

**ANATOMY OF FEDERALISM, WITH  
SPECIAL REFERENCE TO NIGERIA**

**BY PROFESSOR I.E. SAGAY, SAN,**

**BEING THE:**

**15<sup>TH</sup> DISTINGUISHED LECTURE  
AND LUNCHEON**

**DELIVERED TO**

**THE HOUSE OF LORDS, NIGERIA,**

**AT**

**BROKING HOUSE,**

**IBADAN,**

**SATURDAY 1<sup>ST</sup> MAY 2004.**

# **ANATOMY OF FEDERALISM WITH SPECIAL REFERENCE TO NIGERIA.**

By Professor I.E. Sagay, SAN.

## **1. Origins of Federalism**

The idea and practice of linking separate and distinct political and national communities for the purpose of achieving common objectives is an ancient one, dating from the period of the ancient Greeks. Federalism developed as a response to the need to link separate political communities together (i) in order to pursue effectively, objectives unattainable alone, (ii) but without submerging individual identities into the new alliance. The most common objectives of such alliances were either the overthrow of an oppressor city or to present a common defense against a common and larger aggressor.

In ancient Greece for example, attempts were made to form leagues, particularly in the 3<sup>rd</sup> and 4<sup>th</sup> centuries B.C. The same applies to city states in mediaeval, Italy, but these tended to be short lived.<sup>1</sup> The years 323-146 BC, for example, were characterized by the formation of coalitions (Leagues) among the Greek states of which the purpose was to offer a united front against the menace of their Northern neighbour Macedonia.

The first successful establishment of a durable federal or confederal association of formerly independent political communities was the founding in 1291 of the Union of the "Waldstatte" - three forest cantons of Switzerland. This group constituted a perpetual alliance for:

- i) the settlement of disagreements amongst themselves by arbitration;
- ii) the punishment of crime
- iii) the resort to law rather than violence and
- iv) mutual defense.

---

<sup>1</sup> See generally, Stephen Woodard "The Simple Guide to the Federal Idea", in Federalism & Politics in Ventotene papers of the Altiero Spinelli Institute for Federal studies, 1995.

The alliance grew rapidly in the 14<sup>th</sup> century and was firmly established by the 15<sup>th</sup> century. It gradually progressed into a loose federation under its constitution of 1848, which itself was inspired in turn by the American model.<sup>2</sup>

The United Provinces of the Netherlands established by the union of Utrecht 1579 and of course the American confederacy of 1774 which became a more tightly knitted federation in 1789, are good examples of the earlier and still surviving federations.

## 2. **Sources of the Terms 'Federal' and 'Federalism'**

The term Federal has a Latin origin; Foederatus, meaning “bound by treaty” Foederatus is itself derived from the words foedus meaning “treaty” and fidere: to trust. In his 1795 essay on Perpetual Peace, Kant explained the origins of the word thus:

“Federalism, from the Latin word ‘foedus’ means contract, pact, treaty or convention; it implies an agreement, thanks to which one or more heads of the family, one or more local communities, one or more groups of communities or states commit in equality, themselves and each other to reach one or more particular objectives.”<sup>3</sup>

One phenomenon that is common to all federations, whether ancient or modern is that it is the coming together of formerly independent entities, to establish a central organization to **serve** their purposes. This central organization can vary from a common services agency to a powerful government controlling vast resources with a plenitude of wide ranging powers. But for it to remain a federal set up, the federating units must remain autonomous and supreme in those areas reserved for their exercise of authority.

---

<sup>2</sup> See Ventotene, Op. cit

<sup>3</sup> Taken from Stephen Woodard Op. cit, p.7.

Indeed, as long ago as 1795, Immanuel Kant compared the indispensable characteristics of federalism with those of unitarism as follows:

“In substance, the federal system is the opposite of administrative centralism, a system which characterizes ... the Unitarian democracies ..... In a federation, the competences of the central authority are limited. ... On the contrary, in the centralized governments, the competences of the supreme authority multiply, become larger and more direct, and the supreme organ is finally empowered to intervene in the affairs of the region, the community and each individual citizen. From this derives the oppression of centralism, under which disappear not only the regional and communities’ liberties, but also those of the individual and of the nation.”

### **3. Federalism as a Variable Concept.**

Federations dot the five continents of the world, and although unitary states are more in number, federations are a significant minority. Also in terms of population, the federations tend to have large populations, of different nationalities and ethnic backgrounds.

There are currently about 25 federations populated by about two billion people out of just over five billion worldwide. Some of these federations are developed (1<sup>st</sup> world) countries whilst others are underdeveloped third world countries like Nigeria. Some like Russia, India, Canada, Australia and the U.S.A., span entire continents, and have immense populations, whilst others are very small in size and population. In this category are the Comoros (just over half a million people) and St. Kitts and Nevis (42,000 people). Some are well established federations, like the U.S.A., 1789, Switzerland, 1848, Canada, 1867 and Australia 1901 whilst

others are either relatively new or are unstable like Nigeria, which is yet to discover the type of federalism that is appropriate to its over 300 national and ethnic groups.

Finally some federations, e.g., Switzerland are loose, giving the federating units considerable autonomy and limiting the powers of the central government, whilst others, like Nigeria, are basically decentralized, unitary systems.

#### **4. The Central Concept in Federalism**

The deliberate choice of federalism as the only viable and acceptable form of government for Nigeria was a product of the diversity of its peoples, politically, historically, culturally and linguistically and the experience gained from the attempts to create a viable polity out of the forced amalgamation of Northern and Southern Nigeria in 1914.

What then is Federalism? Or to put it in another way, how is a unitary constitution different from a federal constitution? Awolowo has noted that in the case of a unitary constitution, the supreme legislative authority in the state is vested in one government. Whereas in the case of a federal constitution, the supreme legislative authority is shared between the general or central government and the regional, provincial or state governments, all of which are coordinate with and independent of one another in regard to the powers and functions expressly or by necessary implication vested in them by the Constitution.<sup>4</sup>

Federalism therefore, may be described an arrangement whereby powers within a multi-national country are shared between a federal or central authority, and a number of regionalized governments in such a way that each unit including the central authority exists as a government separately and independently from the others, operating directly on persons and property within its territorial area, with a

---

<sup>4</sup> Obafemi Awolowo, Thoughts on the Nigerian Constitution 1966, Oxford, p.23

will of its own and its own apparatus for the conduct of affairs and with an authority in some matters exclusive of all others. In a federation, each government enjoys autonomy, a separate existence and independence of the control of any other government. Each government exists, not as an appendage of another government (e.g. of the federal or central government) but as an autonomous entity in the sense of being able to exercise its own will on the conduct of its affairs free from direction by any government. Thus, the Central government on the one hand and the State governments on the other hand are autonomous in their respective spheres.<sup>5</sup>

As Wheare put it, “the fundamental and distinguishing characteristic of a federal system is that neither the central nor the regional governments are sub-ordinate to each other, but rather, the two are co-ordinate and independent”<sup>6</sup>. In short, in a federal system, there is no hierarchy of authorities, with the central government sitting on top of the others. All governments have a horizontal relationship with each other.

The above working definition of federalism, does not exclude some degree of interdependence amongst the two levels of government. One level, for example, the central government may be the collector of revenue for all governments in the federation, (as in Nigeria - see S. 162 of the 1999 Constitution) but as long as the revenue collected belongs to all the governments and there is no discretion in the central government to determine what each government should get and what should be withheld, federalism, is not necessarily jeopardized. It must however be admitted that the difference between “true” and or “real” federalism, and a decentralized unitary system, could very well depend on the totality of centralized functions being exercised by the federal government, in relation to the regional or state governments.

---

<sup>5</sup> See B.O. Nwabueze, Federalism in Nigeria Under the Presidential Constitution, Sweet & Maxwell, 1983, p.1

<sup>6</sup> Wheare Federal Government, 4<sup>th</sup> Ed., Oxford, 1963

The territorial spread of the powers of some federal commissions under the Nigerian Constitution for example, tends to tilt the Nigerian federation towards a decentralized unitary system. Examples include the Independent National Electoral Commission, which has the power to conduct State Gubernatorial and State Houses of Assembly elections,<sup>7</sup> the Nigeria Police Council, whose fiat runs throughout the country<sup>8</sup> and the National Population Commission, with exclusive powers to conduct, a census of Nigeria,<sup>9</sup> and the National Judicial Council with powers to recommend State Judges for appointment and removal.<sup>10</sup>

## 5. Determinants of Federalism

What determines whether a group of independent political communities should come together to set up a central agency, which can develop into a federal government? In the case of Nigeria for example, why did the British colonial power not return the Nigerian nationalities to their individual and independent statuses of the 19<sup>th</sup> century? On the other hand, why did the British or our founding Fathers not accept and institute one unitary government based in Lagos?

In his book Thoughts on Nigerian Constitution<sup>11</sup> Obafemi Awolowo, the most consummate student of federalism Nigeria has ever known and first Prime Minister of the Western Region of Nigeria, provided an answer with the following pertinent observations:

“From our study of the constitutional evolution of all the countries of the world, two things stand out quite clearly and prominently.

---

<sup>7</sup> 3<sup>rd</sup> Schedule, Part 1(F), 1999 Constitution.

<sup>8</sup> Ibid, 3<sup>rd</sup> Schedule Part 1(L)

<sup>9</sup> Ibid, Part 1(J)

<sup>10</sup> Part 1 (I)

<sup>11</sup> Oxford, 1966, at pp. 48-9

First, in any country where there are divergences of language and of nationality - particularly of language - a unitary constitution is always a source of bitterness and hostility on the part of linguistic or national minority groups. On the other hand, as soon as a federal constitution is introduced in which each linguistic or national group is recognized and accorded regional autonomy, any bitterness and hostility against the constitutional arrangements as such disappear. If the linguistic or national groups concerned are backward or too weak vis-à-vis the majority group or groups, their bitterness or hostility may be dormant or suppressed. But as soon as they become enlightened and politically conscious, and/or courageous leadership emerges amongst them, the bitterness and hostility come into the open, and remain sustained with all possible venom and rancour, until home rule is achieved.”

Awolowo’s findings after an empirical study of the workings of constitutions of virtually all the countries of the world was that in any multilingual or multinational society which are identifiable by their distinct territories, the only viable form of government is federalism.

## **6. Nigeria: Why Federalism?**

In analyzing the complex origins and nature of the Nigerian Federation, many writers forget the fact that in the beginning, there was no Nigeria. There were Ijaws, Igbos, Urhobos, Itsekiris, Yorubas, Hausas, Fulanis, Nupes, Kanuris, Ogonis, Gwaris, Katafs, Jukars, Nupes, Edos, Ibibios, Efiks, Idomas, Tivs, Junkuns, Biroms, Angas, Ogojas and so on.

There were Kingdoms like, Oyo, Lagos, Calabar, Brass, Itsekiri, Benin, Tiv, Borno, Sokoto Caliphate (with loose control over Kano, Ilorin, Zaria etc.) Bonny, Opobo etc.



Prior to the British conquest of the different Nations making up the present day Nigeria, these Nations were independent Nation States - and Communities Independent of each other and of Britain.

(i) Prelude to the creation of Nigeria

The bulk of what is now Nigeria became British Territory between 1885 and 1914, although some autonomous Communities were not conquered and incorporated in the protectorate until the early twenties.

Between the 15th and 19th Centuries, European relationship with West African States was trade/commercial in nature, with little or no political undertones. The Europeans depended on the coastal rulers not only for securing trade, but also for the safety of their lives and property, Thus European traders went out of their way to ensure they were in the good books of Native rulers.

It should be noted that the main commodity during this period were human beings. This was the era of slave trade. It was in a bid to protect the lives, properties and trade of British traders that the British Prime Minister, Palmerston appointed John Beecroft as British Consul in Nigeria in 1849. This was the beginning of peacemeal British colonization of the independent nations of what later became Nigeria.

This was followed by:

- gunboat diplomacy for the enforcement of one-sided agreements for the protection of the interests of British traders and
- the signing of the notorious 'protection treaties' which led directly to colonialism

A typical 'protection treaty' would contain the following clauses:

- “The British majesty hereby undertakes to extend to them (Protected Peoples) and to territory under their authority and jurisdiction her gracious favour and protection.”
- ‘Protected’ people were prohibited from entering into any correspondence, agreement or treaty with any foreign power or nation except with the knowledge and sanction of Britain.
- Britain had exclusive jurisdiction, civil and criminal over British and British protected subjects in the protected territory and authority was exercised by the British Consul.
- Any disputes between the ‘native’ chiefs themselves or between them and British or foreign traders had to be submitted to the British Consul.
- Native chiefs were bound to act on the advice of the British officers in matters relating to the administration of justice, the development of the resources of the country, the interests of commerce or in any matter in relation to peace, order and good government and the general progress of Civilization.

Meanwhile, the European colonists organized the Berlin Conference, 1885. This was a Conference in which Africa was carved into spheres of influence amongst the European Powers. The aim was primarily to eliminate friction amongst them in their commercial and colonizing activities in Africa. The Nations in the territory now called Nigeria were parceled off to Britain at the Conference.

Based on the protection treaties and the Berlin Conferences, the British in 1885 proclaimed the establishment of a protectorate of the oil rivers, which later became the Niger Delta Protectorate.

As various quarrels and disputes arose between British traders or British officials on the one hand, and the Rulers of the States of the Niger Delta on the other hand, the latter's territories were invaded, conquered and colonized, individually.

Some notable incidents include:

- The kidnapping of King Jaja of Opobo - 1886
- 1894 - Nana War - The fall of the Itsekiri (Warri) Kingdom
- 1894-1914 - Push and control of Urhobo and Isoko country; Efunrun (1896), Orokpo (1901), Etua 1904; Ezionum (1905), Iyede (1908; Owe, Oleh, Uzoro (1910)
- Igbo and Ibibio land were taken over without war between 1890 and 1905 and only Okrika (1895) Aboh (1896), Aro 1901-2, Ezza (1905), gave the British any resistance.
- Lagos fell in 1861; Ijebu, 1892; Egba, 1914;

Much of the North was under the Sokoto Caliphate in the 19th Century, with the exception of Borno and the middle belt.

- The Royal Niger Company operated in the North until 1899 when their Charter was abrogated and a protectorate of Northern Nigeria was proclaimed in 1900 to forestall German and French occupation of those territories.
- The British now engaged in the progressive conquest of the Northern states.
- Lord Lugard was made High Commissioner of Northern Nigeria in 1899 and British Conquest followed thereafter, in the following order;
  - Bida - 1901,
  - Adamawa - 1901,
  - Bauchi and Gombe - 1902,
  - Zaria - 1902

Kano - 1902

Sokoto - 1903

- The fall of Sokoto meant the effective end of the independence of the states of the present North Western Nigeria.
- 1903 - 1906 was a period of British consolidation in the present North. In fact the protectorate of Northern Nigeria had been proclaimed in 1900 before the Northern states were conquered. The Protectorate of Southern - Nigeria was also proclaimed in 1900
- In 1906 the Protectorate of Southern Nigeria was amalgamated with the Colony of Lagos. And in 1914 - the Colony and Protectorate of Southern Nigeria, was merged with the Protectorate of Northern Nigeria.<sup>12</sup>

It is therefore a grave error arising from a fundamental flaw in the historical analysis of Nigeria, to state that Nigeria is a country which started as a unitary state and progressively became federalized.

(ii) Establishment of Federations

The late Justice Atanda Fatai-Williams former Chief Justice of Nigeria, is reported to have made the following statement:<sup>13</sup>

“Unlike most of the older federations, what we did in Nigeria was like unscrambling scrambled eggs. We started as a unitary state and then opted for a federation afterwards. The problem of Nigeria originally in 1951 - 52 was one of devolution of powers, but when

---

<sup>12</sup> With minor exceptions, virtually all the information in this section is obtained from Obaro Ikime's The Fall of Nigeria. The British Conquest, Heinemann, 1977, pp. 3-198.

<sup>13</sup> Taken from “Nigerian Federalism in Historical Perspective” in Federalism and Political Restructuring in Nigeria p. 14, Edited by Kunle Amuwo et al, Spectrum Books 1998.

the constitution which was given us by Macpherson broke down we opted for a federal constitution. Very little was known by most of us about the theory of federation at the time. They were always quoting whereas at every constitutional conference. It may well be that if we knew more about the theory at the time, we would have emerged in our effort to provide our people with a federal constitution that took account of all the peculiar circumstances of our country and our peoples.”

In the light of what was stated earlier, Fatai-Williams was clearly under a grave misconception. Nigeria’s federalism did not commence in 1954. If one were compelled to put a specific date on it I would opt for 1885, the year of the Berlin Conference for the carving up of Africa between European colonial powers. There is nothing like building a federation from top to the bottom; meaning splitting an originally unitary state into federating states.<sup>14</sup> That is an impossibility. All federations must start off with independent communities, states nations, ethnic groups, first coming into an association, either voluntarily, or as in the case of Nigeria by the force of the colonial power or some other irresistible force. What happened was that communities that were brought into a suffocating embrace by the British colonial master for their administrative and financial convenience, decided at the National conference in Ibadan in January 1950 to opt for a truly federal system based on powerful Regions and a weak centre. Thus the process of federalism was a small step in a reverse process. Fatai-Williams focused on the middle of the process rather than the beginning. The unscrambling of scrambled eggs (echoing Fatai-Williams) occurred long after the scrambling together of eggs laid by different hens, between 1885 and 1914.

Indeed, in 1953, after the political crisis brought about by Enahoro’s motion for independence in 1956, which led to the Kano riots, the aggrieved North demanded further unscrambling, in order to bring Nigerian Nations closer to their original form or status of independent and autonomous communities. The

---

<sup>14</sup> See this erroneous notion in Readings on Federalism by A.B. Akinyemi, P.D. Cole, Walter Ofonagoro (Eds) 73-74. (1980)

Leaders of the North made the following declarations containing the minimum demands for the North to continue as part of Nigeria:

1. "Each region shall have complete legislative and executive autonomy with respect to all matters except the following: defense, external affairs, custom and West African research institutions.
2. That there shall be no Central legislative body and no Central executive or policy making body for the whole of Nigeria.
3. There shall be a Central agency for all Regions which will be responsible for the matters mentioned in paragraph one and other matters delegated to it by a Region.
4. The Central Agency shall be at a neutral place, preferably Lagos.
5. The composition and responsibility of the Central Agency shall be defined by the order-in-council establishing the constitutional arrangement. The agency shall be a non-political body.
6. The services of the railway, air services, posts and telegraphs, electricity and coal mining shall be organized on an inter-Regional basis and shall be administered by public corporations. These corporations shall be independent bodies covered by the statute under which they are created. The Board of the coal corporation shall be composed of experts with a minority Representation of the Regional government.
7. All revenue shall be levied and collected by the Regional government except customs revenue at the port of discharge by the Central Agency and paid to its treasury. The administration of the customs shall be so organized as to assure that goods consigned to the Region are separately cleared and charged to duty.
8. Each Region shall have a separate public service.!!!"<sup>15</sup>

The diverse character of the Nationalities, Kingdoms, republics, autonomous communities which constitute the present State of Nigeria, made and continue to make strict federalism inevitable. Even an institution as apolitical, conservative

---

<sup>15</sup> See Daily Times May 22 1953, pp. 1 & 2.

and detached as the Nigerian Supreme Court has taken judicial notice of the diversity of Nigeria's nationalities and their distinct and independent existence before the colonizing force of British imperial power brought them forcefully together under one polity. In a judgment on the conflicting claims of the Nigerian Federal Government and the coastal states, to the Nigeria continental shelf, the Court made the following pronouncement.<sup>16</sup>

“Until the advent of the British colonial rule in what is now known as the Federal Republic of Nigeria (Nigeria, for short), there existed at various times **sovereign states known as emirates, kingdoms and empires made up of groups in Nigeria. Each was independent of the other with its mode of Government indigenous to it. At one time or another, these sovereign states were either making wars with each other or making alliances, on equal terms. This position existed throughout the land now known as Nigeria.** In the Niger-Delta area, for instance, there were the Okrikas, the Ijaws, the Kalabaris, the Efiks, the Ibibios, the Urhobos, the Itsekiris, etc. Indeed certain of these communities (e.g. Calabar) asserted exclusive rights of these narrow waters in their area. And because of the terrain of their area, they made use of the rivers and the sea for their economic advancement in fishing and trade - in making wars too! The rivers and the sea were their only means of transportation. Trade then was not only among themselves but with foreign nations particularly the European nations who sailed to their shores for palm oil, kernel and slaves.”

---

<sup>16</sup> Attorney - General of the Federation v. Attorney - General of Abia State and 35 Others. See Weekly Reports of Nigeria, [2002] Vol. 16 WRN 1-312 at p.68. Emphasis added.

In applying the result of his prodigious research on federalism to Nigeria, Awolowo made the following profound statements for which he has been subjected to shortsighted and uninformed criticism.<sup>17</sup>

“Nigeria is not a nation. It is a mere geographical expression. There are no ‘Nigerians’ in the same sense as there are ‘English’, ‘Welsh’, or ‘French’. The word ‘Nigeria’ is merely a distinctive appellation to distinguish those who live within the boundaries of Nigeria from those who do not.

There are various national or ethnical groups in the country. Ten such main groups were recorded during the 1931 census as follows: (1) Hausa, (2) Ibo, (3) Yoruba, (4) Fulani, (5) Kanuri (6) Ibibio, (7) Munshi or Tiv, (8) Edo, (9) Nupe, (10) Ijaw.

According to Nigerian Handbook, eleventh edition, ‘there are also a great number of other small tribes too numerous to enumerate separately, whose combined total population amounts to 4,683,044’. It is a mistake to designate them ‘tribes’. Each of them is a nation by itself with many tribes and clans. There is as much difference between them as there is between Germans, English, Russians and Turks, for instance. The fact that they have a common overlord does not destroy this fundamental difference.

This view, though popularized by Awolowo, was the one almost universally held by the founding fathers of Modern Nigeria. In 1953, during the debate on the famous motion for Nigerian independence moved by Chief Anthony Enahoro, Sir Ahmadu Bello, Premier of the North and Leader of the ruling NPC made one of the most eloquent cases for true federalism when he said:

“Sixty years ago there was no country called Nigeria. What is now Nigeria consisted of a number of large and small communities all of which were different in their outlook and beliefs. The advent of the

---

<sup>17</sup> Awolowo, Path to Nigeria Freedom, 1947, Faber & Faber, p.48.



British and of Western education has not materially altered the situation and these many and varied Communities have not knit themselves into a composite unit ...

Whatever Nigerians may say, the British people have done them a great service by bringing all the different communities of Nigeria together.”

Therefore on purely pragmatic considerations, federalism or even con-federalism is the only system of government that can be operated successfully in Nigeria.

The diversity and of the Nigerian nationalities and their high level of individual social development and integration is such that basically each is a mini state in its own right.

According to Awolowo, these factors of diversity in culture, language, social and political history and organization are:

“natural and automatic generators of centrifugal forces and tendencies. They tend to induce in the ethnic groups concerned a strong and burning desire for separate existence from one another. They are factors which, if they had not been restrained and skillfully canalized by the British, would have led to the emergence of several independent sovereign states in the place of the ONE NIGERIA we now have.”<sup>18</sup>

One advantage of Federalism in the Nigerian circumstances, is that it promotes the protection of minority rights and interests. Apart from the elaborate human rights provisions in Nigerian Constitutions since independence in 1960, the Constitution of the Midwest State (1964) contained a unique provision under which the minority nationalities in that Region were guaranteed seats in the Regional Legislature. By Sections 7 and 14 of the Midwestern Nigeria Act 1964 four special areas were created for the minorities of the Midwestern Region.

---

<sup>18</sup> Awolowo, Thoughts on Nigerian Constitution, p. 25.

These minorities were the Isokos, Itsekiris, Western Ijaws and the Akoko Edo people. Representation of these areas in the Regional House of Assembly was limited to members of the relevant minority ethnic group, in the designated areas. This law was enacted in order to preclude a situation in which these areas would be swamped by ethnic majority nationalities who could then use their numbers to elect their own people to represent the home land territories of the ethnic minorities. Unfortunately, the Military Government of General Obasanjo dropped this minority protection provision when promulgating the 1979 Constitution into law. The resulting tragedy is the current Warri crisis.

## 7. **Key Characteristics of a Federal Union**

As Stephanie Dion, then President of the Canadian Privy Council and Minister of Intergovernmental Affairs observed,<sup>19</sup> democracy is indispensable to federalism. The two are a pair of concepts which lead, one to the other. Every federation experiences an on going dialectic between the autonomy of its components and the solidarity that unites them. In her observation on democracy and federalism, she propounds that:

“Without democracy, genuine federalism is impossible. To be sure, there have been dictatorships or totalitarian regimes that have claimed to be federations. Some still exist today. But genuine federalism presupposes the respect of a division of constitutional powers between two orders of government. If all the political powers in the country is in fact under the control of a single party, it is difficult for the federative form of the state to be anything more than a façade. It is within a democracy that federalism finds its true meaning.”

---

<sup>19</sup> “Federalism and democracy: the Canadian Experience”, an address dated 14 April 2000 at Winnipeg in Manitoba.

Those who have lived in or observed developments in Nigeria under military or civilian dictatorship do not need to be convinced about this truism. We all know for example that the military operate a single and central command system. There can be no federalism in a military government. We are also beginning to find out that the same applies in a civilian dictatorship.

Apart from various individual decrees, the very first decree issued by every successive military regime usually destroys the foundations of federalism. Thus sections 3 and 4 of Decree No. 1 of 1966 stated as follows:

- “1. The Federal Military Government shall have power to make laws for the peace, order and good government of Nigeria **or any part thereof with respect to any matter whatsoever.**
2. The Military Governor of a Region:
  - a) Shall not have to make laws with respect to any matter included in the Exclusive Legislative List; and
  - b) Except with prior consent of the Federal Military Government, shall not make any law with respect to any matter included in the Concurrent Legislative List.
3. Subject to subsection (2) above and to the Constitution of the Federation, the Military Governor of a Region shall have power to make laws for the peace, order and good government of that Regions.”

Thus, the first Federal Military Government, completely undermined the federal status of Nigeria by giving itself the power to make laws for the peace, order and good government for the whole of Nigeria with respect to any matter whatsoever. It is as if the regions or later states did not exist. The matter was taken to the extreme in the Abacha era, when by Decree 12 of 1994, the Federal Military Government declared itself as being established “with absolute powers to make laws for the peace, order and good government of Nigeria or any part thereof (including of course all the states) with respect to any matter whatsoever.”

Clearly therefore, there can be no federalism in a military government. What is equally becoming obvious is that the 1999 Constitution concentrates and accumulates so much power in the hands of the President, that a President with an authoritarian and despotic tendency will exercise those powers dictatorially as in a typical military regime.

Next, the importance of solidarity between the federating components and the central agency cannot be over emphasized. Without such solidarity, a federation will collapse inevitably. In Stephanie Dion's quintessential words of wisdom:

“In a federal system, the state is made up of two orders of government, each possessing powers circumscribed by the Constitution, and because of this, respect for the Constitution becomes the object of mutual surveillance. Each order of government can go to the courts if it believes that the other is infringing on its jurisdiction, which provides citizens with additional protection against abuses of power.

The principle of solidarity strikes me as much an integral part of federalism as the principle of autonomy. **Indeed, while each order of government, each federated entity, is autonomous, it is not so that they may ignore each other. Rather, it is so that each, with its own characteristics and capitalizing fully on its potential, can better help the others. All the governments of a federation are interdependent and must work together for their citizens, over and above their political, regional or other differences. The ideal of federalism is the very opposite of internal separatism, it is genuine solidarity. Here again, it represents an enrichment of democracy.**

**Federalism, as the plural quest for common action that respects the autonomy of all parties, and as a learning process**

**of negotiation and conflict resolution, presupposes a large dose of tolerance. It necessitates an ongoing practice of pluralism and cultivates democratic values.”**

## **8. Defects and Anomalies of Nigerian Federalism**

### **(i) Structural and operational Anomalies**

The Nigerian federation is an anomalous one full of defects both in its structure and in its operation. It is in reality a decentralized unitary system and it is operated in an atmosphere totally devoid of solidarity and cooperation amongst the Federating Units and between them and the Central Agency.

The Federal Government particularly, treats the states with barely disguised contempt and hostility and carries on with an attitude of an intolerant supervisory authority over subordinate and indeed insignificant state vassals. This is compounded by frequent threats of declaration of “emergency” or use of direct coercion or physical force to realize illegal demands made on the states.

Igho Natufe has made the following telling observations about Nigerian Federalism which this writer fully endorses.

“For **political** reasons, a state agrees to federate in order to strengthen existing relations with its co-federating units and to possess a stronger voice internationally. Thirdly, a state constructs a federal polity in order to be able to protect itself from real or an imagined threat to its **national security**. These factors significantly influenced the decision of America’s thirteen colonies and Canada’s four provinces to negotiate their respective federal systems. The United States and Canada remain the models of federalism. Other

successful federations, for instance, Australia, Germany, India, and Malaysia have built on the U.S. and Canadian examples.

What is the state of federalism in Nigeria? The argument in favour of the **status quo** in Nigeria is based primarily on the **Constitution of the Federal Republic of Nigeria 1999**. This constitution, supposedly a federal constitution, is in reality a unitary document that structures the country into obsequious administrative units that are referred to as states. Besides the name of the document, its core is defined in strict unitary terms. In contrast to the 1963 Republican Constitution, the 1999 variant is reflective of the military doctrine that inspired its drafting. It is highly unlikely that the military, a unitary command-based institution will produce a federal constitution. The basic tenets of military political orientation hinders its capability to design a federal polity. Furthermore, given his military training, it is obvious that President Obasanjo does not possess the dispositions or the **coordinating** skills required of federalists. Thus, in political and economic terms, Nigeria is administered as a unitary polity.”

(ii) Some Constitutional Defects

There is ofcourse the major structural defect in the 1999 Constitution which allocates to the Federal Government, under the Exclusive Legislative List, subjects that should be matters of exclusive state jurisdiction or should at best be in the concurrent list. These include:

- (i) Funding of local governments which are constitutionally exclusive subjects of the States;(S.162 (ss.4 and 5))
- (ii) Granting the Ownership of the mineral resources of the States to the Federal Government; (S. 44(3) and item 39 on the Exclusive Legislative List)

- (iii) Establishment of an essentially Federally controlled National Judicial Council for the appointment, discipline and removal of Judicial Officers; (3<sup>rd</sup> schedule, part 1)
- (iv) Exclusive power to make laws on industrial relations, labour and trade union matters, including the determination of the minimum wage across the country; (item 34, Exclusive Legislature List)
- (v) The sole right to generate and transmit electricity (except rural electricity) throughout the country; (item 14(b), Concurrent List)
- (vi) The sole right to conduct population census in Nigeria such that a state cannot conduct its own census for its own internal developmental purposes; (item 8, Exclusive Legislative List)
- (vii) Exclusive right of control over the Nigeria Police whilst making a state Governor a nominal Chief Security Officer of his state.

The result of this is that true federalism has also been jettisoned in favour of an over centralized control of the Nation's political authority, resources and economy, as we saw earlier. The present situation may be contrasted with the situation during the First Republic when fiscal federalism was given constitutional recognition.

(iii) Consequences of Anomalies and Defects

As a direct consequence of the concentration of powers and resources in the federal Government under the 1999 Constitution, Nigeria has been plunged into an unending series of crises since the commencement of the so called fourth Republic on 29<sup>th</sup> May 1999. The country is concurrently confronted with:

1. Fierce competition for the capture of power at the center leading to overheating and instability of the polity. This has led to a culture of election rigging by politicians determined to capture and maintain power at the centre at any cost.

2. Mutual suspicion and fears of domination and marginalisation between ethnic nationalities leading to the rise of ethnic militias and violent conflicts,
3. The denial of the oil producing areas any right of control and management of their resources, resulting in gross environmental pollution, poverty and wretchedness, again, giving rise to militancy of the local populations, violent disruption of oil production and total disenchantment of the Niger Delta with the Nigerian State.

One of the greatest disadvantages of the current over-centralisation of powers and resources in Nigeria is that many states and nearly all the local governments have become complacent and indifferent to sources of revenue in their territories and the generation of independent incomes for themselves. The monthly pilgrimage to Abuja to collect their monthly allocations of the proceeds of the Niger Delta's petroleum resources and Lagos State generated VAT has created a culture of greed and laziness in those states.

Omokhodion in an article entitled "Anatomy of the Nigerian economy" has graphically and lucidly described this debilitating consequences of the abandonment of fiscal federalism in favour of concentrated economic power in an already over bloated federal Government.

"At the end of every month, the 36 honourable commissioners of finance of all the states of the federation gather in a classroom session in Abuja presided over by the Federal Minister of Finance to share money that have accrued to the federation account based on a formula no one really understands. This money comes from three main sources - the oil money from the Niger Delta, the custom duty collections from the coastal/ports states and the VAT money mainly from Lagos State. After the sharing, the commissioners now head back to their respective governors to report what they have received and how to allocate to the areas of defined priority. The way the



funds is used is not the subject of this article but as you know easy come, easy goes and because over two-thirds of the states do not suffer any pain in the generation of this federation account, they fritter the money away and wait for the next monthly allocation. And at the end of the month, they all troop back to Abuja for the monthly routine. It is inconceivable for any state to grow with this type of economic structure that puts state governments on welfare benefits or what the Americans call the “dole”.

If states are not challenged to reap where they sow, the economy of this country will go no where. As a result of cheap money from the Niger Delta, all the Northern states and other Southern states have just allowed their natural and mineral resources to go untapped and where they are tapped, the proceeds go to enrich individual foreign bank accounts. The great agricultural potentials of the entire Mambilla Plateau have continued to lie fallow and seriously under-utilized because the North Eastern states that would benefit directly from its exploitation do not want to be bothered with the initial difficulties of establishing a framework for its cultivation.

As in a growth of human form, any child who depends perpetually on the parents to spoon-feed him for the rest of his life can never grow. Depending on Abuja to dish out handouts called revenue allocation to state governments cannot grow this economy. Powers and wealth are being unduly concentrated at an unwieldy center.”<sup>20</sup>

(iv) Oppressive and Unconstitutional Exercise of Federal Executive Powers

This central control over states’ constitutionally established funds has created in its wake, a Federal Frankenstein monster. Two examples may be given. By an

---

<sup>20</sup> Lawson Omokhodion, “Anatomy of the Nigerian Economy” in the Vanguard Newspaper, Thursday January 2, 2003, p. 35.

executive Order made on 8 May 2002 and made retroactive from 29 May 1999 (the date of his coming into office) President Obasanjo unilaterally increased the Federal Government share of revenue from the Federation account from 48.5%, to 56% at the expense of the states. Such changes could by law, normally only be made by the National Assembly on the recommendation of the Revenue Mobilization Allocation and Fiscal Commission.<sup>21</sup>

Under the existing law, the formula for revenue allocation was as follows:

2. Federal Government - 48.5%
3. All the States - 24%
4. All Local Governments - 20%
5. Special Funds - 7.5%

Under the new Presidential Order, (S. 19 of 2002) the formula was altered as follows:

1. Federal Governments - 56%
2. All States - 24%
3. All Local Governments - 20%

The 36 States instituted an action in the Supreme Court for a declaration that the Presidential Orders was illegal and unconstitutional.<sup>22</sup>

In upholding the validity of the Order, the Supreme Court held that by his powers under section 315 of the Constitution, the President had the power to modify an existing law to bring it in conformity with the Constitution and that that was exactly what the President had done. Since the Constitution had no provision for special funds, the 7.5% allocated to that sector, in the court's views, was incompatible with the Constitution. Therefore the President's order transferring

---

<sup>21</sup> Section 162 of the 1999 Constitution

<sup>22</sup> Abia State & 35 Ors V The Attorney-General of the Federation [2003] WRN Vol.19. p.1

the 7.5% to the Federal Government's share in the Federation account, was a valid exercise of his powers under section 315 of the Constitution.

The Judgment of the Supreme Court, merely reinforces the case for true federalism. For a system under which one tier of the Federation can alter the revenue allocation formula, at the expense of other tiers, even validly, is subversive of federalism.

Again on Tuesday 12<sup>th</sup> May 2003, the Presidency announced that it had cancelled the monthly Federation Accounts Allocation Committee Meeting (The Abuja monthly pilgrimage) which ought to have been held on Thursday and Friday 2003. According to the Presidency, the meeting was postponed to the middle of June 2003 when the newly elected political office holders would have been sworn in and settled down to business. This was a reference to national elections, including governorship elections which were held in April 2003 and the Governors - elect who were to take office on 29 May 2003.

According to the announcement, the aim or objective of the postponement was to forestall embezzlement by outgoing political office holders. There was, in the view of the presidency, the possibility that a large percentage of these funds would not be judiciously utilized.

Apart from the obvious implication of the shutting down of government and non-payment of workers salaries in all the states, there is the more major implication of Federal Government's unilateral and unconstitutional with-holding of state funds, which is again a subversion of federalism.

As a Newspaper columnist rightly observes:<sup>23</sup>

“The Presidency, by this shenanigan, has confirmed the fear of those who say we do not have a Federation; and even the fears of

---

<sup>23</sup>

Kola Animashaun, The Vanguard, Sunday 18 May 2003, p.4

the others who think that even the apparent unitary government is skewed towards a dictatorial Presidency.

We have looked at the relevant sections of the subsisting Constitution (1999). We cannot find a reason for the President's behaviour under the Supremacy of the Constitution nor under any of the provisions of 162(3), (4), (5), (6), (7) and (8) all of which deal with Public Revenue".

Only as recently as January 2004, the President unilaterally decided to withhold States funds (the extra sums arising from petroleum proceeds received over what was expected in the projected revenue) on the ground that their release to the State beneficiaries would generate inflation in the economy. The States were simply informed. This singular act, represented total contempt for fiscal federalism and the 36 States concerned.

Two more recent events involving the Federal Government and some states need to be highlighted. In clear violation of section 162 (5)(6) and (8) of the Constitution, the President has directed the Minister of Finance not to pay states which have created new local governments and held elections on respect of those new local governments, their constitutionally prescribed local government allocations. This high handed and hostile act flies in the face of three facts:

- (i) It is manifestly a breach of the constitution. subsections (5)(6) and (8) of section 162 of the Constitution provide as follows:
  - “(5) The amount standing to the credit of local government councils in the Federation Account shall also be allocated to the States for the benefit of their local government councils on such terms and in such manner as may be prescribed by the National Assembly.
  - (6) Each State shall maintain a special account to be called “State Joint Local Government Account” into which shall be paid all

allocations to the local government councils of the State from the Federation Account and from the Government of the State.

(7) Each State shall pay to local government councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly.

(8) The amount standing to the credit of local government councils of a State shall be distributed among the local government councils of that State on such terms and in such manner as may be prescribed by the House of Assembly of the State.”

- (ii) This leads to the second point. The provision is mandatory. The Federal Government has no discretion in the matter. The money is taken from the Federation Account, which is a joint account of the Federal Government and the States. The Federal Government is a mere custodian of the funds, not the owner.
- (iii) It is important to note that the President’s order prohibits ANY allocations of funds in respect of all local governments in the affected states, not just the extra allocation to their new local governments. In other words, for daring to create new local governments and conducting elections into them, the Federal Government has also seized the allocations to the old local governments listed in the Constitution. Such high handedness, hostility and aggression are the very antithesis for the operation of a federation and democratic government.

The statement issued by the Government of Lagos State in its formal reaction to the Federal Government’s illegal seizure of its local government funds succinctly reveals the grave and devastating social, economic legal and constitutional consequences of the Federal Government’s gross abuse of powers on this issue.

“The Lagos State Government regards this [Presidential Order] as an unjustifiable abuse of power by the Presidency as the Government has made no request for additional funding in respect

of the new councils. The allocation of funds to the three tiers of government is done according to the Constitution, which leaves no room at all for any authority or person to use it as an instrument of blackmail against other tiers of government or as a means of suppressing dissenting opinion. As a result of this arbitrary stoppage, all local councils across the state will be unable to pay primary school teachers, council employees and pensioners, or to carry on their constitutional functions. Of the funds now withheld, about N610 million goes to payment of teachers, N73.8 million to leave bonus and N28.6 million to arrears of house rent. Besides, 10% is retained out of it monthly as training fund, for local government employees and N63m for payment of pensions through the Local Government Pensions Board. When we received information that the stoppage was imminent, we instituted a case at the Supreme Court of Nigeria on Monday seeking, among other things, a determination of the question whether the President can by administrative fiat stop allocation of funds payable to State Governments from the federation account. In spite of that notification of the action pending at the Supreme Court, the federal government proceeded to stop all allocation. This is against the rule of law which all elected and appointed officials of government have sworn to uphold.”

Next the Lagos State Government demonstrated that the Presidential order constituted a grave assault on the rule of law.

“The action of the federal government is not only preemptive of the Supreme Court, it is an assault on the judiciary as a whole as the same issue is also pending at the Court of Appeal and the Federal High Court. A few weeks to the last local government elections, the issue of allocation of revenue to local government councils in Lagos State and the validity of the newly created councils was submitted to court for trial in cases instituted by members of the Peoples’

Democratic Party and a faction of the Alliance for Democracy. These cases are currently before the Court of Appeal, Abuja and the Federal High Court in Abuja and Lagos.”

Quoting from the judgment of Kayode Eso, JSC in the famous Ojukwu case in which the concept of “Executive lawlessness” was first subjected to judicial analysis and exposition, the Lagos State Government continued thus:”

“In the face of cases pending at the Supreme Court, Court of Appeal and the Federal High Court, all parties have a duty not to adopt self help or do any act that would foist a fait accompli on the courts. The Supreme Court has pointed out in the case of Ojukwu v. Governor of Lagos State (1985) 2 NWLR (pt. 10) at 806 that under the Constitution of the Federal Republic of Nigeria, 1979, the executive, the legislature and the judiciary are equal partners in the running of a successful government... The organs of government must never exist in sabotage of the other or else there would be chaos. Indeed there will be no federal government. For one organ, and more especially the executive, which holds all the physical powers, to put up itself in sabotage or deliberate contempt of the other is to stage an executive subversion of the Constitution it is to uphold. The Supreme Court concluded that executive lawlessness was tantamount to a deliberate violation of the Constitution.”

It is disrespectful to the judiciary and the rule of law for the Federal Executive to now preempt the court’s decision and appropriate to itself the same reliefs that it seeks in the law courts. Such an action overreaches the courts and is utterly contemptuous of the judicial process and the rule of law. It cannot but precipitate unnecessary crisis in the federation. As all well-meaning Nigerians would appreciate, the well being of the federation can be sustained only

where difference of opinion among tiers of government are submitted to the judiciary for final resolution.”

Thirdly the release dealt with the brazenly unconstitutional nature of the order and the Federal Government’s lack of power and discretion in the allocation of revenue under section 162 of the Constitution.

“In the same vein, it is useful to note that the constitutional entitlement of local government councils to their share of funds in the federation account has been established beyond contention by the Supreme Court of Nigeria in the cases of A.G. Federation v. A.G. Abia State & 35 Others [2002] 6 NWRL pt. 764, p. 542 and A.G. of Ogun State & 35 Others v. A.G. of the Federation [2003] 3 WRN 100.

Internal distribution of funds to local government councils within a state is a matter for the relevant State House of Assembly and not for the federal executive to interfere in. According to section 162(8) of the 1999 Constitution, “The amount standing to the credit of local government councils of a State shall be distributed among the local government councils of that State on such terms and in such manner as may be prescribed by the House of Assembly of the State.”

Finally the statement emphasized the devastating consequences of the order and the violation of the key concepts in the operation of federalism like solidarity, cooperation and tolerance.

“Finally, and quite apart from the legal issues, the Federal Government is well aware that this decision affects innocent people across the state. Thousands of employees and pensioners, including school teachers, are on the payroll of local government



councils in Lagos State. Primary education, primary healthcare, environmental sanitation and various other essential services being carried on by these councils will be abruptly terminated if they do not receive their due allocation from the Federation account. In short, the damage will be unquantifiable. The deprivation, disruption and disenchantment among the populace will be quite grave. I can only hope that the President would reverse this obnoxious order and avoid a needless crisis.”

The other incident is even more incredible. The Lagos state Government, which has for some time embarked on the beautification of the Lagos environment and major streets and expressways including federally maintained roads, received a shocking warning from Federal Minister of works to the effect that the Lagos State Government should cease all beautification works on Federal roads in Lagos. It gave the Lagos Government an ultimatum of 7 days to dismantle the structures, trees and flowers already in place with the threat that at the end of that period, the agents of Lagos State working on the beautification schemes would be forcefully and physically ejected, the structures destroyed and Lagos state would be charged for the cost of destruction and removal of the debris. The relevant part of the press report of the Minister’s letter vividly captures and illustrates the hostile and aggressive approach of the Federal Government to intergovernmental relations. It is entitled:

“Ogunlewe opens another **war front** with Lagos over road beautification”; the report continues thus:<sup>24</sup>

“Lagos - A Fresh crisis appears to be brewing between the Federal Government and the Lagos State Government after the Federal Ministry of Works gave Alausa a seven-day ultimatum to stop its ongoing beautification of federal highways.

---

<sup>24</sup> Vanguard Newspaper, 19 April 2004, front page.

The ministry said the beautification was without its approval and is “grossly below the permissible standards and specifications allowable along federal highways”.

But the state government in a swift response vowed to ignore the quit order which it dismissed as “indecent, indecorous, illegal, unconstitutional and immoral.”

Firing the first salvo in the seeming face off was the Federal Controller of Works, Lagos State, Engineer A.S.D. Adeniyi, who in a March 17, 2004 letter to the state Commissioner for the Environment, Mr. Tunji Bello said: “The attention of the ministry has been drawn to the several landscaping and beautification works being undertaken by you in different parts of the state without the express approval of the Honourable Minister, Federal Ministry of Works. Investigations have revealed that many of the ongoing and completed landscaping and beautification works are grossly below the permissible standards and specifications allowable along federal highways.

“Also, you are hereby informed that your occupation of the above named spaces contravenes ..... the Federal Highways Act, Cap 135 of 1990, which vests on the Honourable Minister of Works, the authority to approve the occupation and use of spaces within and along the federal highways.

**Seven-day ultimatum**

“Accordingly, therefore, you are hereby issued seven (7) days quit notice effective from above date to vacate all the landscaping and beautification sites and reinstate to its original state road structures which may have become damaged by you in the course of your

occupying the space. You are, therefore, by this notice directed to notify your contractors working at the different sites to vacate them on or before the expiration of the date. The ministry may be compelled to use force to effect the above quit notice in the event of your non-compliance.”

Without going into the legal and constitutional arguments, which clearly favour Lagos State (because the road is in Lagos State and the land belongs to Lagos State) it is clear that the Federal Minister of Works is conducting intergovernmental relations in a warlike manner. He has virtually declared war on the Lagos State Government and is prepared to jeopardize the stability of the Federation in promotion of his hostility towards the Lagos State Government.

Thus, the Federal Government of Nigeria conducts an aggressive master and servant relationship with State Governments and will disregard law, the constitution, ethics, and solidarity, in its efforts to brow beat and intimidate the States into abject submission. The Central body, which started life as an agent of the federating States for some limited objectives, has become a monster, terrorizing the States. Space and time does not permit this paper to include details of the unconstitutional and treasonable attempts to remove the Government of Anambra State, nor the prohibition of the Anambra State Governor from rehabilitating federal roads in his state, which (roads) have been abandoned by the Federal Government for decades. These are notorious illustrations of intergovernmental relations conducted in a hostile manner between the centre and the federating units.

The Federal Government and indeed Nigerians in general appear to have forgotten that the Federal Government is a servant of the State Governments, and that a Federal Government is established to service the needs and interests of States. The servant has become an uncontrollable monster, and an unguided missile against the States and the people of this country.

Let us therefore go back to the drawing board and remind ourselves, about what the true relationship of the States and the Federal Government should be.

## 9. Anatomy of Federalism

1. A federal government is an artificial creation of the federating States, or provinces or the regions. Unlike the States or federating units it (the Federal Government) is incapable of an independent existence. It depends on the States to exist and survive.
2. It is an agency established to serve them for specific purposes; usually to enable them to combine their resources for the purpose of defence and development.
3. For those very reasons, a federal government is not superior to the federating units whose creature it is.
4. A federal Government has no independent resources, but derives its resources from the constituent States. Taking Nigeria as an example, the Federal Government 's major source of revenue, petroleum, comes from the Niger Delta. Before the discovery of petroleum in Nigeria, the sources of the Federal Government's wealth were taxes on commodities such as ground nuts, cocoa, rubber, oil palm, etc. These were all located in the Regions.

Other major sources of the Federal Government's wealth today include, customs and exercise duties and Value Added Tax (VAT). Over ninety-nine percent of the goods on which customs and exercise duties are collected are destined, or are from the states, and not Abuja. The major sea ports are all located in Lagos, Delta and Rivers States. The Federal Government stricto gensu is a land locked Government.

Even the territory directly controlled by the Federal Government, the Federal Capital Territory Abuja, was donated to it by Niger, Plateau, Kogi and Kaduna

States. Taking the matter to its logical conclusion, it can even be stated that the Federal Government is only a government. But the States have a government, which operates within another entity called the State. The Federal Government has no such independent or separate entity other than itself as government. It operates as a state only within the combined entities of the 36 states, in the country. The Federal Government needs the States in order to survive as a government. These are trite facts and common truisms

It is therefore no surprise that only the States have laws of succession. It is a residual subject matter in the Constitution, i.e., States have exclusive jurisdiction in that subject. The reason is simple. The law of succession governing a person's estate, is the law of the place in which he is domiciled. You can only be domiciled in a state, and not in an artificial capital territory. Those who are indigenous to the capital territory in Nigeria have no wills law or law of intestacy applicable to them for example. The non-customary succession law of the states they originally belonged to, will still apply to them. Only territories which have a natural human and social history, have succession laws.

The peoples of a federation are to be found in the states. The population of a federal territory is largely an artificial population. In the Nigerian federation, the President, his Ministers, virtually all the federal legislators and civil servants are indigenes of the States and not of the Capital Territory.

I am reminded of an old fable about the Kingdom of birds which applies rather accurately to the Nigerian federation. Indeed this story illustrates the reality behind the façade and external trappings of the law and the Constitution in any federation.

According to this fable, once upon a time, there was a bird. Unlike its other counterparts in the world of birds, this particular bird had no feathers and so could not fly. It was a pathetic spectacle in the bird world. It was a figure of abject misery. Out of sympathy, all the other birds contributed one feather each

to the miserable creature. As the contributions progressed, the lonely earth bound bird became not only very beautiful to behold, but ended up having far more plumage than any individual bird. Swollen with pride, it soared into air flying higher and higher. It flew above all the birds whose contributions made it possible for it to enjoy the experience of flight.

The bird became proud, arrogant, imperious and disdainful of its benefactors. So they laid in wait for him below. As soon as it flew down to their level, each feather contributor plucked off its feather from the arrogant bird and before long, there were not enough feathers left on it to sustain it in the air. It crashed to the ground! I understand that the birds were so angry with their arrogant beneficiary that those of them who not plucked off their donated feathers, flew down to the disgraced bird and proceeded to remove the few remaining feathers right on the ground where the dazed bird lay.

Relating this allegory to the world of federations, I believe we know which is the arrogant bird, and who are the benefactors in a federation.

The moral of this story is that the Federal Government should realize that its power and resources come from the federating units, whose agent it is. A Federal Government is established to provide service to the states and their peoples. It is to act as the cementing factor, the centre of unity and harmony. It should make itself indispensable to the welfare of the states and their peoples. It must not be a destabilizing agent and certainly not the master or hostile and overbearing supervisor of the states.

## **10. Conclusion**

This Writer has endeavoured to show in the paper, the aims, objectives and raison d'être of federalism, its nature and the form intergovernmental relations in a federation should take. It has been vividly demonstrated that structurally and, in

terms of actual operation, the relationship between the Federal Government of Nigeria and the State Governments, is the anti-thesis of federalism.

Defective as the structure is because of the over concentration of powers at the centre, the real tragedy of the Nigerian Federation is the total absence of a feeling of (i) solidarity from the Federal Government to the States, (i.e., working and cooperating with the states for the welfare of the peoples of the states, over above mean and petty political differences) (ii) total disregard, indeed contempt for the rule of law and the constitution. (iii) operating the executive arm of the federal government as if the country is under a military dictatorship. (iv) total contempt for the federating states, whose agent the Federal Government is supposed to be . (v) abuse of federal powers and regular acts of destabilization of the polity, and sustained and obsessive undermining of the autonomy and authority of the states.

Federalism is not about uniformities, but recognition of diversities and autonomy of the different components. The imposition of a central authority on all spheres of activity as has become our natural practice violates the independence of the federating units and raises serious questions about the competence, knowledge and correct orientation of those at the helm at the centre.

As Natufe has rightly observed:<sup>25</sup>

“Thus if Nigerians want to establish a solid base for true federalism, it is imperative that they begin to construct non-monolithic political and institutional structures that will reflect the independence of the federating units. Nigerians admire the romantic appeal of federalism, but they cannot divorce themselves from the grips of unitary institutions, including the police system.”

---

<sup>25</sup>

“Framework for Renewal Federalism in Nigeria”, 2001 - unpublished.

One thing is clear. We cannot continue to run our Federation in this manner and expect it to survive. The present contemptuous and hostile attitude to federalism at the Centre, is dangerous and unpatriotic. It must change for the sake of the survival of this country as a united Federal Republic. The declaration in the preamble of our Constitution that we are resolved to live “in unity and harmony as one indivisible and indissoluble sovereign Nation under God”, will not be worth the paper on which it is written if we do not work hard to promote the ideals of unity and harmony. To save Nigeria from the danger of disintegration, all political authorities, led by the Federal Government must demonstrate that unity, harmony, solidarity, respect for the rule of law, respect for the independence and authority of the states and realization that the Federal Government is the agent of the federating units i.e., the states, in all its policies, actions and programmes. In summary, in order that our federation should survive, we must shed the current federal stranglehold on Nigeria and go back to true federalism, not only structurally, but also in spirit. We must imbibe and practice, respect for the independence of the States, the rule of law, the solidarity of the Centre with the Federating Units in mutual cooperation. That is the only way forward for a united and harmonious Federal Republic of Nigeria.