makes up an outright majority of the country's population.⁷⁶), tend to create a higher risk of state breakup than do those without one:⁷⁷

⁷⁴ On the postcommunist cases, see Brubaker 1996; Bunce 1998; Bunce 1999; Crawford 1998; Laitin 1998; Lapidus 1992; Leff 1999; Roeder 1991, 1999; Slezkine 1994; A. Smith 1992; Suny 1993. On African cases, see Mozaffar and Scarritt 1999; Wamala 1994. On Canada, see Meadwell 1995. For a treatment of important problematic incentives generated by ethnofederalism generally, see Snyder 2000a.

⁷⁵ Brass 1992; Gurr 1993; Kohli 1997; Lijphart 1977, 1995; G. Smith 1995.

⁷⁶ Hale, Henry E., and Rein Taagepera, *Russia: consolidation or collapse?* Europe-Asia Studies. (2002). 54 (7): 1101-25.

⁷⁷ For a more elaborate theoretical treatment of these dynamics, see Hale 2004. Other authors have advanced related theses. For example, Lemco (1991) and Watts (1994) note that size disproportionalities matter, but for mostly different reasons than those argued here. Elazar (1987) notes in a sentence that federalism tends not to work well when one region dominates. Horowitz (1985) develops similar logic in his analysis of Nigeria (p. 620), but his theoretical elaboration takes him elsewhere

Social scientists have long noted that "dual power" tends to beget revolution.⁷⁸ When a second center of power makes a claim to sovereignty that rivals that of the state over its people, and when that rival center is not immediately quashed, the state faces a danger of collapse. In ethnofederal systems that unite the demographically dominant ethnic group in a single core ethnic region, that core region is a natural, preformed, and powerful potential rival claimant to the sovereignty of the state. When this dominant ethnic group is instead divided into multiple regions, its members face important barriers to engaging in collective action that could pose a dual-power threat to state survival.

A core ethnic region is also likely to generate significant security fears among minority ethnofederal regions. Such a region, which can be expected to have more narrowly group-oriented interests than the central government, is likely to be perceived by minority-region groups as having disproportionate potential influence over the central government. Core ethnic regions tend also to be seen to have the capacity to take unilateral actions that can both threaten minority-group regions directly and undermine central government efforts to accommodate their interests. Breaking up a core ethnic region assuages these fears by bringing to the fore cross-regional differences of interest within the core group and by creating barriers to core-group collective action aimed at influencing the central government or directly harming ethnic-minority regional interests.

Another major source of ethnic conflicts in states is the existence of a core ethnic region in them. It becomes much easier for members of that community (as well as outsiders) to imagine the existence of a separate "ethnic" state coinciding with those boundaries and their associated

⁷⁸ Brinton, Crane. *The anatomy of revolution*. New York: Vintage Books. (1965) See also Tilly, Charles. *Revolutions and collective violence*. 1975. In *Handbook of political science*, vol. 3, ed. Fred I.

institutions.⁷⁹ Dividing up a core ethnic region, on the contrary, denies political entrepreneurs key institutional resources that stretch across the territory, thereby greatly complicating the process of constructing an identification limited to the set of core-group regions. In this latter case, political entrepreneurs also face an enormous task in creating entirely new "central" institutions for any newly independent core group state.

To further this argument on core ethnic region, some scholars have argued that the most important reason why Russia has survived up to date whereas the USSR broke apart is that the latter contained a core ethnic region as part of its ethnofederal structure, whereas the former did not. While it remains to determine how well this argument fits global patterns, a survey of some important cases frequently discussed in the literature on federalism and ethnicity is highly suggestive. By this simple criterion, three of the most widely cited "successes" for ethnofederalism- India, Spain, and Switzerland-lack core ethnic regions.⁸⁰ Moreover, the most commonly identified "failures"-the USSR, Yugoslavia, Czechoslovakia, and the Nigerian First Republic-had core ethnic regions.⁸¹

However, core ethnic regions are not the whole story. Some ethnofederal states with core ethnic regions, such as Belgium, have survived, probably due to complex power-sharing arrangements. Some ethnofederal states without core ethnic regions have avoided state breakup but continue to experience isolated secessionist challenges (as Chechnya poses to Russia). There is also

⁷⁹ On "community imagining" and its importance for state survival, see Anderson 1991 and Beissinger 2002.

⁸⁰ Brass, Paul R. *Language and national identity in the Soviet Union and India. In Thinking theoretically about Soviet nationalities*, ed. Alexander J. Motyl, 99-128. New York: Columbia University Press. (1992)

⁸¹ Bunce, Valerie. *Subversive institutions: The end of the Soviet state in comparative perspective*. Post-Soviet Affairs 14 (4): 323-54. (1999). *Subversive institutions: The design and destruction of socialism and the state*. New York: Cambridge University Press. (1998).

strong evidence that ethnofederalism generally reinforces ethnic difference by institutionalizing it.⁸² Thus even if ethnofederalism without a core ethnic region is adopted, policy makers trying to ensure state unity should implement additional strategies to promote peaceful intergroup relations. These might fall into the categories of institutional crafting,⁸³ people-to-people initiatives,⁸⁴ and the development of inter-communal civil society organizations.

2.3. Conclusion

From the foregoing discussion it is evident that one of the most difficult and important issues of contemporary politics is how to devise political institutions and share power in divided societies so as to avert ethnic conflicts in a number of multiethnic states. As such there are various mechanisms taken to resolve these conflicts. H. Donald makes a comprehensive study of various methods of ethnic conflict prevention, management and resolution.⁸⁵ In particular he identifies distributive and structural approaches to containing and managing conflicts. He argues that distributive approach aims at changing "the ethnic balance of economic opportunities and rewards" whereas the structural one aims at changing "the political framework in which ethnic conflict occurs."⁸⁶ Ethnically skewed investment and preferential policies fall in the category of

⁸² Crawford, Beverly. *Explaining cultural conflict in ex-Yugoslavia: Institutional weakness, economic crisis, and identity politics*. In *The myth of ethnic conflict: Politics, economics and "cultural" violence*, ed. Beverly Crawford and Ronnie D. Lipschutz, 197-260. University of California International and Area Studies, Research Series, no. 98. Berkeley. (1998)

⁸³ Horowitz, Donald L. *Ethnic groups in conflict*. Berkeley: University of California Press. (1985).

⁸⁴ Kaufman, Stuart J. *Modern hatreds: The symbolic politics of ethnic war*. 2001. Ithaca: Cornell University Press.

⁸⁵ H. Donald. *Ethnic Group in Conflict*. (1995) p.46-47

⁸⁶ Ibid pg 44

distributive policies. Federalism, regional autonomy and equitable electoral devices fall in the category of structural techniques. Moreover, federalism and its variants, (e.g. Confederation) regional autonomy and devolution intended to avert separatism, and the electoral laws are stated as tentative solutions whose success depends on the kind and practical situation of the conflict.

In the same vein, S. Hamesso calls for a comprehensive ethnic sensitivity in order to deal with the problems of ethnic conflict in Africa.⁸⁷ He suggests that cultural and political autonomy, promotion of languages, recognition and formalization of ethnicity in public life, and providing for legal guarantee of inter-ethnic equality (through race (or "ethnic") Acts, positive discrimination, and equal opportunity laws, etc) are helpful mechanisms for preventing, managing and resolving ethnic conflict. Thus, one can see that the solutions to ethnic conflict revolve generally around utilization of non-centralization (federalism and its variants, included), inclusive electoral system, and recognition of the rights of ethnic groups including minorities.

⁸⁷ Seyoum Y. Hamesso. *Ethnicity in Africa: Towards a positive Approach*. London: TSC Publications. (1997).

CHAPTER THREE

FEDERALISM IN NIGERIA

3.0.

3. 1.: Introduction

The origins of Nigeria's federalism have been studied extensively by historians and political scientists. Five strong views have developed on this which has drawn its own controversies. The first view suggests that federalism was imposed by the British colonialists on the eve of their departure in order to sustain their neocolonial links with politically independent Nigeria.⁸⁸ A related, but different view, states that the logic of the British colonial economic interests in occupied Nigeria favored a strategy of 'divide and rule,' a strategy that was corroborated by the infighting among British officials stationed in the different parts of Nigeria.⁸⁹ Ballard's oft-quoted remark that if Nigerians were to leave Nigeria, British colonial officials would go to war against one another is quite revealing with respect to the latter part of this position.

An alternative view argues that Nigeria's precolonial structures and the manner in which Britain conquered each of the kingdoms, states, and empires separately and negotiated separate treaties with each of them made a federal or confederal arrangement inevitable.⁹⁰ A related view is that federalism was a compromise solution worked out among Nigeria's regionally based elites in order to ensure that the country earned political independence when it did.

⁸⁸ See, for instance, Toyin Falola. *The Evolution and Changes in Nigerian Federalism; Federalism in a Changing World*, ed. Richard A. Olaniyan (Lagos: Office of the Minister for Special Duties, 1988), pp. 40-49.

⁸⁹ Jide Osuntokun. *The Historical Background of Nigerian Federalism; Readings on Federalism in Nigeria* eds. A. Bolaji Akinyemi, P. Dele Cole, and Walter Ofonagoro. Lagos: Nigerian Institute of International Affairs. (1979). p. 91-102; and Oyovbaire. *Federalism in Nigeria*. p. 34-37.

⁹⁰ See Michael Crowder. *The Story of Nigeria*. London: Faber and on the Faber. (1966). p. 11.

Others looking at the subject of federalism more theoretically have pointed to other factors (both centrifugal and centripetal) that predispose a country to federalism. Such studies have made use of Nigerian experience to illustrate the relative importance of a military bargain⁹¹ and of the ideology of federalism among a country's political leadership in creating and sustaining a Federal system.

Finally, Chief Obafemi Awolowo has added a fifth viewpoint - the preference of Nigerians for federalism when the choice between federalism and unitarism was given to the representatives of the people in local, provincial, regional, and general conference assemblies between 1949 and 1950.⁹²

Although the Federal Republic of Nigeria has persisted since 1960, its federal structure has undergone many changes. Since the periods of its decline correspond with periods of military rule, changes in the nature of ethnic problems during such times may have little to do with federalism. Yet, even during periods of civilian rule, federalism's impact appears ambiguous.

In his argument about Federalism Vincent Ostrom observed that "Whether federal structures provide an adequate basis for the government of diverse ethnic communities is an entirely problematic question."⁹³ Sharing the same sentiments is Donald Horowitz who contends that federalism's impact was not consistently harmful: "the Nigerian evidence shows that federalism can either exacerbate or mitigate ethnic conflict. Much depends on the number of component states in a

⁹¹ William H. Riker. *Federalism: Origin, Operation, Significance*. Boston: Little, Brown. (1964)

⁹² Obafemi Awolowo. *Thoughts on the Nigerian Constitution*. Ibadan: Oxford University Pr. (1966), p. 11.

⁹³ See Vincent Ostrom. *Federal Principles of Organization and Ethnic Communities*, in Daniel Elazar, ed. *Federalism and Political Integration*. Tel Aviv: Turtledove Publishing for the Jerusalem Institute for Federal Studies. (1979).p. 81.

federation, their boundaries, and their ethnic⁹⁴ composition.” At the start of the Second Republic he effused:

The new Nigerian federal framework...utilized all five mechanisms of conflict reduction... First, the proliferation of states /dispersed some of the conflict into more parochial forums. Second, the new states provided arenas in which intra-ethnic conflict might also occur. Third, a result of this was to enhance the position of some political parties at the expense of others, especially in the North, paving the way for greater interethnic cooperation in the all-Nigerian arena. Fourth, as the new states fought to advance their interests, a few non-ethnic issues and actors were also introduced. And, fifth, the separate state bureaucracies provided career opportunities for groups not well represented in the federal civil service. Using all these tools, the nineteen states readjusted, realigned, and complexified the Nigerian political system.

3. 2.: Military governments in Nigeria

One major area of interest in looking at federalism in Nigeria is the compatibility between federalism and military rule. Several scholars from within and outside Nigeria subscribe to the theory of incompatibility. Even though only one of Nigeria's military governments (the Johnson Aguiyi-Ironsi government) sought with his unfortunate Decree 34 (1966), to formally abrogate the Federal system which led to his overthrow and immediate repeal of the decree many scholars point to the fact that unitarism has remained the intention of other military rulers. However, some scholars argue that military rule alone cannot be held responsible for the evolution of a Nigerian unitary state.

⁹⁴ Donald Horowitz. *Ethnic Groups in Conflict*. Berkeley: University of California Press. (1985). p. 603

They cite the oil boom and the civil war as other possible causes. To the extent that these developments coincided with military rule, however, there is substantial agreement among them that military rule has resulted in the supremacy of the Federal government. One scholar asserts quite categorically that federalism died in Nigeria with the emergence of military rule in 1966.⁹⁵ Another scholar has called our attention to the Janus-faced expectations of the military programs for transition to civilian rule: the use of military decrees to nurture the people into participatory democracy.⁹⁶

Turning now to the origin of military government in Nigeria, it may be suggested that there was a relative division of functions between the North and the South that maintained some delicate balance in the political system immediately after independence. The Northern control of political power was counterbalanced by the South's monopoly of economic power in the country. In January 1966, the military staged a coup. Contrary to Richard Sklar's contention,⁹⁷ this military coup tilted a delicate balance on which Nigeria had been able to survive since independence. The concentration of both political and economic power in the hands of Southern leaders altered the delicate balance. Political power had been the North's safeguard against the South's economic and educational advantages. That the South's advantage in the bureaucracy was strengthened by the coup was greatly augmented leading the North to react violently as it saw its last card—the political card—suddenly

⁹⁵ Adedotun O. Phillips. *Fiscal Goals and the Revenue Allocation System, The Nigerian Federal system: Administrative Problems under Civilian and Military Governments*, ed. Dele Olowu Syracuse. New York: FACS Publications. (1991).

⁹⁶ Afigbo. *The Nationality Question and the Federal system*. p.259.

⁹⁷ According to Sklar, on the January 1966 coup, "political power had shifted away from the Northern rulers and their allies to a more progressive section of the population. The dangerous imbalance between legal and technological power had been corrected." In other words, the January coup corrected existing imbalance. Richard L. Sklar. *Nigerian Politics in Perspective. Nigeria: Modernization and the Politics of Communalism*, eds. R. Melson and H. Wolpe. East Lansing: Michigan State University Press. (1970). p. 50.

taken away or rendered ineffective. It was therefore not surprising that Northern soldiers staged a coup in July 1966 drowning Nigeria in the vortex of crises that climaxed in a 30-month civil war.

Military government led to substantial changes in the Nigerian fiscal landscape. First, it was under military rule that the number of units in the federation increased from four regions in 1964 to twelve states in 1967, nineteen in 1976, and twenty-one in 1987. With the initiation of the ambitious federal capital project by the federal military government in the 1970s, the proliferation of states not only created an additional budgetary burden for the nation, because of the large number of states established and the haste involved, but also compounded the problem of effective fiscal control.

Secondly, the *de facto* superimposition of the military's unitary command structure on the pre-civil war Federal system resulted in a mixed form of intergovernmental fiscal relations—sometimes decidedly federal and at other times unitary, depending on geo-ethnic or political imperatives. The tendency toward a mixed system was boosted by the weak economic base and limited internally generated financial resources in all but a few states.⁹⁸

The sharp expansion in oil earnings greatly enlarged the federation account, that is, the distributable revenue pool, and consequently caused increases in the level of statutory allocations to most states beyond the limits of their direct contribution to the account. The dominance of oil revenue under military rule had two major fiscal impacts. First, it led to and sustained overcentralization of the economy under federal ministries. As competition to gain access to the federal bureaucracy became more acute, the need for policies to support "ethnic balance," or so-called "federal character," led to overstaffing in the public sector, with attendant budgetary

⁹⁸ Central Bank of Nigeria, Annual Report and Statement of Accounts, 1981 and 1988. In 1980 and 1987, for example, eleven out of nineteen states were at least 80 percent dependent on statutory allocations. Only Lagos State derives less than 50 percent of its revenue from the Federation Account.

problems, and weakened management commitment. Paradoxically, the Federal government's fiscal control of the economy did not match its apparent political and bureaucratic clout, as judged by its share of total government annual expenditure.

The creation of two additional states in 1987 illustrates the pervasiveness of the geo-ethnic constraint on the Federal government. The two newest states were created at a time when one of the objectives of the Federal government's policy under the Structural Adjustment Programme was to reduce the size and role of the public sector. Meanwhile, foreign-exchange earnings were still weak as crude oil exports plummeted from \$12.3 billion (U.S.) in 1985 to \$6.3 billion (U.S.) in 1986, and rose by about 20 percent in the next two years amid severe external debt obligations and domestic economic difficulties. In spite of the adverse budgetary and economic conditions, the Federal government created the states.

Second, the dominance of oil revenue during military rule practically discouraged fiscal prudence in the states. At the same time, state spending, taken together, was generally sufficient to work significantly at variance with Federal government fiscal policy objectives.

The military ruled Nigeria from 15 January 1966 to October 1979, from 31 December 1983 to 27 August 1993, and from 17 November 1993 to 29 May 1999.⁹⁹ The military overthrow of the Second Republic at the end of 1983 led Horowitz to reconsider what he thought was a success: "As the ingenious federal engineering of the Nigerian second republic went down before a military coup the jury must remain out on the success or otherwise of democratic federalism in resolving Nigeria's ethnic dilemmas."

⁹⁹ This period accounted for about 30 years i.e. three-quarters of Nigeria's political life.

One effect of the over-centralization of power by various military regimes in Nigeria though, was the emergence of strong centrifugal forces that felt disadvantaged in the system. Many sub-national groups believed that if the Nigerian federation were not as centralized as it was, they would have had a fairer deal in the federation.

3. 3.: Federalism and Economic Development

One question that many scholars strive to answer is whether federalism is compatible with underdevelopment. Some writers, such as Philip Mawhood,¹⁰⁰ affirm that, over time, Third World federal states either fragment into their component parts or become in reality unitary states. He gives two explanations for this viewpoint: the newness of the nation-state and therefore political fragility and the hardships associated with low development and the economic distribution of state resources. This makes survival the key political rule and federalism a luxury new state can ill-afford. However, Ursula Hicks suggests that while centrifugal factors might exert some influence during the early years of independence, the cohesive forces of industrialization and urbanization are likely to emerge and strengthen with economic advancement.¹⁰¹

Nigeria has existed as an independent Federal system for more than thirty years. During this period, its economy emerged from strong dependence on agricultural export earnings with a slowly growing manufacturing sector to a condition of critical dependence on crude oil exports with a

¹⁰⁰ Philip Mawhood. *The Politics of Survival: Federal States in the Third World*. International Political Science Review 5 (1984): 521-531.

¹⁰¹ Ursula K. Hicks. "Introduction," *Federalism and Economic Growth in Developed Countries: A Symposium*, eds. U. K. Hicks, F. G. Carell, J. R. Hicks, W. T. Newlyn, and A. H. Birch. London: Allen & Unwin. (1961). p. 13-15.

stagnant or declining agricultural sector. In about three decades, at least four National Development Plans were implemented, and about 106 billion naira was allocated to capital expenditure.

Although macroeconomic indicators suggest that growth was experienced during most of this period, it is hardly debatable that the growth was not accompanied by real development. Such aggregate indicators conceal the structural weakness in the economy.

3. 4.: Strategies of National Resource Distribution

Resource distribution includes both statuses and resources. In fact, it includes the distribution of all scarce but allocatable resources. The location of government projects, the pattern of recruitment into political offices and the public service are also yardsticks for measuring the fairness of leaders in the distribution process in Nigeria. Resource distribution and its management have become important issues of debate as Nigerian groups reassess the federation. The various strategies for dealing with inter-ethnic competition are among the liveliest issues in Nigerian federalism today.

Adele Jinadu has identified four categories of affirmative action measures in the Nigerian milieu.¹⁰² These are measures designed to eliminate certain barriers, such as discriminatory rules, hidden biases in access routes for some ethnic groups inherent in the basic institutional arrangements of the state, measures that give some ethnic-group members access to institutions where they would not have been admitted through competitive selection processes, and lastly measures that promote proportional representation for ethnic groups. Most of these strategies are based largely on a

¹⁰² L. Adele Jinadu. *Federalism, the Consociational State, and Ethnic Conflict in Nigeria*. Publius: The Journal of Federalism 15 (Spring 1983). p. 71-100.

perception of educational imbalance between some states regarded as "educationally disadvantaged"¹⁰³ and others regarded as educationally advantaged.

Representativeness is held to be valuable for ensuring fairness and balance, however, there is no agreement on what should be the unit of representation (north/south, the states, or the 250 or more ethnic groupings), or whether representativeness should be carried out at the expense of merit. The constitutional stipulations on this matter remain ambiguous and the subject of much controversy with respect to educational places, civil service positions, admissions into the armed forces, and the sharing of political offices among political parties.¹⁰⁴ The problem of ethnic balance is compounded by the association of the various ethnic groups with particular religious affiliations, a fact which has not been settling for the Federal system.¹⁰⁵

Generally, given the centralization of political power under the military, the center became a financial titan, because military rulers altered the revenue formula¹⁰⁶ as they deemed fit. They did not need to debate the formula at any legislative forum, except at the Armed Forces Ruling Council or the Provisional Ruling Council. There have been calls for the revision of the legislative list and

¹⁰³ Emmanuel A. Yoloje. *Federal Character and Institutions of Higher Learning: Federal Character and Federalism in Nigeria*. p. 47-79.

¹⁰⁴ David D. Laitin. *The Sharia Debate and the Origins of Nigeria's Second Republic*. *Journal of Modern African Studies* 20 (September 1982): 411-430; Raymond Hickey. *The 1982 Maitatsine Uprisings in Nigeria: A Note*. *African Affairs* 83 (April 1984): 251-256.

¹⁰⁵ Anthony H. M. Kirk-Greene, "Ethnic Engineering and the 'Federal Character' of Nigeria: Boon of Contentment or Bone of Contentment," *Ethnic and Racial Studies* 6 (1983): 457-476.

¹⁰⁶ There had been Revenue Commissions in the past: (1) Philipson Commission (1946); (2) Hicks- Philipson Commission (1951); (3) Chicks Commission (1953); (4) Raisman Commission (1958); (5) Binis (Commission (1964); (6) Dina (Committee (1969); (7) the Military governments issued decrees in 1967, 1970, 1971, and 1975 on revenue allocation matters; (8) Abovade Commission (1978), and (9) Okigbo Commission (1980). The Okigbo Commission formula was amended by subsequent military regimes, as they deemed fit. See T. Y Danjuma, "Revenue Sharing in Nigerian Federalism, Federalism and Nation Building in Nigeria: The Challenges of the 21st Century, eds.J. Isawa Elaigivu, P.C. Iogams, and I H. Saladilal. Abuja: National Council On Intergovernmental Relations. (1994). pp. 87-115.

accompanying tax powers in favor of local governments and states. The argument is that the federal center has too much funds at its disposal, thus encouraging it to engage in policy adventures in areas it should not, and in activities reserved for other tiers of government.

In order to ensure relative fairness in the appointment of people from various groups into the Federal Public Service, government established the Federal Character Commission to monitor the pattern of appointment into all the public services of federal, state, and local Governments in order to give Nigerians a sense of belonging to the nation. Cries of discrimination and marginalization by groups have not abated since the establishment of this commission. But, at least, there is a point to which complaints can now be addressed for redress. This 'federal character,' principles in the Nigerian constitution serve as a Rorschach test for the national family's dysfunction. The principles are interpreted as a mandate for the central government to represent and aid all groups. However laudable and necessary the principles are for a multi-ethnic nation, Suberu observes that efforts to implement them have cultivated resentment between winners and losers competing for slots in governmental institutions. Because national political parties must meet minimum membership requirements across the nation for certification, federal character policies may also create structures hostile to legitimate ethnic grievances and regional agendas. Consequently, a federal character interpreted as such, can close, rather than create opportunities for flexible and constructive approaches to minority or regional needs, leaving grievances simmering below a lid of constitutional language championing pluralism. The thrust of Suberu's argument is that strengthening the federalist system of divided powers can provide healing solutions for a wounded Nigerian union.

However, at the heart of Suberu's critique of the current system is his distaste for an overweening central government. Whether by creating debilitating state dependence on federally

distributed revenue or enhancing ethno-regional power struggles, over-centralization plays the part of principle villain in the narrative's drama of political and economic ills.

However, a disturbing trait in the politics of leadership and resource distribution is the extent to which actions of leaders, either military or civilian, can be easily ethnicized. It is very easy for a leader's mandate to be ethnicized or geoethnicized by his people, by the way they lay claim to him. It is also easy for a leader to ethnicize his mandate by his policies and actions. Usually, a leader's mandate being ethnicized by his people becomes more dangerous if the leader also ethnizes his mandate through his official actions in government. The qualities of fairness and justice in a leader cannot be overemphasized in the process of nation-building in a federal context.

Revenue sharing arrangement is at two levels: One, the vertical allocation- among federal, state and local councils- two, horizontal allocation, among the states and the local governments. Revenue allocation is meant to attain two broad objectives, namely, efficiency and equity. Revenue allocation, in Nigeria commenced under the Richard Constitution of 1946. Thereafter, there were over nine fiscal commissions, six military decrees and one act of parliament to design appropriate tax assignment and revenue allocation formulae including: the Hicks-Phillipson Commission (1951), Chick's Commission (1953), Raisman Commission of 1958, Binns Commission (1964) Dina Commission (1968), Aboyade Technical Committee (1972), Okigbo Commission (1980) and Danjuma Commission 1988 (Salami, 2007). The recommendations of all the commissions were all based on the need to have equitable and balanced horizontal and vertical allocation for the country.

Nigeria's fiscal arrangement has been guided by the country's constitution. For example, Section 162(1) of the constitution states that the federation shall maintain a special account to be called the "Federation Account" into which are paid all revenues collected by the government of the

federation. All funds standing to the credit of the Federation Account must be distributed among the federal, the state governments and the local government councils on such term and manner prescribed by the National Assembly. Proceeds from the PIT of members of the armed forces, the Nigerian Police Force and the External Affairs Ministry and residents of the Federal Capital Territory, Abuja are, few exceptions of revenue not paid into the federation account in line with the constitution.

The 1999 Constitution provides in Section 162 (2) that the Revenue Mobilization, Allocation and Fiscal Commission has the function of tabling before the National Assembly a draft revenue-allocation formula. The National Assembly shall then deliberate on this document, taking into account the principles of "population, equality of states, internal revenue generation, land mass, terrain as well as population density." The National Assembly shall note that the principles of derivation applied on all proceeds from all natural resources will not be less than 13 percent. Since the advent of the new democratic polity, governors have argued that a new allocation formula should be put in place giving the states at least 40 percent. As a matter of fact, a delegation representing governors made the same point to the members of the Revenue Mobilization, Allocation and Fiscal Commission. This point was reinforced by the resolution of the Governors' Forum, meeting in Abuja in August 2000.

The Federal Government retains some of the federally collected revenues as its independent revenues and balance of the federally collected revenues is to be paid into the Federation Account for distribution among tiers of government in accordance with an agreed formula. Before independence, the regional government allocation was more than that of the Federal Government. The sharing formula in 1958 as recommended by Raisman commission was 40:60 in favor of region.

Thereafter and up till today, federal government is allocated the highest share of the federally collected revenues.

However, the Federal Government's share has been on the decline in favor of lower tiers of government. In 1992 the vertical allocation was changed to 48.5%, 24% and 20% for federal, state and local government respectively. Special funds accounted for 7.5 %. The current vertical allocation (without the special funds) with effect from 2002 is 52.68%, 26.72% and 20.60% for federal, state and local government respectively. Anderson (2007) observed that at less than 53% of total government spending (after all transfers to the states), Nigeria is more decentralized than in Brazil, Malaysia and Venezuela. On the other hand, some federations are still more decentralized than Nigeria like Belgium, Canada, Germany and Switzerland, where the federal government accounts for between 30 and 40% of direct government spending.

Between 1982 and 1998, equality of states has a weight of 40 %, population 30 %, independent revenue efforts 10 %, land mass and terrain 10 % and social development 10 %. From 1999, equality of state had the highest weight of 40 % under horizontal allocation among the states. This is followed by population, 30 %. The balance of 30 % is being shared by social development factor, 10 %; land mass, 10 % and internal revenue effort 10 % respectively. Annex 2 highlights the horizontal allocation in Nigeria from 1969 to date. For the distribution of VAT proceeds among states and local governments the indices are derivation (20 %), equality (50 %) and population (30 %). The horizontal distribution formula had remained stable since 1981, except, for the increase in derivation principle for mineral revenue to 13 % in 1999 to the following Nigeria's nine oil producing. As a result, Rivers, Akwa Ibom, Delta, Bayelsa and Ondo, all oil producing states received the highest amount from the federation account in 2008. This has been the trend for the past 8 years. However, the revenues allocated to oil producing areas over the years are not sufficient to

remedy the negative externalities of oil production let alone grant them access to equal opportunities for development with other states of Nigeria. Therefore, the persistent restiveness in the oil producing areas for sometimes now.¹⁰⁷

3. 5.: Centralization and decentralization of power

By 29 May 1999, when the military handed political power to civilians, the Nigerian federation had become excessively centralized. If the loose federation with a weak center of 1960-1965 had elicited demands for a strong center, there were now demands for a federation with a weaker center, by some Nigerians.¹⁰⁸ Why did Nigeria's central government become so strong?

A number of factors may account for this centralizing trend since 1965. These were military rule, the civil war, the creation of states, and increase in petro-naira, demands for federally desirable harmonization, and international trade and globalization.

The military took deliberate actions to centralize authority, given the country's background of the civil war. In addition, the emergency powers acquired by the Federal government during the civil war were hardly reversed. Thus, the Federal government acquired powers which, because they were not reversed after the civil war, made it more powerful vis-a-vis the states.

The creation of additional states from the four regions that existed by 1966 meant weaker states with narrower resource bases. Paradoxically, as additional states were created to meet the

¹⁰⁷ Vincent O. *Fiscal Federalism, Good for Nigeria*, (2002), accessed on 25/03/2009 at http://www.nigerdeltacongress.com/farticles/fiscal_federalism_good_for_niger.htm

¹⁰⁸ Some Nigerians believe that about three score years of military rule has overly centralized the federation, and are therefore asking for a federation with a weak center or a "Confederation."

demands of subnational groups for greater autonomy, the greater the number of states, the stronger the federal center, and the more imperative its role, as a center, for taking necessary homogenizing or harmonizing actions in matters that transcend each state.

The advent of revenues from petroleum resources and the gradual dependence of the economy on this source made a huge difference to fiscal federalism in Nigeria. The Federal government derived greater resources than did sub-national units, especially from the profit tax. Similarly, as from 1966, the federal military government adjusted the revenue formula in favor of the center. The nature of military rule meant that there were few, if any, debates before such formulae were adopted by the military's highest ruling body.

Finally, the Federal government's role in international trade and foreign relations in a world caught up in globalization fever gave advantages to the federal center at the expense of states.

Given the post-military rule situation and the emergence of a very strong central government, some Nigerians have called for "true federalism." By "true federalism," the protagonists of a weak central government refer to a "confederation" or what they claim to be the classical model of federalism delineated by K. C. Wheare. This is evident in the 1995 Report of the Constitutional Conference Containing the Resolutions and Recommendations, Volume 11, which recommended "innovation" to Nigerian federalism thusly:

*It should be true federalism with clear demarcation of powers and functions among the levels of government. In the exercise of those powers and functions assigned by the Constitution, each level of government should be autonomous.*¹⁰⁹

¹⁰⁹ Federal government of Nigeria. *The Constitutional Conference Containing The Resolutions and Recommendations*, Vol. 2. Lagos: Nigerian Government Printer. (1995). p. 61.

However, as Ranjit Sarkaria of India correctly observed:

*The classical concept of federation which envisaged two parallel governments of coordinate jurisdiction, operating in isolation from each other in watertight compartments, is no where a functional reality now. With the emergence of the Social Welfare State, the traditional theory of federalism completely lost its ground. After the First World War, it became very much a myth even in the old federations... By the middle of the twentieth century, federalism had come to be understood as dynamic process of cooperation and shared action between two or more levels of government, with increasing interdependence and centrist trends.*¹¹⁰

In essence, the old sense of autonomy of component units in their areas of jurisdiction has given way to cooperation, interdependence, and interaction. That there is still a call for a return to a nostalgic classical model of federalism, however, is a reflection of the extent to which centrifugal forces are at work in Nigeria's federation, as groups seek greater autonomy or self-rule in their state arenas in order to control their destiny. Paradoxically, the greater the number of states, the less "autonomous" the content of this self-rule, and the stronger the federal center. However, the prospects of a review of the legislative list in favor of sub-national units are high. The future is most likely to witness a relatively less strong center than Nigeria has now. But it is unlikely that Nigerians would revert to the loose federation they had between 1960 and 1965, or even adopt a confederal constitution.

¹¹⁰ Ranjit S. Sarkaria. "Foreword," *Current Issues and Trends in Centre-State Relations: A Global View*, ed. S. C. Arora. New Delhi: Mittal Publications. (1991). p. 3. Government of India. *Sarkaria Report: Commission in Centre-State Relations*. India: Government of India Press. (1988).

3. 6.: Units in the Federal system

A continuing issue in the study and practice of the Nigerian federal experience is the appropriate number of units, a question raised again in 1991. An early controversy among Nigeria's founding fathers was the number of units, with Nnamdi Azikiwe proposing ten units and Awolowo proposing eighteen units based on language groups.¹¹¹ Whereas the problem of a Federal system that stood on an uneven tripod which defied John Stuart Mill's law of federal stability was roundly criticized,¹¹² the creation of more state units since 1967 to 1996 without exhausting the demands for more states has led some scholars to doubt whether an end can be put to the periodic fragmentation of the state units. General Gowon created 12 states in 1967. These were increased to 19 states by Murtala Mohammed in 1976. General Babangida created two additional states in 1987, thus making it 21 states. He increased the number of states to 30 in 1991, while General Sani Abacha increased the number of states to 36 in 1996.

Although the creation of more states has furthered the goal of national stability and decentralized political and administrative power in the country, it has also led, according to some observers, to imbalance in the share of national resources going to the major ethnic and minority groups and reduced the viability of state units and their capabilities.¹¹³ The real problem, however, is not small state units but the strongly centralized Federal system, particularly the concentration of

¹¹¹ Dele Olowu. *Awolowo's Contribution to Nigerian Politics and Administration*. Obafemi Awolowo: *The End of an Era?*, eds. Olasope O. Oyelaran, T. Falola, M. Okoye, and A. Thompson. Ile-Ife, Nigeria: Obafemi Awolowo University Press, 1988), pp. 582-594 and Osaghae, "Awolowo and Nigerian Federalism," Obafemi Awolowo: *The End of an Era?*, pp. 526-562.

¹¹² Kenneth C. Wheare, *Federal government* (4th ed.; London: Oxford University Press, 1963), pp. 50- 51; and especially Billy Dudley, "Federalism and the Balance of Political Power in Nigeria," *Journal of Commonwealth Political Studies* 4 (1966). P.16-29.

¹¹³ Phillips. *State - Creation, Revenue Allocation and Nigeria's Development*. Jadesola O. Akande. *The Minorities and the Challenge to Federalism. Federalism in a Changing World*. p. 219-237.

resources in the Federal government. This, coupled with the fact that national resources are shared mainly on the basis of equity and need (roughly defined by population), explain the pressure for more state units.¹¹⁴ Such demands are orchestrated and fueled by interclass and intra-elite competition for state resources.

3. 7.: Political Parties

Two important issues have concerned writers on political parties and the Nigerian Federal system. The first issue has been how to foster political parties that will cut across ethnic boundaries in a deeply divided society such as Nigeria. The second issue has been the relationship between political parties and the government. This search has led to adventurous proposals, such as the zero-party option and the current experiment with political parties organized and administered by the state.

3. 8.: Intergovernmental Relations

The relationship between the federal and state governments has been a well established interest of various scholars.¹¹⁵ Although this relationship has long been regarded as part of the

¹¹⁴ Victor Ayeni and Dele Olowu. *The Politics of Revenue Allocation and Intergovernmental Relations; Nigeria's Second Republic: Presidentialism, Politics and Administration in a Developing State*, eds. Victor Ayeni and Kayode Soremekun. Lagos: Daily Times Publication. (1988). p. 197-218.

¹¹⁵ See Ladipo Adamolekun. *Public Administration: Nigerian and Comparative Perspective*. London: Longman. (1983), chap. 8; Ladipo Adamolekun. *The Idea of Local Government as a Third Tier of Government Revisited*. *Quarterly Journal of Administration* 18 (1984): 113-138; Alex Gboyega. *Intergovernmental Relations in Nigerian Local Government and the Nigerian Constitution*. *Public Administration and Development* 1 (1981): 281-290; *Federal Republic of Nigeria*. Report on the Management of Intergovernmental Relations in Federal systems. Lagos:

normal pattern of interactions in a Federal system, the increasing recognition of local governments as a third tier of government since 1976 has popularized the concept and expanded the dimensions of intergovernmental relations in Nigeria. Two issues have dominated the discussions on intergovernmental relations in Nigeria: finance and management. Other issues, such as foreign policy and the legal implications of intergovernmental relations, have also received some attention.¹¹⁶

Relationships among governments in Nigeria generally tend to be vertical rather than horizontal, and have alternated between hierarchical subordination under military rule and conflict under civilian regimes. In the relations among federal, state, and local governments, there are signs of residual militarism in the actions of political executives. The ghost of the military's politics of control has had difficulty leaving the scene. Federal officials treat state and local government officials with overbearing arrogance. In similar ways, state governors patronizingly relate to local government chairmen. The following summaries reflect the current state of debate on the vertical structure of the federation and the powers and functions of each tier in the context of the politics of power sharing.

The state government believes that the Federal government's powers are too sprawling and that it is carrying out functions it has no business carrying out. They argue that its powers should be curbed to allow the Federal system to breathe a new lease of life from the squeeze imposed by years

Government Printer. (1983); and four special issues of *Quarterly Journal of Administration*, 1969 (no. 1), 1970 (no. 4), 1976 (no. 10), and 1980 (no. 14).

¹¹⁶ Perceptive writings on foreign policy and legal/constitutional implications include: A. Bolaji Akinyemi. *Foreign Policy and Federalism*. Ibadan: Ibadan University Press. (1974); L. O. Aremu. *Intergovernmental Relations: A Legal Overview*. *Quarterly Journal of Administration* 14 (1980): 133; Ben O. Nwabueze. *Federalism Under the Presidential Constitution*. London: Sweet and Maxwell. (1983); and Jadesola Akande. *The Constitution of the Federal Republic of Nigeria*. London: Sweet and Maxwell. (1982).

of military rule; and that the revenue formula must be reviewed to reflect these changes in functions. After all, they argue, the states are closer to the grassroots and should have more resources to carry out development programs; the fiscal dominance of the center has made it so priced that politicians will do anything to get there.

On the other hand the proponents of a stronger Federal government state the period between 1960 and 1966 and pose various questions such as: Do you want a weak federal center unable to give the country a sense of security? They further argue that the trend all the world over is to have a strong Federal government that can intervene to carry out fiscal and developmental equalization among the component units of the federation; to them the states and local governments are complacent about revenue generation and must realize that autonomy in a federal association presupposes fiscal autonomy.

The Local government proponents argue that state governments are still living in the past; and that they have not realized that local governments are now a constitutionally guaranteed third tier of government and are therefore autonomous of state governments; they call upon state governors to stop removing local government chairmen as if they are bureaucrats; and challenge the states to release appropriate statutory allocations to the local governments promptly. To them states should be abolished because they have outlived their usefulness.

In countering the arguments of the local governments the state government proponents argue that Local governments are the most problematic tier in the federation; and that they lack executive capacity. Their leaders are inexperienced and mistake federally desirable autonomy for independence or sovereignty; they even forget the provision that the State House of Assembly can make laws specifying additional functions for them. They generate no revenue from internal sources

and expect to be autonomous; really they need education on their roles; they have so much money that they are unable to manage properly, partly because of their lack of executive capacity. Money spent on local government is money thrown down the drain-pipe; give such money to the state government for a more productive performance. To them autonomy for the local government is autonomy for excellence in wastage and mismanagement.

How to mediate these conflicts in view of the limitations of the courts in such matters remains a central problem of the Nigerian Federal system under civil authorities. One important recommendation, which has resulted from the analysis of scholars interested in this subject, is the need for an independent advisory commission on intergovernmental relations.

In federal-state interactions, the relations between President Olusegun Obasanjo and state governors oscillated between hot and cold. The governors accused him of taking actions in flagrant disregard of the federally desirable and constitutionally guaranteed autonomy of state governments,¹¹⁷ especially as provided in the legislative lists. These concerns can be illustrated with three cases. The first source of conflict between both tiers of government was the National Minimum Wage (NMW). On Labour Day (1 May 2000), President Obasanjo announced a national minimum wage of 5,500 naira for state government and 7,500 naira for the Federal government." Apparently under pressure from the Nigeria Labour Congress, the president did not consult the governors or the National Assembly. The governors were livid and reminded the president that the era of centralization under military rule was over.¹¹⁸ They insisted that only the states could negotiate wages with their employees. While recognizing the powers of the Federal government to set the minimum wage, they held that the president could not announce such a wage without due

¹¹⁷ The Vanguard (Lagos), 24 June 2000, p. 6.

consultations with state governments (as employers of labor) and without sending a bill to the National Assembly. For almost a year the country was gripped by wage crises¹¹⁹ and strikes because many state governments could not afford to pay the new wages and arrears as demanded by their labor force. Some analysts believe that the president hastily announced the NMW in order to court the support of the labor force against the National Assembly with which he was having problems. General Obasanjo's military background and unilateral actions goaded him into a number of political hot waters with the state governments.

In a similar manner, the Federal government introduced the Universal Basic Education (UBE) program. This program is aimed at providing free, universal, basic education from primary school to the first three years of secondary school. The Federal government announced this program and launched it in Sokoto, before a bill was sent to the National Assembly. State governors complained of lack of consultation. They claimed that the matter is under the concurrent legislative list, and that because the Federal government was going to depend on states to implement the program, states should have been adequately consulted by the president. In addition, some state governments are controlled by political parties different from the one at the federal level. Each political party has its own program on education. They therefore frowned on the "military" fashion in which federal programs were announced in areas of concurrent legislation, without regard to the priorities of states, especially where states were to be the implementing agency. The governors and the vice-president later met to harmonize areas of disagreement over this program, but many grey

¹¹⁸ The Vanguard (Lagos), 4 May 2000, p. 2.

¹¹⁹ There were labor crises all over the country. Many state governments could not pay the new wages, thus negotiations with their labor forces failed. In some states, public servants were on strike for between three to six months. See Vanguard, 4 May 2000, p. 2. in which Governor Dariye of Plateau State expressed his concern. "Our concern is that we don't want to go back to the ugly past when workers were owed several months arrears of salaries."

areas remained. Adequate political consultations could have reduced tensions in federal-state relations. While the Federal government accused state governments of sabotaging the UBE program, state governments felt that they could not abandon their programs in order to execute federal programs.

The Federal government had similar problems in getting the cooperation of state governments in the implementation of its Poverty Alleviation Programme (PAP), now replaced by the Poverty Eradication Programme (PEP). Again, the states reminded the Federal government that each government had its own poverty-eradication program. If the Federal government desired the cooperation of states in the implementation of its programs, it should carry state governments along.

Finally, there is the issue of the Nigeria Police Force and the maintenance of law and order. Given the ineptitude and inefficiency of the Nigeria police in the maintenance of law and order, governors of states with large urban centers and high rates of crime found themselves helpless in dealing with crimes. Police is a federal matter, even though the governor of a state is the chief law officer of the state. As happened in the second republic, many governors complained that state commissioners of police ignored orders from them but took orders only from their boss, the federal inspector-general of police.¹²⁰ In frustration, some governors demanded a review of the Constitution to enable the states to establish their own police forces. However, some governors, opposed to establishing state police forces, expressed their reluctance to spend their meager resources on maintaining state police. They opted for a greater level of decentralization of the Nigeria police to

¹²⁰ It has been suggested that the Structure of the Nigeria Police Force be decentralized in order to allow the zonal commands to be more responsive to local situations. Quite a number of Nigerians are apprehensive of the wanton misuse of the local police by local governments, politicians, and traditional leaders, in the past.

enable it to respond to problems on the ground more effectively and promptly. In some states, the government officially resorted to using vigilante groups to maintain law and order.¹²¹

The relations between the national and state assemblies have not been smooth neither; In view of the confusion over the actual tenure of chairmen of local governments, state houses of assembly had made laws limiting the term of office of these chairmen to two years in some states, and three years in others. In an attempt to sort out the problem, the Senate set up a committee to make recommendations to the National Assembly. The state houses of assembly believed that this was a usurpation of the powers given to them under section 7 of the Constitution that the "Government of every state shall.... ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such councils." They threatened to go to court.¹²²

3. 9.: Federal ethics

Analysts have tended to concentrate on the role of constitutional legislation and power as the key factors shaping and reshaping the Nigerian Federal system. To the perceptive observer, however, it is not difficult to see that the problem of Nigerian federalism does not lie so much with constitutions and the power structure, but with the absence of a culture of understanding, self-restraint, mutual respect, and appreciation, which are essential for the successful operation of a

¹²¹ This is the case of Anambra State where the "Bakassi Boys" have become officially recognized "Vigilante" to complement police efforts. Attempts by the governor of Lagos to use the OPC has been criticized by the police, especially since the OPC is a banned organization. See *This Day (Lagos)* 18 August 2000, p. 13; 2 August 2000, p. 1; 30 July 2000, p. 1, and 27 July 2000, p. 1.

¹²² *The Punch (Lagos)*, 7 July 2001, pp. 1-2

Federal system of government. According to Elazar, the preference for consensus and negotiation rather than the power to threaten coercion is one of the most important prerequisites of federalism.¹²³ This requirement led Alexis de Tocqueville to argue that the complicated nature of a Federal system and the necessity to develop an ethic or culture of federal coexistence precluded the adoption of federalism in many nations, especially underdeveloped nations.¹²⁴

3. 10.: Federalism and ethnicity in Nigeria

Ethnic heterogeneity is a pervasive feature of the contemporary world. The problem it poses, especially in deeply divided or plural societies, is one of reconciling ethnic diversity with overarching loyalty to the state. This is more problematic because the state is not a neutral force in mediating political conflict. It can be captured and used to further the interests of the leadership of an ethnic group or combination of such groups. A plural society is thus one in which politics is ethnicized, in which political competition is overtly drawn along ethnic lines. Examples of such societies are Belgium, Ceylon, India, Lebanon, The Netherlands, Nigeria and Yugoslavia, among others. Ethnicity, as an aspect of political processes, should be viewed dynamically.

During the First Republic, the Northern Region's dominance over the two and then three southern regions produced resentment against the Hausa/Fulani. Political struggle was organized during that period around ethnically based political parties, partly as a result of the shape of the Federal system. The 1966 killing of Igbo people in the North and the Biafran secession resulting in a great loss of life were not prevented by federalism. The creation of new states brought to the fore

¹²³ Ibid., p. 181

¹²⁴ Alexis de Tocqueville, *Democracy in America* (Doubleday ed.; New York: Anchor Books, 1966), p. 164.

many grievances minority ethnic groups had suppressed under the domination of the three large ethnic groups whose domination was assured by the size of the initial federal units. The effort to introduce the notion of "federal character" as a means of overcoming an aspect of the ethnic problem appears to have done more to exacerbate than solve it. Roberta McKown made a similar observation, suggesting that "federalism has served only to provide a structure for the exacerbation of ethnic and regional conflict."¹²⁵ He further argued that federalism may be appropriate for moderate amounts of diversity, but not the extremes to be found in Africa."

Because Nigerian federalism is based on ethnic and not geographical diversities, it has tended to exacerbate centrifugal forces in the country. Pierre van den Berghe's observation that "ethnicity is such a powerful sentiment that, once mobilized, it cannot always be controlled"¹²⁶ is highly pertinent to the Nigerian situation. This is partly because, with scarcity being a major constraint in politics, ethnicity becomes a crucial criterion for regulating political conflict and distributing public goods and bads in situations of plural diversity. In other words, the political salience of ethnicity is due to its being deployed for competitive purposes by political entrepreneurs. The mechanisms of deployment are various and can include political parties, bureaucracies, the military, trade unions, ethnic unions, and the like.

It is with reference to ethnic configuration of Nigeria that the development of Nigerian federalism as a dynamic process is best understood. The process has partly involved the creation of

¹²⁵ Roberta McKown contends that "neither a federal nor a unitary constitution is a solution to multiculturally based problems but a structural context within which they may be confronted." See Roberta McKown, *Federalism in Africa*, in C. Loyd Brown-John, ed., *Centralizing and Decentralizing Trends in Federal States*. Lanham, MD: University Press of America. (1988), p. 298. John McGarry and Brendan O'Leary observe: "Unfortunately federalism has a poor track-record as a conflict regulating device in multi-ethnic states." See John McGarry and Brendan O'Leary, *Introduction, The Macro-Political Regulation of Ethnic Conflict*, in McGarry and O'Leary, *The Politics of Ethnic Conflict Regulation*. London: Routledge. (1993). p. 34.

¹²⁶ Pierre L. van den Berghe, *The Phenomenon* (New York: Elsevier North Holland, 1981), p. 191. 72

more states in order to reduce political domination at the federal level by the Hausa-Fulani who constitute about 25 percent of the total population of Nigeria. It has also partly involved the attempt by minority ethnic groups to challenge the hegemony of the three largest ethnic groups - the Hausa-Fulani, Yoruba, and Igbo - in the political, social, and economic life of the country, each of which, like some of the other ethnic groups, is also made up of a number of sub-ethnic groups. Federalism as a system of concurrent regimes therefore developed in Nigeria in response to problems of governance created by this ethnic configuration. It is deliberately structured to provide the legal superstructure within which the various ethnic fractions of the political class seek access to state power, with a view to controlling or influencing its exercise.

Various ethnic groups are involved in conflicts with one another and/or with the Nigerian government particularly in the Niger Delta area where several groups, in particular the Ijaws, are fighting for self-determination and/or a greater share of the regions oil resources. There are numerous ethnic groups who engage in sporadic fighting and hundreds of ethnic-based armed groups. Some of the conflicts include Ijaws and Itsekiris in the Niger Delta; Ilajes and Ijaws in the southwest; Yorubas and Ijaws in the southwest; Yorubas and Hausas in the southwest and north; Tivs and Jukuns, Fulani and Kutebs in central Nigeria; Fulani and Berom in the Riyomo district, south-west of Jos.

The government has also had its share of blame. According to Human Rights Watch report of October 9, 2007, violence, corruption and impunity are not just problems that the government has failed to tackle but are also systematic abuses that flow from the heart of the very same government institutions that should be working to combat them.

The conflicts between Muslims and Christians in the north continue to rise in Nigeria. Muslim-based armed groups include the Arewa People's Congress (APC), Hisbah Groups (Islamic vigilante groups that enforce adherence to Sharia), the Zamfara State Vigilante Service (ZSVS), and Al-Sunna Wai Jamma (also known as the Taleban). There are numerous small Christian militias. While some of the armed groups are clearly motivated by religion, often religion is used as a cover for disputes over land and cattle that have traditionally occurred between farming communities (who are mostly Christian or practice indigenous African religions) and cattle herders (who are mostly Muslims). This is especially true in Plateau state where the most violent episodes of religious violence have occurred.

Minority ethnic groups have exploited the religious component of these conflicts in order to further engage in farming and cattle rustling disputes in this mainly agrarian state. While both Christians (who are mainly farmers) and Muslims (primarily cattle herders) have pointed to identification cards recovered during combat as proof that their adversaries are religiously motivated, its true role in instigating conflict is not certain except for the fact that the various ethnic groups involved just happen to belong to one or the other. The Fulani and Wase militias are exclusively Muslim, for example, while the Taroh and Gamai militias are non-Muslim—and are made up of Christians and practitioners of African traditional religions (ATR).

3. 11.: Conclusion on Federalism in Nigeria

The Nigerian federation is characterized by strong unitarist streaks as a response to almost three decades of military rule. As a result of overcentralization of the Nigerian federation, there have been numerous reactions by subnational groups for a review of the legislative list.

Among the challenges the Nigerian Federal government faces is the issue of how to decentralize an overly centralized federation. It is most likely that the powers of the center will be reduced in favor of subnational units.

In similar vein, the distribution of scarce but allocatable resources continues to dominate the debate on the state of the federation. As Nigerian groups reassess their benefits from (more often rather than contribution to) the federation, conflicts over distribution of resources will continue to arise. However, given the complementarity and interdependence of the Nigerian economy, political leaders are likely to find appropriate forms of compromise from time to time.

In the new democratic setting, the politics of federalism has led to the emergence of geopolitical bargaining platforms in anticipation of a National Conference. The explosion of subnational identities and associated aggressive nationalism are likely to surface over time, without destroying the polity.

Ultimately, it is clear that the reasons for the adoption of federation are very much around. The mutual fears and suspicions of one another by Nigerian groups are likely to continue in the next decade. Yet, it is hoped that as groups interact and establish relative mutual confidence in one another and in the Federal system, necessary compromises will be effected and conflicts managed appropriately.

CHAPTER FOUR

4. FEDERALISM IN GERMANY

4.0.: Introduction

Germany has a strong tradition of regional government dating back to the founding of the German Empire in 1871. Since unification in 1990, the Federal Republic has consisted of sixteen states commonly known as *Länder*: the ten *Länder* of the former West Germany, the five new *Länder* of the former East Germany, and Berlin. The postwar Federal system did not emerge from a combination of previously independent states but as a result of action by the German people through approval by the Land parliaments with the support of the occupying powers. Ethnic, religious, and linguistic minorities are not relevant. Nevertheless, the sixteen *Länder* are different in area, population, geography, and economic and social structure.

From a comparative point of view, German federalism is a case in itself. Some scholars have even raised doubts as to whether the German state can be labeled as a Federal system.¹²⁷ One reason for this can be found in the Constitution which assigns legislative power mainly to the Federal government, whereas the *Länder* are, in most cases, responsible for implementing the law. Moreover, the Federal system is embedded in a society with centralized organizations of interest¹²⁸ in a highly developed welfare state, in an increasingly Europeanized economy, and in a political culture that emphasizes national unity and uniform living conditions in all regions.¹²⁹

¹²⁷ Kenneth Wheare. *Federal government*, 4th ed. London: Clarendon Press, (1963). p. 26; Heidrun Abromeit. *Der verkappte Einheitsstaat*. Opladen: Leske & Budrich. (1992).

¹²⁸ Peter Katzenstein, *Politics and Policy making in West Germany: The Growth of a Semi-Sovereign State*. Philadelphia: Temple University Press. (1987). p. 15

¹²⁹ Konrad Hesse, *Der unitarische Bundesstaat* (Karlsruhe: C. F. Müller, 1962); Kommission für die Finanzreform, ed., *Gutachten über die Finanzreform in der Bundesrepublik Deutschland*. 2nd ed.; Stuttgart: Kohlhammer. (1966). p. 19;

Territorial diversity and competition between decentralized governments, which are often said to characterize a truly Federal system, are not supported. Even so, the division of power, decentralization, and the participation of Land governments in national policymaking are basic features of German federalism. The sharing of legislative, administrative, and financial functions between governments and the widespread orientation toward unity and equality have contributed to the emergence of a system of interlocking politics (Politikverflechtung)¹³⁰, which is typical of cooperative federalism.

The current state of German federalism is ambivalent. In the West German Federal Republic, the fact that there were no severe inequalities among regions enabled intergovernmental cooperation despite competition among political parties. After 1990, regional disparities between West and East Germany, which might become more significant within the European Union, made the Federal system asymmetric. Cooperation is now complicated by intense distributive conflicts. However, party system structures are now more pluralistic, and the bargaining strategies of governments led by different parties have become more pragmatic.

4.1.: History of the German Federal system

The Federal Republic of Germany established in 1949 has firm historical roots in the earlier experience of the German Empire (1871-1918), the Weimar Republic (1919-34), the failure of the totalitarian centralization of the Third Reich (1934-45), and the immediate postwar influence of the allied occupying powers. In 1949 the eleven Länder of West Germany became the Federal Republic of Germany. Thirty-one years later, the reunification of Germany in 1990 provided for the accession

of five new Länder from what had previously been the Democratic Republic of Germany. The federation, therefore, now consists of sixteen Länder with a total population of over 80 million. The population of the German federation is linguistically homogeneous, although there remains considerable economic disparity and difference in political cultures between the former West and East Germanys.

4.2.a.: The Prussian reformers

While Federalism in Germany dates from 1871, decentralization – the authorisation of dependent agencies to make decisions of a regional and local character – has an older history. The Prussian reformers 1807 – 11 established a system of administration combining functional and regional specialization which was extended by the development of local self government (Selbstverwaltung) in the course of the nineteenth century. Five classic central departments were established in Berlin – Interior Finance, Justice, Foreign Affairs, and war and constituted 'upper tier' authorities. With the exception of Tax offices there were in principle no specialist administrations below the upper tier: instead, the central departments worked through generalist officers in middle and lower tiers.

Prussia provided for the regional coordination of state activities: the state was divided into provinces headed by a governor (Oberpräsident), and each province was in turn divided into government districts (Regierungsbezirk) headed by a district president (Regierungspräsident). The provincial governor and district president was not the subordinate of the governor; both were multi-purpose agencies, with the function of coordinating the work of various ministries in their area. Beneath these two regional authorities, Prussia was divided into subdistricts (Kreise) of which there

were two kinds, rural and urban. The rural subdistrict (Landkreis) was a unit of state administration, headed by the county director (Landrat), an official subordinate to the district president. The Landkreis was further subdivided into municipalities (Gemeinden), autonomous local authorities headed by a Bürgermeisterschaft. The Urban Kreis (County borough) was known as Stadtkreis or Kreisfreie Stadt. This hierarchical system of administration divided all the territory of the state into geographical units and established a tradition of unified decentralization which gave sovereignty to the central power but devolved administrative functions to intermediate (Mittelstufe) and lower (Unterstufe) levels of authority.

4.2. b.: Bismarck's Federal system

This was essentially superimposed on the existing collection of states – principally Prussia, whilst the Reich had twenty – five federal states; Prussia constituted two thirds of the area and three quarters of the population. Although the preponderance of one state made the Federal system unbalanced, Bismarck deliberately preserved the numerous petty governments. He took the view that if one wished to preserve the conservative-monarchical landed primacy, one could not get rid of the other state governments without the risk of democratising and radicalizing the Reich. The peculiar institution of Bismarkian federalism was the Bundesrat with its dual role as an assembly of delegates of the different state governments and as the upper house of the legislature. Bismarck's Bundesrat laid down a heritage of representation of the states in Germany by means of their governments not their populations. Both Reichstag and the Bundesrat could veto each other's resolutions. The essence of the formal structure of federalism was legal unification, enshrined in the principle 'Reich Law'

prevails over 'state law'. This was laid down by Article 2 of the 1871 constitution and has now become – in the form of Federal Law prevails over State Law – Article 31 of the Basic Law.

It suited Bismarck to leave administration in the hands of states, because this was the easiest method of bypassing the Reichstag. Peter Merkl uses the convenient terms 'executive legislative federalism' to refer to a vertical division of powers and mutual independence to refer to a vertical division of powers.¹³¹ Even in the imperial period from 1871 to 1918 the horizontal system was powerfully modified by the addition of elements of a vertical division. In a number of fields Reich administration expanded rapidly and established its own agencies with full administrative responsibility for particular tasks.

4.2. c.: The Third Reich

The Federal states survived the collapse of imperial Germany in 1918 because they represented policy differences with the Reich government. The overthrow of the dynasties strengthened rather than weakened particularism because the Länder thereby obtained a democratic legitimation. The political parties in the Länder became pseudo-dynasties. The federal element in the political organisation of Germany was, however, greatly diminished. The assembly of the *Land* governments- renamed the Reichsrat- lost its absolute power of veto, being given only a suspensory veto (Einspruch). Constitutionally it ceased to be the upper house of a bicameral legislature. Above all, through Erzberger's reforms of 1920 the Länder lost their financial autonomy. Instead the federation fixed the levels of and collected the major taxes throughout the Reich Finance Ministry

¹³¹ Peter H. Merkl. *Executive – Legislative Federalism in West Germany*. American Political Science Review, 53. (1959). p. 732-41

which controlled tax assessment and collection throughout Germany. The Federation then distributed a portion of tax revenues to the *Länder*.

The Nazis suppressed but did not destroy regional and municipal autonomy. The Reich Reconstruction Law of 30th January 1934 transferred to the Reich all Sovereign powers still held by the *Länder*. All Prussian Ministries were merged with their Reich Counterparts. Otherwise the state cabinets remained in existence but they became the agents and appointees of the Reich government. Both the state legislatures and elected local authorities were dissolved permanently. A Reich Governor (*Reichstatthalter*) was elected to supervise each state government, who in almost all cases was a *Ganleiter*. All Prussian Civil Servants were transferred to Reich authorities. All the seventeen states existing in 1933 were retained as administrative units except for Lubeck, which was deprived of its *Land* Status in 1937, reputedly because it was the only *Land* in which Hitler had never been allowed to speak in the Weimar period.

While the principle of the primacy of Reich Law restricted the state's legislative competence, it left their other governmental functions intact. In a classic formulation, 'Arnold Brecht described German Federation as horizontal rather than vertical. "The line of demarcation that in the United States separates governmental powers of the nation from those of the states has always been vertical. When power to deal with some subject matter was given to the Federal government, it was as a rule full governmental power including administration and adjudication as well as legislation. This was not so in Germany. The imperial constitution of 1871, while liberally granting the Federal government the power to legislate in most fields of general significance, left administrative and

judicial functions in almost all matters to the states... In other words, the original line of demarcation between powers was horizontal rather than vertical.”¹³²

Quite distinct from the Federal states, the Nazis established 32 party districts (Gane) each headed by a (Ganleiter). The Reichsrat was abolished as Reich Interior Minister Frick grandiosely proclaimed in a broadcast on 31st January 1934: the dream of centuries is fulfilled: Germany is no longer a weak federation (Bundesstaat) but a strong national unitary state (Einheitsstaat)

4.2. d.: Germany after 1945

After 1945 the occupation powers resurrected familiar German institutions, both restoring old and creating new Länder. In all four zones German administration was built up from the bottom, but owing first to the French Veto and then to the gulf between the western powers and the Russians, the administrative structure remained incomplete, no national German authorities being established to crown the edifice. Hence the Land governments were unexpectedly strengthened and became the focus of and instruments of post war developments.

The outcome of the war in fact dismembered Prussia, so that its abolition by the allied Control Council in February 1946 was a formality; one third had been annexed by Russia and the new westwards shifted Polish state; one third was the Russian zone of occupation the remainder was left in the British zone and was divided in 1947 between the new Länder of North Rhine – Westphalia and Lower Saxony.

¹³² Arnold Brecht. *Federalism and Regionalism in Germany. The Division of Prussia*. New York. (1945). p. 47. See also A. J. Zurck. *The Experiment with Democracy in Central Europe*. New York (1993).

In 1945 – 47 the western zones were divided into eleven Länder with the exception of Bavaria, Hessen, and Hamburg, these were new and artificial entities, with neither cultural identity nor historical tradition. The US believed in Germany's democratic salvation through federalism.¹³³ Allied Security Policy - above all as represented at that time by the French – sought to prevent the emergence of a strong central government. Accordingly the Frankfurt document specified that the new constitution to be drafted for West Germany should be a 'democratic constitution' for a governmental form of a federal type which protects the rights of the participating Länder and creates an appropriate central authority; the device of federalism by administrative decentralization was to function as a support for the dispersal of power.

These external influences coincided with and reinforced the views of the majority of members of the Parliamentary Council, which enacted the Basic Law. The Nazis suppression of Federalism produced a reaction in its favour. The Land bureaucracies had been the historical pillar of German federalism. The parliamentary Council was made up of Land politicians and civil servants, who were not going to legislate themselves out of existence or forgo their own instrument of power in the form of a federalistic Bundesrat. Bavaria had retained its representatives had consistently pressed for a greater autonomy from the central government a pressure increased by the licensing of the Bavarian Party 1948. Catholic Social and political teaching was influential in the CDU/CSU and this favoured a decentralized state.

The countervailing pressure came from the SPD who wanted a solution as centralistic as possible as federalistic as necessary. However, this general principle gave no specific guidance, where the line was to be drawn. The SPD had its own strong regional bases in the north and wanted

¹³³ J. F. Golay. *The Founding of the Federal Republic of Germany*, 2nd Edn. Chicago. (1965). p. 17

these to retain an influential role regardless of the composition of the Federal government. On the federal question, Allied and German wishes were largely identical.

Besides the Länder, the basic institutions of the Federal Republic were also in place before 1949, in the form of the inter-zonal bodies established in 1947-8. The Economic Council (Wirtschaftsrat) became the Bundestag; the Executive Council (Verwaltungsrat) became the Federal government; and the Länder Council (Länderrat) became the Bundesrat. In 1949, as in 1871, a new federal entity was superimposed upon an existing set of states.

4.3.: Changes in the development of the German Federal system

The development of the German Federal system over the last 50 years can essentially be characterized by changes along the following three lines of tension. The Federal state of the Basic Law corresponds to an executive federalism as it was established (under the leadership of Otto von Bismarck) with the building of the German Reich in 1871.¹³⁴ This cooperative federalism of governments took over an idea for regulating conflicts that emerged much earlier in German history. It became evident in the "Permanent Reichstag" (since 1666), and during the nineteenth century, in the Deutscher Bund (German Confederation) and the Norddeutscher Bund (Northern Federation).¹³⁵

Governing by the division of power, negotiation, contracting, and cooperation remained the predominant state practice in Germany, while processes of concentrating power led to the foundation of the modern state in countries such as England and France. At that time, the German Reich was

¹³⁴ Heiderose Kilper and Roland Lhotta. *Der Federalismus in der Bundesrepublik Deutschland* Opladen: Leske & Budrich. (1996). p. 46-50.

fragmented. The centralization of sovereignty took place in the Länder, the politics of the Reich primarily focused on getting the princes to compromise. The cooperative federal state of 1871 mirrored this type of politics. Although parts of the legislation were centralized, administrative powers were left to the Länder. At the same time, Land governments participated in legislation through the Bundesrat. Moreover, a significant part of tax revenue remained with the Länder. Other concepts of a federal state can be found in the history of federalism in Germany.¹³⁶

The draft constitution of 1848 was strongly influenced by the American model of a democratic federal polity. The failure of the 1848 revolution and of liberalism, however, led the development of government in the direction of a cooperative federalism and an executive federalism. In the 1871 constitution of the German Reich, the Bundesrat (the assembly of the representatives of the Land governments) was the supreme body of legislation and government. The Weimar constitution of 1918 marked the transition to a parliamentary form of government in Germany. The chamber of the Länder (then called Reichsrat) clearly lost its power and influence.

The institution of the Bundesrat of the Basic Law of 1949 again strengthened the Länder, particularly because the number of laws requiring consent of the Bundesrat grew significantly. The cooperation between the Federal and Land governments laid down in the Basic Law was accompanied by party competition in the parliamentary system. The Basic Law of 1949, in creating a democratic government, imitated the Westminster model. By joining a democracy with confrontation among parties to cooperative federalism based on traditional pattern of compromise

¹³⁵ Gerhard Lehbruch. *Die korporative Verhandlungsdemokratie in Westmitteleuropa*. Schweizerische Zeitschrift für Politische Wissenschaft, Special Issue 2 (1996). p.19-41.

¹³⁶ Thomas Nipperdey. *Nachdenken über die deutsche Geschichte*. München: Beck. (1986). p. 60-109.

between governments, a uniquely mixed constitution emerged.¹³⁷ As both elements of governance are innately incompatible, politics is marked by continuous tension. The competitive orientations predominating in party politics make compromises in negotiations between the federal and Land governments rather difficult. On the other hand, a successful cooperation between the federal and Land governments weakens the parliaments. It threatens to paralyze party competition, which constitutes a basic element of the parliamentary system.¹³⁸

A second line of tension stems from the relationship between cooperation and distributive conflicts among territories. The cooperative federal state of the Federal Republic of Germany was accurately called a unitary federal state.¹³⁹ The practice of cooperation between the Federal and Land governments and the cooperation between *Länder* have always been aimed at creating uniform legal and economic conditions as well as equal standards of public services in the whole territory of Germany. This did not cause any problems until the mid-1960s because either unitarization served legal uniformity, or growing tax revenues provided the necessary resources for redistributive policies aiming at equality. Cooperation and unitarization reinforced each other. It would, however, be wrong to put them on the same footing. The term "cooperative federalism" means the specific structure of a state, while unitarization describes the circumstances of intergovernmental processes and the characteristic features of policies. If conditions in the *Länder* reveal significant disparities, and if policies aimed at unitarization require massive redistribution, it is to be expected that the performance of the cooperative federal state is affected. This is what we have observed since the end of the 1970's, and particularly since German unification.

¹³⁷ Lehmbruch. *Parteienwettbewerb im Bundesstaat*. p. 25.

¹³⁸ Arthur Benz. *Verhandlungssysteme und Mehrebenen-Verflechtung im kooperativen Staat. Regierungssystem und Verwaltungspolitik*, ed. s. Arthur Benz and Wolfgang Seibel. Opladen: Westdeutscher Verlag, (1997). p 83-102.

A third line of tension results from the integration of the German federal state into the European Community (EC) and later into the European Union (EU). In the Federal Republic, this was often described as centralization because responsibilities were transferred to European institutions, and the Länder were not compensated by being given adequate participation. The development of institutions in Europe, however, primarily changed the cooperation between the federal and Land governments. German intergovernmental relations have become part of a system of multi-level governance that differs in terms of its functioning from interlocking politics in the German federal state.¹⁴⁰

4.4.: The Länder

In a federation sovereignty is shared by the national and the constituent states. In German terminology both the nation and the federal units are 'states'. The Weimar Constitution used the term 'Land' plural 'Länder' to designate the federal states and this terminology has been retained by the Basic Law, which distinguishes between the federation Bund and the *Länder*. The essence of federalism is that the states have a constitutionally entrenched position as bearers of limited form sovereignty. Where the political subdivisions of a country represent administrative structures that do not possess sovereignty in any form this constitutes a decentralised rather than a federal mode of organisation.

¹³⁹ Hesse. *Der unitarische Bundesstaat*.

¹⁴⁰ Arthur Benz. *From Cooperative Federalism to Multi-level Governance: German Regional Policy in the EU*. Paper presented at the Annual Meeting of the American Political Science Association, Boston, 3-6 September (1998).

4.4. a.: The Land governments

In a federation sovereignty is shared by the national and the constituent states. In German terminology both the nation and the federal units are 'states'. As mentioned earlier, the essence of federalism is that the states have a constitutionally entrenched position as bearers of limited form sovereignty.

The *Land* governments are based on a parliamentary system. Most *Länder* (apart from Berlin, Bremen, and Hamburg) have unicameral legislatures, whose members are elected directly by popular vote. The party or coalition of parties in control of the legislature chooses a minister president to lead the *Land* government. The minister president selects a cabinet to run *Land* agencies and carry out the executive functions of the *Land* government. Minister Presidents are highly visible national figures and often progress to federal office, either the chancellorship or a position in the federal cabinet.

The Basic Law divides authority between the Federal government and the *Länder*, with the general principle governing relations articulated in Article 30: "The exercise of governmental powers and the discharge of governmental functions shall be incumbent on the *Länder* insofar as this Basic Law does not otherwise prescribe or permit." Thus, the Federal government can exercise authority only in those areas specified in the Basic Law. The Federal government is assigned a greater legislative role and the *Land* governments a greater administrative role. The fact that more civil servants are employed by *Land* governments than by Federal and Local governments combined illustrates the central administrative function of the *Länder*.

The *Länder* differ markedly in size, population and resources and each has a constitution which must conform to the principles of the Basic Law (Article 28(1)). Constitutionally and

organisationally a distinction exists between the area-states (Flächenstaaten) and city states (Stadtstaaten). In the area-states the Land government has below it separate local and - in the case of the larger states - district authorities. In the city states the land government is also largely responsible for local government.

While there is a significant degree of devolution of functions from Federal to Land government, government within the Länder is relatively centralized. For example, in North-Rhine Westphalia the appointment of teachers throughout the whole Land is decided by one central office in Düsseldorf.

All Länder have ministries of Interior, Finance, Economy, Transport, Labour, and Social Security, and Education. The key minister is the minister of the interior, who in the Prussian tradition is head of the general internal administration, has command of the police and is responsible for all matters for which no specific ministry is named.

Land ministries also have a number of autonomous operational units attached to them. In the city-states the Land government doubles up as the major local authority, but elsewhere there are a number of political and administrative units below Land level.

The government district has been retained as a unit decentralised administration in the six larger Länder (North-Rhine Westphalia, Baden Württemberg, Lower Saxony, Hessen, Bavaria, and Rhineland Palatinate). The District president is a senior political official appointed by the minister president and under the control of the Minister of Interior. He serves as the agent of Land government in matters delegated to him and is the principal executive institution with the Land, bringing the threads of government in a district under a single roof. The District president controls the police in his area. He supervises for legality the activities of local authorities and public

undertakings and the schools inspectorate and audit office report to him. His office administers Land funds for education, roads and housing, whether directly expended or paid to local authorities. It also has an extensive administrative law functions, giving legal advice to local authorities and acting as an appellate tribunal. It supervises industry and commerce, with power to issue warnings and impose fines for breaches of law, appeal from which lies in the ordinary courts. In 1989 six Länder were divided into a total of twenty six government districts in West Germany.

The Kreis as a subdivision of the Land has been retained in all the area states, with its two forms of the rural county (Landkreis), and County borough (Stadtkreis). Stadtkreise are now generally towns with a population of at least 80,000 people. In 1989 there were 91 Stadtkreise and 237 Landkreise.

The rural counties are further subdivided into 8,503 municipalities (Gemeinden). The principal difference between the Landkreis and the municipality is that the municipality has universality of competence, whereas the Landkreis only has those functions given to it by law. In general the Landkreis performs those tasks which are either beyond the financial capacity of the municipality, or cannot be properly performed in a local framework. In its capacity as the state agent of administration the Landkreis is, for example, the housing and highways authority. As an autonomous corporation the Landkreis administers savings banks, hospitals, secondary education, vocational training, public assistance, and provision of gas, water and electricity. The organisation of Landkreis government varies from Land to Land; but always contains three elements; an elected council, an executive committee and executive officer, variously named Landrat, Kreisrat or Oberkreisdirektor. In Saarland and Rhineland Palatine he has remained a state official but in all other Länder he is now a local official.

The Landkreis finances itself by a levy on the tax receipts of municipalities in its area. The Stadtkreis is not divided into municipalities and so receives all revenue which would normally be due to them. Certain tasks of the Kreis government are beyond the capacity of all but the largest cities. The commonest solution is for Kreise to form joint public undertakings for specific services, e.g. the supply of gas, electricity or water. Alternatively the Land government can establish multipurpose territorial corporations at the intermediate level between Land and Kreis and vest the administration of larger projects in them, thereby extending principle of indirect state administration.

The function of municipalities can likewise be classified as delegated and autonomous. They are multipurpose authorities, responsible for everything not assigned to other bodies. As in case of the Kreis, single tasks can be delegated to joint authorities. The Bürgermeister is as a rule appointed for a fixed term by the council and his role varies according to the constitution of the municipality.

In the past years there has been a sharp reduction in the number of units of local government. Whereas 1967 some 24,300 municipalities existed, by 1989 this number had fallen to 8,503. A large number of small municipalities have combined to form administrative unions (Gemeindeverbände), which assume tasks of the member authorities. In 1987, 6,013 municipalities belonged to 1,037 administrative unions. In addition to this kind of association, there are some 3,500 administrative associations with a specialized function (Zweckverbände), e.g. Water supply, secondary education.

4.5.: The Powers of the Federation and the Länder

Arnold Brecht points out: 'Federalism is based upon state rights. Delegations of powers that can be withdrawn at any time at the discretion of the delegating authority in every detail, does not establish federalism'¹⁴¹

The Länder undoubtedly enjoy a constitutionally protected position – as the eternity guarantee of Article 79(3) says. The Basic Law also establishes a constitutional presumption of land competence. According to Article 30, the exercise of state powers and fulfilment of state tasks is the concern of the Länder, in so far as the Basic Law does not otherwise prescribe or permit. Article 70(1) states that Länder shall have the right to legislate in so far as this Basic Law does not confer legislative power on the Federation. Article 83 states that the Länder shall execute Federal Law automatically in so far as this Basic Law does not otherwise prescribe or permit. As the recurring formula "in so far as this Basic Law does not otherwise prescribe or permit" suggests, Land competence proves the exception, rather than the rule. Nevertheless, the states retain substantial powers.

The hallmark of vertical federation is that states have in certain fields independent powers of legislation, coordinate with those of the national parliament. This type of federalism has been sparingly represented in Germany since 1871. There is a long tradition of 'hollowing out' the states' legislative prerogative. A stable definition of the irreducible minimum of Land competence was achieved by 42 of the Third Emergency Decree of 14th February 1924, which contained a pledge that the administrative functions of the police, education and measures of public assistance would be left with the Länder and local authorities.

¹⁴¹ Brecht. *Federalism and Regionalism*. p.20

Although the Basic Law made extensive provision for the possibility of Land legislation by assigning most of the substantial areas of legislation to the concurrent sphere where both Federation and Landtage can pass laws, the federation has ousted Land legislation in the whole concurrent sphere, leaving the Länder supremacy only in the sphere of education, which forms the cornerstone of their autonomy.¹⁴²

The development of what Hesse calls 'the unitary federal state' has not occurred in opposition to the Constitution, but results from the fact that the Basic Law has itself in the delimitation of legislative competences given the federation a dominating role. Moreover, the Parliamentary Council specifically contemplated this process, by extending the range of consent laws. As Golay explains, "By additions to the list of Zustimmungsgesetze, the federalists were reconciled to grant of powers to the Federation desired by the centralists."¹⁴³

The growth of a more homogeneous society, itself accelerated by the post war shifts of population, has diminished both the need and justification for regional variations in legislation. There exists in consequence a high degree of federal legislative uniformity. In German federation it is the function of the national government to make law. The term 'executive-legislative federalism' only superficially fits the German system, however, as the Länder through the Bundesrat have a substantial role in the federal legislative process, whilst the federation plays a considerable role in administration.

¹⁴² Konrad Hesse. *Grundzüge der Verfassungsrechts der Bundesrepublik, Deutschland*, 13th edn. Tübingen. (1977). p. 89.

¹⁴³ Golay. *Founding of the FRG*. p. 55-56.

4.5. a.: Federal – Land Administration

It is not the function of the Länder to generate and administer distinctive policies through autonomous legal and executive action at regional level. Whilst it is the administrative competence of the Länder which gives German federalism its strength, the framework of Land administration is closely defined.

In general the Federal government works without its own administrative sub-structure and employs the administrative apparatus of the Länder and local authorities. Only the Foreign Office, Defence Ministry, and Labour Ministry have their own agencies. In consequence of the division of executive responsibilities between Federal government, Länder and local authorities, the bulk of civil servants are Land and local officials.

The three fold horizontal division of German administrative broadly corresponds to a functional division. From the point of view of personnel, in the sectors of the central direction of policy, foreign affairs, defence finance and tax administration, the centre of gravity lies with the federation; in the sectors of law and order, the administration of justice, and education responsibility lies with the Länder; the municipalities have the predominant role in local government, social welfare services, transport and public utilities.

4.5. b.: Delegated and autonomous administration

In the execution of laws there is a fundamental distinction between 'delegated administration' (Auftragsverwaltung) and autonomous administration (Verwaltung als eigene Angelegenheit). This distinction - like much else - has its origins in the practice of Prussian administration.

Elected local authorities were established in Prussia in the nineteenth century. They could not be incorporated in the existing direct state administration because their elected status set them apart from it. They therefore came to constitute institutions of mediate state administration.

The power of supervision, control and direction rested in the direct state administration. However, the mode of control exercised by the superior over the indirect state administration differed in kind and degree from the control exercised by a superior of direct state administration over an inferior. In the sphere of direct state administration; it was a political control. The superior authority can issue directives and administrative regulations to the inferior authority. In supervising a local authority an organ of direct state administration was concerned only with the form of administration, it was a legal control. As long as the local authority did not go wrong in law, it was immune from direction from above. In particular it determined who was administering a law and the administration procedure to be adopted.

Local authorities were not all-purpose but had statutorily prescribed responsibilities. For certain purpose of direct state administration it was convenient to use local authorities rather than establish field offices at local level and thereby multiply administrative bodies. Hence for certain tasks the local authorities were made agents of direct state administration and effectively incorporated into the hierarchy of the direct state administration. Thus arose the characteristic 'double role' of local authorities. For example, in the case of the urban sub-district, in the exercise of police function the Stadtkreis (county borough) became a unit of state administration and in performing this task the Öberbürgermeister was the agent of the state acting under direction from his administrative superior. In performing the task which had been allotted to local government, however, he remained the chief executive of the autonomous town council, subject only to legal control. Hence arose the distinction between delegated administration and autonomous

administration. Where a body with its constitution executes a law subject only to legal control, it is said to administer the law autonomously. Where such a body executes a law subject to political control, it is said to execute the law as the agent of the supervising authority, which was delegated that task.

Before 1933 delegated administration from Land government to local authority was common. As mentioned, the *Öberbürgermeister* in the *Stadtkreis*, the *Bürgermeister* in the municipality had control of the police but in this function they were the agents of the Land government acting under its orders. Delegated administration from Reich government was, however, rare. The principal factor inhibiting the growth of delegated administration at state level after 1918 was the inability of the Reich government to effectively supervise state government.

Federal execution is the only mode provided for the Foreign Service, the Post office, the Armed Forces (*Bundeswehr*), the Federal Railways (*Bundesbahn*) and Federal Fiscal administration (Article 87). The Basic Law assumes in cases of federal execution a three-tier administrative structure consisting of federal, regional and local level. However, the Federation exceptionally has field units at regional and local level. These are normally provided by Land ministries which do not thereby lose their status as Land institutions. In certain fields, federal administration is prescribed, but the federation may delegate the tasks to the *Länder* as its agent. These fields are Atomic Energy (Article 87C, Inland Waterways (Article 89(2)); Civil Defence (Article 87b (2)); and the collection of certain federal taxes (Article 108(4)).

Delegated Land administration is prescribed in the case of Federal Autobahns, (Article 90(2)). Whenever federal laws confers subsidies and the law is administered by the *Länder*, if the

federation provides 50% or more of the cost of the programme, the Lander implement the law as agents (Article 104a (3)).

In all other cases the norm of autonomous Land administration otherwise prescribes. Such a law will prescribe how the law is to be implemented by providing for the regulation of administrative procedures, and the establishment of administrative agencies. This will have the effect of switching administration from the autonomous to the delegated sphere. Such legislation requires the consent of the Bundesrat (Article 84(4)). In practice, the Bundesrat has freely agreed to the enactment of such laws, with the result that the constitutional norm of autonomous administration has become in practice the exception. Delegated administration has ousted autonomous administration just as federal legislation has ousted Land legislation.

There are several connected reasons for this process. The Western occupation powers, who particularly insisted on the inclusion of Article 72(2), hoped that it would provide a substantial limitation on the ability of the Bundestag to arrogate to itself legislation lying in the concurrent sphere shared with the Landtage. The host of urgent problems confronting West Germany in 1949 required uniform, national solutions, not separate, regional ones. The Länder could not be left to go their own way, even if they had the capacity to formulate and implement individual policies. The transformed party system also favoured the centralization of legislation. Article 72(2) as drafted contained a 'needs' formula which, as interpreted by the Federal Constitutional Court was held not to raise justifiable criteria and so did not act as a restriction on federal regulation exists, the court stated, 'is a question which lies in the reasonable discretion of the federal legislator, which in its nature is not justifiable and is therefore in principle not open to review by the Federal Constitutional Court.'

Thus the volume and significance of federal legislation as compared with legislation by the Landtage greatly exceeded what was contemplated in the ground plan of the Basic Law. In consequence, the Federation has also been required to play a corresponding larger role in the administrative process. The Länder have had little incentive to resist this process. Where the Länder administer a programme autonomously, they bear the costs; when they act as agents of the federation, the federation pays for the programme (Article 104a (2)).

The transfer of programmes from autonomous to delegated administration in turn produces greater centralization of finances. The federation has only limited formal powers of supervision, whichever mode of administration is employed; and these have never been tested in practice. (Article 84 (3 - 5)); (Article 85(3-4)). The Länder do not compromise their independent position by yielding up administrative powers. The substitution of delegated for autonomous administration switches a law from the category of simple to consent legislation and so expands the power of the Bundesrat. Land governments thus receive compensation for the erosion both of their own powers and those of the Landtage. In the development of the Federal system three changes have been dependent on each other; the growth of federal law at the expense of Land law in the concurrent sphere; the growth of delegated administration at the expense of autonomous administration; and the increase of consent laws at the expense of simple law. The Land ministries are left with two sets of functions; those in which they exercise their autonomous role; and those which devolve upon them in their derivative role as regional and local agencies of the Federal government. Their administrative experience is fed back into the legislative process via the Bundesrat.

4.6.: The Financial System of Federalism in Germany

It is fundamental to the principle of Land autonomy that the greater part of the financial costs of services are met out of the general allocation of funds to the Länder rather than by specifically appropriated grants from the centre. Indeed the states rely on the federal government for only a small percentage of their revenues; for the former East German states, however, these transfers are of considerable significance. There has, however, been a marked increase in the significance of the federal government since reunification and a dramatic impact of federal supplementary grants on some states revenues.

An entire section of the Basic Law is devoted to the financial system of federalism. These provisions have been much amended and revised, together with legislation which implements them. The system adopted by the Bonn Republic represents a compromise between the previous methods of public finance. In Imperial Germany the bulk of taxes were paid to the states, which paid 'matriculatory contributions' to the Reich. In the Weimar Republic, all taxes were collected by the Reich, which made grants in aid to the Länder.

While the Länder were under close financial control by the Reich, the local authorities had remarkable financial autonomy, and in the second half of the 1920s indulged in compulsive overspending which ran directly contrary to the deflationary policy of the Reich government. The Basic Law seeks to reconcile the budgetary and the fiscal autonomy of the Länder and local authorities with sound finance and an equal level of resources and social provision throughout Germany.

The major feature of German revenue-raising arrangements is constitutionally mandated sharing of tax revenues. All of the most important revenue sources are shared. Together, the wage

and assessed income taxes, the corporation income tax, and the general sales, or value added tax (VAT), make up about three-quarters of total tax revenue and the proceeds of all are shared.¹⁴⁴ These goals are achieved, first, by dividing up tax revenues between the different levels of government according to a fixed formula (Vertical financial equalization); secondly by redistributing the amounts accruing to the federation and Länder, in order to equalize the relative resources of Länder (horizontal financial equalization). The constitutional and statutory basis of vertical financial equalization rests in Article 106 and the Apportionment Law of 25th February 1971, horizontal equalization is based upon Article 107 and the Finance Equalization Law of 28th August 1969 as amended in 1987.

Vertical financial equalization is the primary distribution of taxes. Central to this process is the distinction between community and undivided taxes. Community taxes (*Gemeinschaftssteuern*, Article 106(3)) are taxes which are shared between different levels of government. Undivided taxes flow exclusively to one tier of government only. The community taxes comprehend the principal taxes in revenue terms; income taxes, corporation taxes and value added tax (VAT). These provide also 70% of gross tax yields. The remaining taxes are undivided.

In regard to the community taxes the federation has concurrent legislative power (Article 105(2)). From January 1st 1980, the federation and Länder each receive 42.5% of the yield of income tax, the balance 15% going to the local authorities. Corporation tax is divided equally between the federation and Länder. According to local yield principle, income and corporation tax yields accrue to the Land where the taxable person resides, as the term is understood in Law, although in the case of corporation tax two or more Länder may share the tax paid by a Company on its profits. Value

¹⁴⁴ Paul Bernd Spahn and Wolfgang Föttinger. *Germany in Teresa Minassian, ed., Fiscal Federalism in Theory and Practice*. Washington: International Monetary Fund. (1997) p. 229.

added tax yields are the subject of a two way split determined by consent law. The ratio is reviewed every two years, and adjusted if necessary in light of changing financial needs; this provides an important element of flexibility in fiscal arrangements. At present, the allocation ratio is 56:44, for the Federation and Länder respectively. From federal share of VAT 1.4 % is deducted and paid to EU.

Of the undivided taxes, customs duties go to the Federation; capital taxes (wealth and inheritance) accrue to the Länder; the business tax (Gewerbesteuer) and local taxes on consumption are receipts of the local authorities in turn give 20% of their income from business tax to the federation and a further 20% to the Länder, as quid pro quo for the local authorities share of income tax. The approximation of the financial resources of the Länder takes place horizontally, i.e. between the Länder, in three stages.

The Länder share of VAT is distributed among the Länder not according to the 'local yield principle' but according to the size of population. The local yield principle applies to other taxes and means (roughly speaking) that tax is paid to the Land or local authority in which a taxpayer resides. If the taxpayer is the headquarters of a large company, this circumstance will give a revenue boost to the land or local authority which may be disproportionate to the population of the unit in question. Additionally, up to one quarter of the Länder share VAT is given to the 'financially weaker' Lander, i.e. a Land whose tax income falls below a defined average.

Equalization payments are worked out in a manner prescribed by the finance equalization law. The Länder share of corporation and income tax is distributed according to the local yield principle. A 'tax quota' is then established for each Land. This is the tax yield per head of population. Next the 'equalization quota' is ascertained. This is the tax yield required to enable the

Land to provide a level of public services which conforms to the national average. If a Land's tax quota exceeds its equalization quota, it is classified as 'financially stronger' and is obliged to make equalization payments. If a Land's tax quota is less than its equalization quota, it is classified as 'financially weaker' and is entitled to receive equalization payments.

Since 1983 three Länder have contributed to the equalization process (Baden – Württemberg, Hamburg and Hessen), while six Länder have received these subventions (Bavaria, Lower Saxony, Rhine – Palatinate, Bremen, Schleswig – Holstein and Saarland. North Rhine – Westphalia, by far the largest of the Länder – has neither received nor made payments. Bavaria is teetering on the brink of moving from recipient to contributor status. The greater bulk of equalization funds are provided by Baden – Württemberg (70%), while the highest per capita burden falls on Hamburg.

In addition financially weaker Länder receive grant in-aid from the federation. From 1974 federal grants were fixed annually at 1.5% of VAT. As a result of the Federal Equalization Law, the federal contribution was set at maximum of DM 1,775 billion a year. All the poorer Länder except Bremen have benefitted from these supplementary payments. The reason for the exclusion of Bremen is that the Basic Law in general does not allow direct financial links between the federation and local authorities. Because it is a city – state, the Land government also functions as a local authority and this raised a constitutional obstacle to the direct receipt of federal fund.

The business tax forms the only significant element in the income of local authorities which they are able to vary. All non-agricultural undertakings which carry on a trade are assessed for business tax on their profits and capital value. The rate is set by the local authority. There is an element of chance, however, in the location of business undertakings in particular council areas. Part of the tax revenues also go to the churches. Members of churches which are public corporations are

obliged to pay tax. This is a supplement to income tax, which is levied and collected by tax offices and paid over to the churches.

Taxes which accrue solely to the Federation are assessed and collected by Federal authorities (Article 87 of the Basic Law). All other taxes are administered by the Länder, but in the case of community taxes – which are shared by Federation and Länder - the Länder act as the sole agents of the Federation. Hence, while there is no central finance ministry along the line of Erzberger's model, the main tax authorities are effectively joint Federal – Land agencies. The Länder in turn delegate the collection of local taxes to the local authorities.

The financial system of German federation has to meet a number of criteria. There must be some overall plan; there must be sufficient flexibility for the Länder and local authorities to have a genuine measure of autonomy; the rules must be drawn up by the Federation and Länder together; rules must be capable of adapting to changing circumstances. The system as a whole is designed to work in an apolitical manner; to limit the role of political bargaining and government discretion; to take the allocation of revenues outside the range of ordinary political debate; to run as far as possible on automatic pilot. By this means the principle of the financial autonomy of the Länder and local authorities can be preserved, while ensuring a uniform level of social provision throughout Germany. The financial arrangement of federalism affords another example of the attempt to 'unburden' the political system through institutional arrangements.

However, it is worth noting that the allocation of finance is too intensely political to be removed from politics and that there cannot be an apolitical solution to political problems. However, the political disputes which the system engenders cross party divisions. The Federal Constitutional Courts subjected the Financial Equalization Law to an extensive review in 1986. The essential

dilemma running through the judgement is: how far political questions can be depoliticized by reliance upon legal means of resolving disputes? The Court observed:

These limitations and restrictions exclude neither political negotiation between all those concerned nor the seeking of compromise and mutual understanding; on the contrary both lie within the meaning of the federal principle. The Federation may in these negotiations act as an 'honest broker'. In the last resort, however, the federal legislator is subject to the duty imposed by the constitution, to frame the legal settlement in a way that satisfies the normative requirements of the Basic Law. It cannot restrict itself to the authentication of political decisions of a majority of the Länder without regard to their content ... the constitution imposes certain substantive legal restrictions on political compromise.¹⁴⁵

This passage underlines the extent to which government takes place in a legal framework which is only partly at the disposition of government itself. The influence of the Länder in the financial equalization process takes three forms; Through the Bundesrat their consent is required to legislation implementing the system. They can also form decisions at Federal level through the national political parties. In the last resort they can take the path to the Federal Constitutional Court in Karlsruhe.

While the system guarantees Länder sources of finance in the interests of Land autonomy, it also fixes the amount of their resources in the interests of social solidarity. The result is the broadly uniform level of taxation throughout Germany, and a corresponding high degree of centralization of resources of finances, notwithstanding the federal structure. At the centre of the web stands the

¹⁴⁵ BVerfGE, 2,213, at 224

Federal government, which, while it does not make the rules, must operate them. It fixes the rate of community taxes, which produce the bulk of revenue. It also has significant discretionary powers. By making the execution of Federal Laws delegated rather than autonomous, the Federation assumes responsibility for the costs of implementation.

Proposals for reforming the system seek a more national distribution of resources. The overall plan of finances can, however, only be strengthened at the expense of regional and local autonomy. A further source of difficulties is the Federal governments' tax reform programme. The two main thrusts of the reform are to bring about a permanent reduction in the tax burden and to make lasting improvements.

The sharp reduction in the yield of income and corporation taxes, both implemented and projected, will correspondingly diminish the resources of both Länder and local authorities; whose primary source of revenue is a fixed share of the amount raised by these taxes. This will in turn reduce the freedom of the Länder and local authorities to pursue policies of their own.

The accession of the poorer East German Länder to the Federation has increased existing strains and by the end of the transition period a substantial revision of the financial system will be unavailable.

4.7.: Constitutional Allocation of Expenditure and Responsibilities

The relatively centralized system of revenue-raising is counterbalanced by a relatively decentralised system of expenditure. Land administration of both Federal and Land legislation means that the vertical division of legislative competences is not reflected in the distribution of

administration and hence of expenditures among orders of government.¹⁴⁶ Thus, expenditures for areas as varied as social policy and investment in infrastructure are made by all orders of government.

4.8.: Conclusion on Federalism in Germany

The German federal constitutional system attempts to achieve a balance between diversity and unity by utilising a federal structure, but with the societal goal of uniform living conditions across the federation. The achievement of a common standard of living throughout the country has been a stated goal in the Federal Republic of Germany since federation.¹⁴⁷ Indeed, the achievement of 'uniformity of living conditions' was a principle entrenched in the Basic Law until 1994. It was considered a guiding tenet of the West German state that, although it was organised federally, all institutions should be oriented toward uniformity.¹⁴⁸ The primary impetus behind this philosophy was the belief that the general population, regardless of their territorial position, had essentially undifferentiated demands and expectations in regard to social conditions. Uniformity became a powerful norm permeating all relationships between, and actions of, both orders of government. This contrasts sharply with the traditional greater emphasis in other Federal States upon state autonomy and individual initiative as higher values.

¹⁴⁶ Ibid., 228

¹⁴⁷ Uwe Leonardy. *German Federalism Towards 2000: To be Reformed or Deformed*; in Charlie Jeffery, ed., *Recasting German Federalism: The Legacies of Unification*. London: Pinter. (1999). p. 297.

¹⁴⁸ Hartmut Klatt. *Forty Years of German Federalism: Past Trends and New Developments*. *Publius* 19. (1986). p. 186-87.

Adjustments in the balance between the achievement of uniform living conditions and the maintenance of a federal system are accomplished by means of constitutional amendment, intergovernmental relations, and judicial review. Amendment of the German constitution requires only special majorities in the two houses of the federal parliament; it must be noted, however, that because the Bundesrat is composed of *ex officio* delegates of the Land governments, this process in effect entails agreement of a special majority of the Land governments. This process has proved relatively flexible, allowing 46 amendments during the first 50 years of the federation. These amendments have included the strengthening of the Bund's legislative and financial roles in the period 1967-9, and the reunification of Germany in 1990.

Germany has been relatively successful in using incremental constitutional amendment as a means of adjustment in the federation; however, the particular characteristics of the German distribution of powers necessitate intensive and ongoing coordination among orders of government. Thus, an extensive system of intergovernmental relations is a prominent feature of the German political decision-making processes. However, intergovernmental relations occur in the context of a tension between parliamentary government and federalism. During periods when there are differing party majorities in the Bundestag and Bundesrat, the second chamber sometimes acts as an alternative opposition. This can complicate the processes of intergovernmental relations.

In the aftermath of reunification in 1990 there was a felt need to further adjust the constitutional basis of the federation. The western Länder believed that the addition of the economically-dependent eastern Länder and the ongoing process of European Union (EU) integration put them in danger of losing ground to the federal government.¹⁴⁹ The Constitutional

¹⁴⁹ Hans-Peter Schneider. *German Unification and the Federal System: The Challenge of Reform*, in Charlie Jeffery, ed., *Recasting German Federalism: The Legacies of Unification*. London: Pinter, (1999).p. 69-70.

Reform Act of 1994 provided the answer to these concerns. Among the changes were the strengthening of the Bundesrat's role in German policy-making in relation to the EU, the placing of a greater onus on the federal government to justify its use of its concurrent and framework legislative powers, additions to the administrative powers of the Länder, and expansion of the areas over which the Bundesrat has veto powers.¹⁵⁰ While the effects of these changes are complex, it appears that the position of the Länder, especially in regard to their institutional privileges as represented by the Bundesrat, was further enhanced.¹⁵¹

¹⁵⁰ Werner J. Patzelt. *The Very Federal House: The German Bundesrat*, in Samuel C. Patterson and Anthony Mughan, eds., *Senates: Bicameralism in the Contemporary World*. Columbus Ohio, USA: Ohio State University Press. (1999). p. 75-79.

CHAPTER FIVE

5 . FEDERALISM IN GERMANY AND NIGERIA: A CRITICAL COMPARATIVE ANALYSIS

5.0.: Introduction

As mentioned earlier, a number of Countries in the world currently express a commitment to federalism in their governance. The reasons for this commitment vary from one country to another. The main objective in this chapter is to compare federalism in Nigeria and Germany and will entail an analysis of their composition, structure and functioning.

5.1. : Federalism and decentralization in Germany and in Nigeria

Max Weber recognised that the key element of every Federal government was not the method of decision making or division of functions but the question of federal finances. 'The financial relationships are what most decisively determine the real structure in a Federal government.'¹⁵² According to Aigbokhan¹⁵³, and Olowonmi¹⁵⁴ the most feasible option of achieving an efficient public sector is fiscal decentralization. A very important goal of any

¹⁵¹ Ibid. p.78.

¹⁵² Karl Loemenstein. *Max Webers Political Ideas in the Perspective of Our Time*. Boston:Mass. (1966). p.21

¹⁵³ Aigbokhan, B.A. *Fiscal Decentralization Wagner's Law and Government size: The Nigerian Experience*. Journal of Economic Management. (1997). p. 32-40

¹⁵⁴ Olowonmi G.D. *An Evaluation of Revenue Allocation Formula in Nigeria; NCEMA Policy Analysis Series*. Volume 6 No.2. (2000). p. 107-140.

government is therefore, efficient allocation of resources and efficient distribution of national wealth.¹⁵⁵

Whereas in Nigeria all decisions including resources are controlled from the centre and the vertical revenue allocations tilt more towards the direction of federal government; contrary to the tenets of federalism the country is practicing; it is fundamental to the principle of Land autonomy in Germany that the greater part of the financial costs of services are met out of the general allocation of funds to the Länder rather than by specifically appropriated grants from the centre.

Consequently, most of the Federal states in Germany apart from the former East German states rely on the federal government for only a small percentage of their revenues. However, there has been a marked increase in the significance of the federal government since reunification and a dramatic impact of federal supplementary grants on some states revenues. On the other hand, after about 50 years of independence in Nigeria, the country is still engulfed in the problem of how to share centrally generated revenue among the Local Governments, States and Federal Government. Another problem is how the revenue apportioned to the Local Governments and States can be shared among the different tiers of government. Both vertical and horizontal revenue in Nigeria is engulfed in controversy.

The sources of public revenue in Nigeria are proceeds from the sale of crude oil, taxes, levies, fines, tolls, penalties and charges. Oil revenues account for about 80% to 85% of the total.¹⁵⁶ In the period 2001-09, oil revenues averaged 27% of GDP while tax revenues averaged 6.4%. Oil revenues have been volatile, ranging from 35.6% in 2001 to 19.6% in 2009 when oil prices dropped

¹⁵⁵ Afolabi L. (1999), *Monetary Economics*, Ibadan, Nigeria, Heinemann Educational books (Nigeria) Plc.

¹⁵⁶ AfDB, UNECA, and OECD (2010), *African Economic Outlook 2008/09*. Paris and Tunis: AfDB and OECD.

as a result of the global recession. Overreliance on oil revenues in Nigeria puts it in the same league with countries like Algeria, Angola, Equatorial Guinea and Libya which rely almost entirely on one single type of tax, unlike other countries, Germany included, which show a relatively balanced mix of different types of taxes. Revenue-raising arrangement in Germany is that of constitutionally mandated sharing of tax revenues. All of the most important revenue sources are shared. Together, the wage and assessed income taxes, the corporation income tax, and the general sales, or value added tax (VAT), make up about three-quarters of total tax revenue and the proceeds of all are shared.¹⁵⁷

As a result of its huge dependence on oil revenues, Nigeria has encountered a number of problems; Firstly, it poses issues of political accountability because the federal government raises its revenues from such a narrow base and most states contribute very little to national or their own revenues. Only 6 of the 36 states produce petroleum, with 4 being the most important. Thus the large majority of states turn to the federal government for the vast majority of their revenues and most of those revenues are effectively collected in other parts of the country. The public, for its part, pays little of the cost of government programs. Secondly, it has been a source of major tensions between the producing and other regions of the country as evidenced by the case in the Niger Delta region.¹⁵⁸ Thirdly, this it appears, has led to an underdevelopment of alternative revenue sources because it is easier to tax oil than citizens. This has longer-term implications for the economy. Finally, it creates

¹⁵⁷ Ibid. p.229

¹⁵⁸ The current conflict in the Niger Delta arose in the early 1990s over tensions between the foreign oil corporations and a number of the Niger Delta's minority ethnic groups who felt they were being exploited, particularly the Ogoni and the Ijaw. Ethnic and political unrest has continued throughout the 1990s and persists as of 2007 despite the conversion to democracy and the election of the Obasanjo government in 1999. Competition for oil wealth has fuelled violence between innumerable ethnic groups, causing the militarization of nearly the entire region by ethnic militia groups as well as Nigerian military and police forces (notably the Nigerian Mobile Police).

problems of stability in public finances tied to a resource whose value swings widely and that will deplete over time. This poses short-term issues about the central government's ability to manage cyclical pressures on the economy as well as longer-term issues about the sustainable level of public services. This issue has led a number of countries' Russia being probably the best federal example' to be very aggressive in developing revenue stabilization funds.

In the recent past however, in a bid to address these problems, Nigeria has had a very rapid decentralization of revenues to state and local governments to address their responsibilities. Sub-national spending went from 23 per cent of the consolidated budget in 1999 to 46 per cent in 2005. This constitutes a dramatic shift of fiscal resources in a federal system. With the federal government now spending somewhat less than 54 per cent of total government spending (after all transfers to the states), Nigeria falls in the broad company of federations such as Argentina, India, Mexico, Russia, Spain, South Africa and the United States. Its spending is a good deal more decentralized than in Brazil, Malaysia and Venezuela. However, some federations such as Germany, Switzerland among others are still more decentralized as the federal government accounts for between 30 and 40 per cent of direct government spending.

Another key problem in Nigeria is the systematic and overlapping patterns of inequalities that correspond to the existing cleavages. These inequalities are caused by a complex range of factors, including history, geography, cultural orientation, religious affiliation, natural resource endowments, current government policies, and past colonial policies. Starting from the colonial period, there has been a structurally embedded pattern of educational inequalities which persist to this day. Economic inequalities are another feature of Nigerian national life. For example, in 1986-90, 70% of the registered companies in Nigeria were located in the southwest, with 16% in the three

northern zones and 14% in the two other southern zones.¹⁵⁹ By 2001, 46% of the industries located in the northern zones had closed down as a result of infrastructural and macro-economic difficulties; de-industrialisation, associated with economic liberalisation, has disproportionately affected the north.¹⁶⁰ Economic inequalities may be due to differences in drive, motivation, cultural disposition and geographical opportunities. But they may also be due to intended and unintended effects of public policy. Structurally embedded social inequalities correspond to the educational and economic inequalities. These inequalities have led to fear which has been constant in every tension and confrontation in political Nigeria. Not the physical fear of violence, not the spiritual fear of retribution, but the psychological fear of discrimination, of domination. It is the fear of not getting one's fair share, one's dessert.¹⁶¹

The German system of federal-state fiscal relations is constitutionally anchored in the uniformity-of-living-conditions principle. Article 30 [Division of authority between the Federation and the Länder] confirms the paramountcy of states in the provision of government services. Equally, Articles 72 and 106(3)2 confirm the role of the federal government in ensuring fiscal equity. Constitutional provisions that promote horizontal equalization—both implicitly and explicitly—provide the “glue” that binds the system together. The end result is a high degree of uniformity in terms of public infrastructure and government services. The federal system has with time also given the Länder sufficient room to maneuver, such that they could pursue their own economic policies when they perceived those of the federal government as inadequate. Thus, the

¹⁵⁹ Hamalai, Ladi. *Distribution of Industrial Enterprises in Nigeria and National Unity*, in A. Mahadi et al, eds., *Nigeria: The State of the Nation and the Way Forward*. Kaduna: Arewa House. (1994)

¹⁶⁰ Fatima Adamu. 'Globalisation and Economic Globalisation in Northern Nigeria', *Development Studies Association*, UK, www.devstud.org.uk/publications/papers/conf03. (2003).

German federalism is constituted by the independent policies of the federal and Lander governments and joint policies generated through cooperative federalism.

A major difference in both federations in their attempts to decentralize both economic and political resources is evident in the creation of states. Whereas Nigeria has created a total of 36 states from the original four within a span of thirty two years, having made changes for over four times as mentioned earlier, attempts to increase the number of states in Germany since reunification in 1989 have proved futile. The failed attempt to unify Berlin and Brandenburg attest to this.¹⁶² The increase in the number of states in Nigeria has been due to the need by the different ethnic groups to have a state or states of their own. As mentioned earlier increase in the number of states has its own consequences. The proliferation of states in Nigeria has not only created an additional budgetary burden for the nation, because of the large number of states established and the haste involved, but also compounded the problem of effective fiscal control. Although the creation of more states has furthered the goal of national stability and decentralized political and administrative power in the country, it has also led, according to some observers, to imbalance in the share of national resources going to the major ethnic and minority groups and reduced the viability of state units and their capabilities.

In looking at fiscal decentralization some studies have indicated four key findings. First, fiscal decentralization increases the likelihood of ethnic rebellion and ethnic protest in contexts where there are high levels of inter-regional inequality. Second, large, encompassing national governing parties increase the likelihood of armed conflict, ethnic rebellion, and ethnic protest when

¹⁶¹ Kirk-Greene, A.H.M. *The Genesis of the Nigerian Civil War and the Theory of Fear*. Uppsala: Nordic African Institute. (1975).

¹⁶² See <http://www.bundestag.de/dasparlament/2005/04/Inland/003.html>. (last accessed on 24/05/10)

minority regions are excluded from those parties. Third, inter-regional inequality increases the likelihood of ethnic rebellion when ethnic groups are regionally concentrated. Fourth, increased fiscal transfers by central governments to decentralized governments serve to reduce the likelihood of ethnic protest when ethnic groups are regionally concentrated.¹⁶³

Last but not least, for responsibility and accountability to be genuine, the transfer of political powers must be accompanied by a transfer of fiscal powers. Devolving power to decentralized units makes sense only if the necessary taxation powers go with it. As long as the central government controls the financial strings, all "devolution" or "decentralization" is but sham devolution and sham decentralization.

5.2.: Ethno-Federalism and the Multi-ethnicity

A large number of politicians and political scientists continuously and repeatedly claim that one of the most important and effective means to solve the ethnic conflicts in multinational societies is federalism. One of the ways proposed is through the formation of Ethno-federations. Ethno-federations are Countries which are nationally and ethnically heterogeneous and work in a federal structure at least partially based on national and ethnic heterogeneity (i.e. at least some of their member states are ethno-regional units). It is a federal political system in which component regions are intentionally associated with specific ethnic categories and has frequently been recommended by policy makers as a way to combine democracy with ethnic difference. Many of the world's most geopolitically important states have thus adopted ethnofederal structures, including Canada, India, and Nigeria, among others. At the same time we can see that there are very few genuine and

¹⁶³ Kristien M.B. & Erik Wibbels. *Diversity, Disparity, and Civil Conflict in Federal States*.

historically lasting success stories among multinational federal states; most of them struggle with problems of stability, and some have broken up. Therefore, it seems useful to examine what challenges federalism must face in a multinational environment and what their chances are to manage crises successfully.¹⁶⁴

Modern federal states can be divided into three basic categories according to the role they play in dealing with ethnic issues. The first is that of mono-national federations. These are not necessarily ethnically homogenous like Austria or Germany, they can be heterogeneous, but in the latter case their member states are not ethno-regional units, and their population is integrated by a common political and national consciousness and the unified identity of the population. A typical example of a mono-national federation with an ethnically heterogeneous population is the United States, but Australia and federal states in Latin-America can also be included in this category. In these countries federalism is only linked to the national question in a historical sense as it used to be a tool to unify the state and build the nation, but in a structural sense it is not so. From a structural and functional perspective they do not aim at the institutionalization of national-ethnic differences or the protection of minorities, instead, they work as territorial power-sharing systems, which basically intend to articulate regional differences, the decentralization of administration, and the provision of democratic checks and balances.

Multiethnic federations in this narrower sense refer to those ethno-federal countries where - like in mono-national forms the population is united by state-patriotism and a unified identity of the population and/or where the demographic composition is characterized by the predominance of the majority nation. In these cases federation together with other institutions of consociation can be a

¹⁶⁴ This article is the fourth, closing part with the conclusions of a larger, yet-to-be published paper which analyses the history of ethno-federalism in East- and Central-Europe.

successful means to handle linguistic and ethnic differences and conflicts. Atypical example of such a multiethnic federation is Switzerland (where everybody defines themselves as Swiss first, and only belongs to one or other ethnic group or canton with a secondary group identity), but many analysts say that post-Soviet Russia and India are moving towards this form too.

Bosnia-Herzegovina are considered to be multinational federations, where the individual ethnic groups (or a majority of them, like in the Soviet case) had or have a separate national identity. Therefore, for this system, the loyalty of each nation is mainly linked to their national member state, and the link to the union is secondary, through the member states. Due to the lack or weakness of common state-nation patriotism, only this can lead to internal cohesion, otherwise sheer power remains the only uniting force. As far as federation trends are concerned, the European Union is obviously moving towards this system.¹⁶⁵

Those ethno-federations where integrative national political consciousness and a strong separate identity are simultaneously present can be considered to be borderline cases between multi-ethnic and multinational forms. Examples of this are Belgium, Canada, Serbia-Montenegro and most African and Asian ethno-federations. In the two Western democratic states - Belgium and Canada - there is some kind of common identity of the linguistic and ethnic groups and a feeling of belonging together as citizens, but (especially in the cases of the Flemish people in Belgium and the French in Quebec) its dominance over group identities is questionable. A similar duality can be observed in the relationship between Serbs and Montenegrins. In the case of Afro-Asian ethno-

¹⁶⁵ The Forum of Federations website considers 25 countries as de facto federations. (Internet: 2005.06.20.). From these mononationalist are Argentina, Australia, Austria, Brazil, Comoros, Germany, Mexico, Micronesia, United Arab Emirates, United States of America, Venezuela. Ethno-federalist are Belgium, Bosnia and Herzegovina, Canada, Ethiopia, India, Malaysia, Nigeria, Pakistan, Russia, St. Kitts and Nevis, Serbia and Montenegro, South Africa, Spain, Switzerland.

federations it is even less adequate to talk about strong and comprehensive political group identities (perhaps with the exception of India), but linguistic, tribal and religious group identities “on the other side” are usually no more than pre-national identities. The question of dominance is still open in these countries. The population of Nigeria, for example, can only be considered to be a virtual state-nation and yet may become a real one - but it may also disintegrate into separate Ibo, Yoruba and Hausa nations, or it can be divided along religious lines between Muslims and Christians.

Nigerian federalism is based on ethnic and not geographical diversities, as is the case in Germany which has a linguistically homogeneous population. Politics in Nigeria has tended to be recentralised around the tripolar ethnic cleavage of Hausa versus Yoruba versus Igbo, and even more ominously, around bipolar cleavages of North versus South, Christians versus Muslims. The interplay between this tripodal ethnic structure on one hand, and administrative divisions and communal identities on the other, has led to eight major cleavages in Nigerian political life¹⁶⁶, the most important of which are: the cleavages between the three majority groups; between the three majority ethnic groups on one hand and the 350-odd minority ethnic groups on the other; between the north and south; between the 36 states of the federation and the six zones – three in the north and three in the south – into which they are grouped; and finally, between different religious affiliations. Some of these cleavages overlap: for example, the southeast zone overlaps with Igbo ethnicity and Christian religious affiliation, while the north central overlaps with northern ethnic minorities.¹⁶⁷ This has tended to exacerbate centrifugal forces in the country. The ethnic, regional, and religious cleavages in Nigerian society are made more problematic by systematic and overlapping patterns of

¹⁶⁶ Mustapha, Abdul Raufu. *The National Question and Radical Politics in Nigeria*, Review of African Political Economy, No. 37, Sheffield. (1986).

¹⁶⁷ In the 1953 census, the North constituted 54% of the population and the South 46%. In the 2005 census, the corresponding figures are 52.58% and 46.4% respectively.

inequalities that correspond to the cleavages. These inequalities are caused by a complex range of factors, including history, geography, cultural orientation, religious affiliation, natural resource endowments, current government policies, and past colonial policies.

In modern political thinking three basic approaches have developed concerning the role of federalism in the handling of national and ethnic issues.¹⁶⁸ Besides ideological federalism, which tries to find multi- or post-national answers to national-ethnic questions, and French republicanism, which refuses federations, the third basic approach is the American federation concept. This is a kind of middle approach which, in contrast with the Jacobin-unitarist one, does not see federations as a means of destroying the nation, but as a nation-building device. However, unlike federalist ideologies and similarly to French republicanism, it follows mono-national values, therefore, like the French approach, it refuses ethno-federalism. However, according to this approach, federalism can only exploit its positive opportunities if it integrates the population so that it can push "premodern ethnocentric political activities" to the periphery.¹⁶⁹ That is why it is of great importance that the member states should not be ethno-regional units (at least in most cases if it cannot be avoided sometimes) because the coincidence of member state borders and ethnic borders would mean that regions are dominated by different national-ethnic groups. This increases the danger that ethnic differences might lead to political friction, other kinds of conflicts can become ethnically motivated,

¹⁶⁸ See: Pierre Joseph Proudhon. *A föderáció elvéről* ("Du principe fédératif"). in: András Bozóki & Miklós Sukósd (eds.). *Anarchizmus, Századvég*. Budapest. (1991).p. 45-59.

¹⁶⁹ "Federalism increases the opportunity for multiple sources of cleavage by adding regional interests and values to the others which crosscut the social structure. A major exception to this generalization occurs when federalism divides a country across the lines of basic cleavage, e.g., between different ethnic, religious, or linguistic areas, as it does in

India and Canada. Democracy needs cleavage within linguistic or religious groups, not between them. But where such divisions do not exist, federalism seems to serve democracy well." Seymour Martin Lipset, *Political Man*, Heinemann, London 1983, p. 81.

more opportunities can be given to nationalists to mobilize their resources, and it can strengthen centrifugal tendencies.

Based the problems of ethnically divided federal states, some circumstances have been identified which can contribute to – though, of course, cannot guarantee – the success of ethno-federalism and its continuously satisfactory ability to function for all, or at least all the major ethnic groups. Some of these factors are not parts of the federal structure itself, like economic prosperity, social and regional balance and, obviously, political democracy. If these are absent, in spite of all the sophistication and meticulous construction of the federal framework, the socio-economic equality of the ethnic groups will sooner or later be harmed and a psychosis of exploitation will develop in which any other alternatives might look better than the existing system. Cynthia Enloe has argued that “Federalism is best understood if it is seen as one conflict management formula among several. Typically, its utility is measured according to its functionality for central elites (which may or may not be ethnically exclusive).”¹⁷⁰ Benjamin Neuberger suggests that in the 1950s and early 1960s, “Federalism within the state was the outcome of devolution, and thus its function was more to mediate between the ethnic groups than to integrate them into one uniform whole.”¹⁷¹ And Ruth Lapidoth notes that autonomy, closely related to federalism, is “a tool or a framework that can constitute an adequate compromise if the parties are looking for one. Like any tool, it must be used in accordance with the special circumstances of each case.”¹⁷² The distribution of power is widely viewed by observers as a tool; second, the tool may be used for a variety of purposes.

¹⁷⁰ Cynthia Enloe. *Internal Colonialism, Federalism and Alternative State Development Strategies*. *Publius*, Vol. 7, No. 4 (Fall 1977), p. 159.

¹⁷¹ Benjamin Neuberger. *Federalism in Africa: Experience and Prospects*, in Elazar (1979), pp. 178 and 174.

¹⁷² Ruth Lapidoth. *Autonomy, Flexible Solutions to Ethnic Conflicts*. Washington, D.C: United States Institute of Peace Press, (1997). p. 204.

One of the keys to success of ethno-federalism is state-nation integration. Such unification provides cohesion much more than anything else: Switzerland is more stable than any ethno-federations in the world based on the fact that each linguistic-ethnic, religious or cantonal identity is just a group identity subordinate to the common patriotism of its citizens. The development of such a feeling of belonging together takes a long time, but it can be easier if there is a majority nation and there are no substantial differences between the ethnic groups, i.e. no strong and parallel social, cultural and religious diversities, and no historical revanchism.¹⁷³

The stability of ethno-federations can also be facilitated by an ideal demographic structure as evidenced in the cases of American-German type federations that their stability is mainly due to national homogeneity. National homogeneity does not necessarily mean ethnic homogeneity, though there is a majority ethnic group in the former case too, like the historically dominant group of WASPs (white, Anglo Saxon, protestant) in the United States. The more demographic (but not institutional or political!) dominance the majority ethnic group enjoys, the more stable an ethno-federation is (in general, but especially when state nation integration is weak).

It is also an important aspect that the federal state of different national and ethnic minorities is not limited to federalism in the sense of territorial autonomism. One reason for this is that it is often impossible to draw territorial lines between ethnic groups. It could be helpful therefore to include cultural autonomy on a personal basis in the structure (which can unite a minority irrespective of its geographical location), and the implementation of consocial techniques at intra-regional level (which can ensure the protection of local minorities – which can include people belonging to the majority population of the whole state – against the regional majority). It is perhaps

¹⁷³ Smith, Graham. *Federalism: the multiethnic challenge*. London: Longman. (1995).

even more significant that the organization of the state, besides ensuring self-government, must employ the principle of power-sharing at federal level as no local autonomy can compensate a minority against its under-representation in the central power. That is why it can be important that besides classical federalist tools (bicameral federal parliament, etc.) further consensual-consocial governmental techniques must be employed in the central power (all-party coalition, minority veto, proportionality in the elections system and the central executive apparatus – police, administration, judiciary, a balance in the use of languages, and the cooperative attitude of political elite groups). These forms can, of course, result in overcomplicated and inefficient government, but this is not inevitable, and it can also be a kind of “price” that might be worth paying to some extent in order to achieve a balance in governance.

Ethnofederations in Eastern Europe, Africa (as is the case in Nigeria) and Asia show the symptoms of forced unification and maintenance in many respects, that is why their legitimacy is doubtful, especially for some of their minorities. Western ethno-federations, on the other hand, were born as a union of different state formations (Switzerland), or as an internal division aiming at the maintenance of the state (Belgium), or even the combination of these (Canada). Of course, the voluntary nature was not absolute in these cases either, and it characterized the formation of other ethno-federations to some extent too. Thinking of the Sonderbund War in Switzerland, for instance (in the civil war in 1847, just before the enactment of the first federal constitution the liberal-Protestant cantons defeated the Catholic-conservative cantons), or the foundation of the Canadian federation (which happened as a unification of three British colonies in 1867, but at the same time Canada¹⁷⁴ was divided into two provinces, Ontario and Quebec, that is why it can be described as a

¹⁷⁴ James B. Kelly. *Reconciling Rights and Federalism during Review of the Charter of Rights and Freedoms: The Supreme Court of Canada and the Centralization Thesis, 1982 to 1999*. Canadian Journal of Political Science/Revue canadienne de science politique. (2001). p. 321-355

combinative foundation) when the francophone elite of Quebec could hardly opt for independence. On the other hand, the birth of the second Yugoslavia was the consequence of a multiethnic anti-fascist war, and in 1945 most bourgeois parties (though they sharply objected to the Communists' policy on a number of questions) contemplated some kind of a Southern Slavic federation. Nevertheless, we can say that the voluntary nature was more characteristic of the three Western countries. In these three states federalization was based on the consent of the representative political elites of the ethnic groups concerned, and it could gain more legitimacy in the eyes of the population.

The innovative abilities of the federative system are also of major importance. That is one of the reasons why the instruments of consensual democracy are significant, and these are especially crucial in the cases of multinational forms of ethno-federations. In spite of all its decision-delaying effects, this set of instruments can make the best political framework, in which the common interests of the constitutive elements of multinational federations can be renewable. It is this innovative ability that creates – in democratic conditions – the stability and cohesion of multinational federations, as common interests are “not forever”, they can change according to a number of internal and external factors, they can even disappear (despite the good performance of federative institutions!), or they can appear again.

Finally it is evident that in many countries federation does not serve as a remedy for national and ethnic conflicts, and Nigeria is no exception. However, it must also be noted that federalism is only one of the number of means to solve national and ethnic divergences. This is not only true in the negative sense (though it is absurd to refer to genocide and ethnocide, i.e. forced assimilation, border wars, population exchanges, deportations, etc. as “solutions”), but in a positive sense too. It depends on a number of factors whether it is necessary to federalize the given state in order to

manage a national or ethnic problem in a civilized and democratic way, and, if so, in what form - or other means are sufficient, or in certain cases, more appropriate. Depending on the demographic structure, historical and political traditions, the economic and international situation of the country as well as the ethnic groups' identity, their relationship and geographical pattern, a number of other options can come into question besides different forms of federalism. These can range from the equality of the citizens at individual level within a unified state or from different forms of autonomy to the various types of consocial techniques (cooperative mechanisms) and to peaceful break-ups.

5.3.: Federalism in monolithic and pluralistic states

Contemporary interest in the use of federalism as a way of balancing centripetal and centrifugal forces led to the question of which type of federalism is compatible with those countries affected by ethnic conflicts. Accordingly, students of federalism classify federations based on their recognition of ethnic and linguistic diversities¹⁷⁵

Modern federal states can be divided into three basic categories according to the role they play in dealing with ethno-linguistic and cultural issues. The first is that of mono-national federations. Most of these federations resulted from the coming together of their units, which previously existed independently. These federations ensure territorial power sharing and do not recognise ethnic and linguistic cleavages, as such, many of the western federations such as the US, Australia and Germany fall under this category. They are not necessarily ethnically homogenous like Austria or Germany, but can also be heterogeneous, but in the latter case their member states are not ethno-regional units, and their population is integrated by a common political and national

consciousness and the unified identity of the population. Their main purpose is 'to unite people living in different political units, who nevertheless share a common language and culture'. A typical example of a mono-national federation with an ethnically heterogeneous (multi-cultural) population is the United States, but Australia and federal states in Latin-America can also be included in this category. In these countries federalism is only linked to the national question in a historical sense as it used to be a tool to unify the state and build the nation, but in a structural sense it is not so any more. From a structural and functional perspective they do not aim at the institutionalization of national-ethnic differences or the protection of minorities, instead, they work as territorial power-sharing systems, which basically intend to articulate regional differences, the decentralization of administration, and the provision of democratic checks and balances.

Countries which are nationally and ethnically heterogeneous and work in a federal structure at least partially based on national and ethnic heterogeneity (i.e. at least some of their member states are ethno-regional units) are usually called ethno-federations. Federations in this category not only recognise ethnic and linguistic diversity but also reflect them in their ideology and structures. They are also referred to as multi-ethnic or multi-national federations, but these two latter terms have a more restrictive sense: they designate two versions of broadly defined ethno-federalism. Multi-ethnic federations in this narrower sense refer to those ethno-federal countries where—like in mono-national forms—the population is united by state patriotism and a unified identity of the population and/or where the demographic composition is characterized by the predominance of the majority nation. In these cases federation together with other institutions of consociation can be a successful means to handle linguistic and ethnic differences and conflicts. A typical example of such a multi-ethnic federation is Switzerland (where everybody defines themselves as Swiss first, and only

¹⁷⁵ Burgess, Michael. *Comparative federalism: theory and practice*, Routledge. (2006).

belongs to one or other ethnic group or canton with a secondary group identity), but many analysts say that post-Soviet Russia and India are moving towards this form too.¹⁷⁶

On the other hand, the former Socialist federal states and today's Bosnia-Herzegovina are considered to be multi-national federations, where the individual ethnic groups had or have a separate national identity. Therefore, for this system, the loyalty of each nation is mainly linked to their own national member state, and the link to the union is secondary, through the member states. The success of multi-national federations basically depends on whether the individual nations are linked together by some kind of a common long-lasting. On one hand, scholars identify all those countries 'in which internal boundaries have been drawn and powers distributed in such a way as to ensure that each national group is able to maintain itself as a distinct and self-governing society and culture' as multinational federations. On the other hand, Henry E. Hale conceived an ethno-federal state as one in which 'component territorial governance units are intentionally associated with specific ethnic categories'.¹⁷⁷ That is why it is more appropriate to use ethnic federalism in the Nigerian context than multinational federalism. In contrast to Nigeria, those western federations (e.g. Canada and Switzerland) usually categorised as multinational, do not promote ethnicity as the chief instrument of state organisation and mobilization nor do they seek congruence between ethnic and intra-federal boundaries.

¹⁷⁶ Ibid

¹⁷⁷ Hale, Henry E. *Divided We Stand: Institutional Sources of Ethnofederal State Survival and Collapse*. World Politics. (1966) - Volume 56, Number 2, January 2004, pp. 165-193

5.4.: Conclusion

Finally, it must be clearly and firmly stated that it is absolutely difficult to formulate abstract generalizations about federal institutions and the prospects for their stability, since it might well be that institutions that work perfectly in one context will fail to perform if transplanted to another.

Multi-ethnic federalism in Nigeria will succeed if it serves as a political tool and institutional design to manage the ethnic, cultural and religious diversity, to equitably share the political and economic resources of the country, and strengthen the democratic unity based on equality as well as the capability to solve the ever-nagging problems of underdevelopment, and the intermittent/intercine ethnic conflicts over resources, identity and state power. It will undoubtedly fail if it cannot help Nigeria resolve these problems and if it is not widely embraced, based on its performance, by the majority of the political and social elites as well as the general populace.

However, whatever mechanisms are applied power conflicts can never be entirely solved, since they are inherent in the federal system as such. As soon as power is divided between different levels of government, tension is created and conflicts will arise.¹⁷⁸ While keeping in mind the inherent cultural, social, ethnic and Constitutional differences of federalist States, which lead to particular solutions when it comes to fine-tuning, the best approach appears to be a regulatory mix of formal and informal mechanisms, involving catalogues of competencies and adjudication, institutional and procedural solutions, as well as informal bargaining solutions. In particular, the idea of intergovernmental agreements as half-formal and half-informal instruments may be further expanded, since such agreements may be able to generate both flexible and equitable solutions. Furthermore, it should be well understood that, neither federalism, multi-ethnic federalism, nor any

¹⁷⁸ Hogg, Peter W. *Constitutional Law of Canada*. Toronto: The Carswell Company Limited. (1985). p. 127.

other constitutional arrangement can be a panacea for resolving ethnic conflicts or other socio-economic and political problems.

CHAPTER SIX

6.0.: CONCLUSIONS AND RECOMMENDATIONS

Conflicts in federal States may exist in terms of legal disputes between different levels of government that assert legislative, executive and judicial powers within a State.¹⁷⁹ Conflicts may also arise through clashes between different legal orders, in particular between Constitutional and International law. Another source of conflict is characterized by the conflicting aims of decentralization for the purpose of establishing local identification and autonomy within a federal State on the one hand, and the necessity, to a large extent dictated by effects of globalisation, to centralize important powers in order to be able to act effectively on the international level on the other hand. Finally, there are political power conflicts, which are dealt with outside or by the stretching of Constitutional powers, e.g. notorious blocking of decision-making processes requiring consent of both levels within a federation.

Solving conflicts in an adequate, i.e. effective, efficient, equitable and legitimate way implies elaborating possibilities for reform on the basis of the fundamental historic, cultural and Constitutional parameters of a particular federal system. Such fundamental parameters can hardly be changed even by major reform projects without causing much greater conflicts than the ones they are trying to solve. When trying to balance the competing interests and to find the adequate solution under the given parameters of a federal system the solution will vary greatly for each country. However, in spite of the particular features of each system, the existing conflicts are comparable and the solutions chosen are not always the only ones available under the given circumstances.¹⁸⁰ This

¹⁷⁹ See, for example, Watts (2006), p. 3.

¹⁸⁰ See Watts (2003), p. 2, who stresses the common problems and the "need for effective intergovernmental arrangements" as "a common feature" of federations.

has been the case in the federal systems in Nigeria and Germany which, since their formation, have shown remarkable ability to adapt and to meet emerging challenges. While some challenges they face may be similar, other challenges are unique to either federation. The solutions they discover and adopt, however, are always unique and local. This represents a remarkable attestation to the triumph of the spirit of federalism in its never-ending quest for balance and excellence in responsive, responsible, and accountable governance in Countries.

Ethnic heterogeneity is a pervasive feature of the contemporary world. As discussed earlier the problem it poses, especially in deeply divided or plural societies, is one of reconciling ethnic diversity with overarching loyalty to the state. This is the more problematic because the state is not a neutral force in mediating political conflict. It can be captured and used to further the interests of the leadership of an ethnic group or combination of such groups. A plural society is thus one in which politics is ethnicized, in which political competition is overtly drawn along ethnic lines. The political salience of ethnicity is therefore due to its being deployed for competitive purposes by political entrepreneurs. The mechanisms of deployment are various and can include political parties, bureaucracies, the military, trade unions, ethnic unions, and the like.

With over 130 million people, two or more major religions, a few major and many minor languages, major geographic differences, and 36 states, Nigeria remains as one of the largest and most complex federations in the world. It has been said that countries are not difficult to govern because they are federations; they are federations because they are difficult to govern and Nigeria exemplifies this. Ethnic conflicts in Nigeria are compounded by mutual fears and suspicions of one another by the different groups. The ethnicisation of politics for purposes of constitutional experimentation has turned out to be a powerful obstacle to the working of Nigerian federalism.

Because it is based on ethnic and not geographical diversities, it has tended to exacerbate centrifugal forces in the country.

By providing cultural and linguistic autonomy to various minority groups within a diverse society, provincial governments may constrain potential abuses of power at the central level directed at minority groups by offering multiple groups in society the authority to maintain their linguistic or ethnic integrity, as in the case with the Francophone population in Canada residing in Quebec. Federal arrangements may thus reduce the likelihood of potential abuses of power by the majority group at the central level by shielding the minority groups from domination; however, this is not always the case as seen in Nigeria. Horizontal fragmentation of national power is therefore, a necessary but not sufficient condition for robust federalism. Fragmentation can directly satisfy the first condition for federal stability: it can check the ability of the Federal government to take advantage of the provinces and may also allow for effective juridical federalism, in which an independent court can combat defections from the provinces.

Democracy is key in ensuring success of any government. Federal governments are not spared either. Lack of democracy continues to hinder the prosperity of the federal government of Nigeria. Federalism, in the sense of true territorial self-rule, cannot exist without democratic pluralism, that is, political polycentrism. Thus, for instance, military, socialist, and fascist dictatorships on one hand, and federalism on the other, may be viewed as mutually exclusive. It is not possible for a system, aiming at maximal centralization of power in the hands of a military junta, party presidium, or a dictator, to implement a federal division of power; either centralism or federalism must yield. The Nigerian federation has thus far been characterized by strong unitarist streaks as a response to almost three decades of military rule. Nigeria's civilian, democratic federal system is highly centralized while also being fragmented sub-nationally. This notwithstanding

federalism in Nigeria presupposes non-centralization of powers among the component units of the federation.¹⁸¹ No one component, federal, state, or (as in the 1999 Constitution) local government, is supposed to be superior to the other. They all are supposed to act directly on the people. If there is to be no superior government, which tier should devolve powers to the other? Herein also lies the difficulty of devolution of powers in the Nigerian federation, like some others in the world.

Centralization of powers is, however, not just a trend in Nigeria but also a problem that the Federal Republic of Germany has to deal with. Competing power claims by the Federation and the Länder have led to a continued process of centralization of legislative powers. However, this has been compensated by an extension of the veto power of the Länder through the Federal Council (Bundesrat), which is composed of representatives of the Land governments. This has caused an entanglement of legislative powers and, due to strong party political influence, a blockade situation hampering the enactment of important reform legislation by the Federal Diet (Bundestag). Consequently, the Länder are often willing to accept constitutional amendments in order to extend federal legislative power (which requires a two-third majority by both chambers), so as to be compensated by an extension of their veto power in the Bundesrat and the preservation of their executive power. In the long run, this has resulted in centralization and in an entanglement of

¹⁸¹ There are many publications on Nigerian federalism, among which are: Frederick Ebert Foundation. *Constitutions and Federalism: Proceedings of the Conference on Constitutions and Federalism*. Lagos: Friedrich Ebert Foundation. (1997); E. E. O Alemika and Festus Okoye, eds. *Constitutional Federalism and Democracy in Nigeria*. Kaduna: Human Rights Monitor; A. Adedeji. *Nigerian Federal Finance*. London: Hutchison Educational, (1969); A. Akanle. *The Power to Tax and Nigerian Federalism*. Lagos: Centre for Business Executives. (1985); E. O. Awa. *Federal government of Nigeria: A Study of the Development of the Nigeria State*. Berkeley: University of California Press. (1964); Peter P. Ekeh, ed. *Nigerian Federalism*. Buffalo: Association of Nigerian Scholars for Dialogue, (1997); Ladipo Adamolekun, ed., *Publius: The Journal of Federalism* 21 (Fall 1991); J. Isawa Elaigwu and Erim O. Erim, eds., *Foundations of Nigerian Federalism: Pre-Colonial Antecedents*. Vol. 1 Abuja: National Council on Intergovernmental Relations. (1996); J. Isawa Elaigwu and Godfrey Uzoigwe, eds. *Foundations of Nigerian Intergovernmental Relations*. (1996); J. Isawa Elaigwu and Godfrey Uzoigwe, eds. *Foundations of Nigerian Federalism: 1900-1960*, Vol. 2. Abuja: National Council on Intergovernmental Relations (1996); J. Isawa Elaigwu and Godfrey Uzoigwe, eds. *Foundations of Nigerian Federalism: 1960-1995*, Vol. 3. Abuja: National Council on Intergovernmental Relations (1996).

legislative powers, which has made increased cooperation necessary in order to pass legislation. This is a significant feature of the German federation in that the Länder are more directly involved in decision-making at the federal level than the states or provinces in virtually any other federation. Perhaps this is a feature that the Nigerian Federation can borrow. Through the various reforms the joint decision system has become a permanent feature of German federalism, combined with a strong resolve of the Länder to maintain a common position vis-à-vis the federal government. This led to a situation where nearly all major policy initiatives (except foreign and defence policy) needed to be based on a broad consensus between the governing majority and the governments of the Länder.

The resolution of power conflicts in the German federalist system relies rather strongly on formalization, in particular by means of redrafting competence catalogues and their interpretation by the Constitutional Court. In a dilemma situation as presented by the reform gridlock of the past years, the reaction was a further delineation of competencies. This reliance on formalism might overstate the normative power of competence delineation and put too heavy a burden onto Constitutional interpretation by the Court. Adjudication can play an important role, but it also has its limits. It is an illusion to believe that clearly cut boundaries between the different legislative powers can be established by legislation and adjudication, especially where powers are competing or overlapping. Both Parliament and Constitutional Courts may be overcharged when trying to do solve these problems alone. A number of informal mechanisms of coordination already exist in the German system, but they may need to be further elaborated in order to tackle conflicts in a more

Intergovernmental Relations. (1996); D. Rothchild and Victor Olorunsola, eds. *State Versus Ethnic Claims: African Policy Dilemmas*. Boulder, CO: Westview. (1983).

political and informal way. Thus, the Conference of *Land* Premiers already provides a useful forum for negotiation, which deserves further development.

Emphasis upon the uniformity of living conditions principle, the revenue sharing arrangements and the self-financing nature of the state-to-state equalization truly distinguishes the German fiscal arrangements from that in Nigeria or any other Federal state. Despite Nigeria having adopted the Federal character principle, its gains are yet to be compared to the gains of equalization fund in Germany which has played a key role in transforming former East German states. Nigeria needs therefore to reinforce its federal principle so as to ensure that the living standards in all the 36 states are uplifted. This will minimize the current state of conflict by the states so as to control the centralized revenues. Closely related to this would be the diversification of revenue generating sources and reduction in overreliance on oil revenues. This will not only ensure that the oil producing states are allowed to benefit more from the oil revenues but will also ease the burden of meeting the revenue demands of other states which do not produce oil, hence reduced hostility and more tolerance between the states.

Apart from the conflicts related to ethnic diversity, Nigeria just like Germany, also experiences problems relating to intergovernmental relations and fiscal arrangements as mentioned earlier. In Germany this is both a stabilizing influence as well as a source of conflict. To ensure lasting stability in both federations though, there is need to mark clearly the roles of the different states in their constitution and to have efficient and independent judicial systems, such as a Federal constitutional court, such as have been established in Germany, so as to arbitrate in case of any conflict.

All in all one can easily say that in as much as multi-ethnic federal states may have problems which are unique to their situation, it would not be in order to conclude that federalism cannot function well in such states. If there is decentralization of resources and powers to the states, if there is democracy and transparency in governance, if the intergovernmental relations between the different tiers of the Federation are clearly worked out so as to minimize conflicts, then federalism would work perfectly well in Multi-ethnic states.

However, whatever mechanisms are applied power conflicts can never be entirely solved, since they are inherent in the federal system as such. As soon as power is divided between different levels of government, tension is created and conflicts will arise.¹⁸² Competing claims automatically create the necessity to define and delineate powers. At the same time, interdependence between the different spheres of government increases over the years. The instrument of competence catalogues and (in most cases) their maintenance by Constitutional Courts constitutes the backbone of federalist systems, since it appears to be the only means of distributing specific powers in a way that created a certain amount of legal certainty and stability. But in terms of system design it already makes a difference whether the general rule is that powers are vested in the central or in the regional level of government or whether there are two catalogues with some overlapping competencies. Whatever solution is chosen, federalist systems should not rely too heavily on these catalogues and their adjudication by Constitutional Courts, but should include additional, more informal forums accommodating the political process of negotiation in the niches of Constitutional regulations and adjudication.¹⁸³ Peter Hogg¹⁸⁴ may be right in stating that "ultimately there is no other body to

¹⁸² Ronald Watts, *Intergovernmental Councils in Federations*, in: Institute of Intergovernmental Relations (ed.): *Constructive and Cooperative Federalism? A Series of Commentaries on the Council of the Federation*, p. 1 et seq..

¹⁸³ Watts (2003), p. 3.

¹⁸⁴ Peter W. Hogg, *Constitutional Law of Canada*, Toronto, The Carswell Company Limited. (1985)

decide...(disputes as to the distribution of legislative powers) other than the courts”, but when looking at these disputes in the wider sense of conflict resolution, court decisions are only one viable means. While the significance of the Federal Constitutional Court should not be underestimated, German and Nigerian federalisms might rely more strongly on and further develop their informal mechanisms of conflict resolution, as well. This may help to find political solutions based on the principle of federal loyalty, which may for example warrant a certain self-restraint in the use of the right to deviate.

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