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## LAW MAKING AND MULTI-ETHNIC SOCIETY

BY

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### ABSTRACT

This work will be divided into several unequal parts. It commences with definition of terms that will assist in understanding and appreciating the topic. We shall examine the attempts through law making in tackling the problems associated with a multi-ethnic society like Nigeria. Issues like distribution of powers and resources in order to avoid "marginalization" shall be examined. Attention shall be paid to the constitutional device in form of federalism: state creation and "federal character" provisions, reasons for their introduction, their content and extent of adherence to their provisions; problems associated with their compliance, their future and prospects shall be looked into.

### 1.0 INTRODUCTION

According to Black's Law Dictionary Legislature is "The branch of government responsible for making statutory laws." Legislatures in modern states ... do not all perform identical functions. Everywhere they pass laws, determine the ways of raising and spending public revenue and discuss matters of public importance. Almost everywhere they have some part in the process of amending the constitution. In every modern government there are three organs and those are the legislature, the executive and the judiciary. The legislature makes laws, the judiciary interprets them and the executive

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Warner, ed., Blacks Law Dictionary (7<sup>th</sup> ed. Thompson West Group, 1999).

\*\* See the Substance of Politics by A. Appadoral, (Oxford University Press, Fourth Impression 2004) 5485-50.

enforces them. Out of these three, the legislature is the most important. It is only when a law has been made by a legislature that the question of interpreting or enforcing it arises.

We agree with that assertion that, "There is no special brand of federalism peculiar to Nigeria and there is no universally accepted definition or conception of federalism. Whatever their shape, federal constitutions are by definition devices to limit the centre and the range of federal decisions". And also that: "federalism is capable of different meanings and conceptions depending on the perspective and the background of the perceiver. There are writers whose emphasis has been on the form of the constitution and certain institutions and as far as they are concerned the absence of these makes any discussion on federalism as futile".

Federalism like democracy freedom and revolution is an ambiguous term having no clear or universally acceptable meaning. It is usually viewed as a form of governmental and institutional structure deliberately designed by political architects to cope with the twin but difficult task of maintaining unity while also preserving diversity .... Kenneth Wheare in his own definition, states: "by the federal principle I mean the method of dividing powers so that the general and regional governments are each within a sphere coordinate and independent". In Professor B.O. Nwabueze's view "Federalism is an arrangement whereby powers of government within a country are shared between a national countrywide government in such a way that each exists as a government separately and independently from the other's operating directly on persons and property within its territorial area with a will of its own and its own apparatus for the conduct of its affairs and with an authority in some matters exclusive of all the others."

Finally, we are in agreement with a learned author who concluded that: "federalism is no doubt an expensive legalistic and abrasive system of government. No one would have it. If there is a feasible alternative what has been responsible for the enduring nature of federalism in Nigeria even under

<sup>1</sup> See Political Theory by V.D. Mahajan (4<sup>th</sup> ed., S. Chand and Company Limited 1988) 499-501.

<sup>2</sup> A. Ojo, Constitutional Law and Military Rule in Nigeria (Evans Brothers 1987) 243-244.

<sup>3</sup> Ibid., 171.

<sup>4</sup> See A. Jinadu, "A Note on the Theory of Federalism" in Readings on Federalism, ed. Dr. A.B. Akinvemi, et al. (Nigerian Institute of International Affairs 1979) 18.

<sup>5</sup> Ibid., 14-15.

<sup>6</sup> Ibid.

<sup>7</sup> B. O. Nwabueze, Federalism in Nigeria under the Presidential Constitution (Sweet and Maxwell 1982) 1.



military administration is that it was a system consciously adopted by Nigerians not as a matter of convenience but as a means of survival as a nation ...”

What is ethnicity? It is a social phenomenon associated with interactions among members of different ethnic groups. Ethnic groups are social formations distinguished by the communal character of their boundaries. The relevant communal factor may be language culture or both. In Africa language had clearly been the most crucial variable. As social formations however ethnic groups are not necessarily homogeneous entities even linguistically and culturally. Minor linguistic and cultural differences often exist within the group forming the basis for the delineation of sub-ethnic systems. More important still is the possibility of occupational and class differentiation. This is dependent on the level of production in the group. The level of growth of the productive forces and the consequent extent of the division of labour within the social formation. In this regard, different ethnic groups may have a similar pattern of social differentiation ... ethnicity is characterized by a common consciousness of being one in relation to the other relevant ethnic groups. This factor more than any other defines the boundary of the group that is relevant for understanding ethnicity at any historical point in time ... exclusiveness is an attribute of ethnicity. In group-out-group boundaries emerge with it and in time become marked more distinct than before and jealously guarded by the various ethnic groups. Acceptance and rejection on linguistic-cultural grounds characterizes social relations.

Ethnicity is a very complex phenomenon. Its complexity is not always adequately reflected in socio-political thought. The methodological difficulties of studying it may be traced to this complexity like any other social phenomenon ethnicity is not immutable: it alters its form, its place and its role in the life of society.

The point must be made that in Nigerian Constitutional history sensitivity to the ethnic structure of Nigeria started manifesting itself lately under 1951 Macpherson's Constitution when Mr. Oliver Lyttleton, the Secretary of

<sup>10</sup> Ojo, (n. 3) 184-185.

<sup>11</sup> Okwudiba Nnoli, *Ethnic Politics in Nigeria*, (Fourth Dimension Publishers Co. Limited 1978) 5- 8.

<sup>12</sup> *Ibid.* .8.

State for Colonies, had to make the following observation in 1953 that: "since it appeared impossible for Nigerians to work together effectively in a tightly knit federation, Her Majesty's Government had regretfully decided that Nigerian Constitution would have to be redrawn. It would therefore be necessary to provide for greater regional autonomy and for the removal of powers of intervention by the centre in matters which could without detriment to other regions be placed entirely within Regional competence."

The above consequently heralded the Lyttleton's Constitution of 1954 whereby the Regional Legislature has a high degree of legislative autonomy being able to make laws on subjects included in the "Regional" list and in the Concurrent List (in which a federal law could override the regional law). The Lyttleton Constitution contained two lists of legislative powers exercisable by the Federal and Regional Governments on subjects in the "concurrent" list. Both the Federal and Regional Legislatures could make laws with the provision that federal legislation could override Regional Legislation. This was "exclusive" list of powers which were exclusively for the federal legislature. All other powers lay with Regional legislatures. By leaving the residual powers with the regions the constitution greatly enhanced the standing of the regional legislatures and governments.

The above could be interpreted as a response to the observation by ELIAS, that it would seem that in attempting to forge unity the 1951 Constitution had established a too-closely knit system of government.

The issue must be appreciated that the Regions in the Nigerian federation has been structured unhappily upon the nucleus of a major tribe with a number of minority tribes clustered around it. Tension was inevitable in a majority-minority tribe structure because it entrenched the permanent control of the regional government by the majority tribe.

These regional minorities in Nigeria naturally felt they had no place in such an arrangement. Minority grievances and the agitation for the creation of more states constituted a major feature of Nigerian politics necessitating the appointment of the Minorities Commission in 1958 by the British.

<sup>23</sup> See J. Nnamdi Aduba and Sam Oguche in key issues in Nigerian Constitutional Law (Nigerian Institute of Advanced Legal Studies 2014) 84

<sup>24</sup> *Ibid.* 85.

<sup>25</sup> T.O. Elias, Nigeria: The Development of its Law and Constitution (Steven and Sons: 1967) 41.

<sup>26</sup> See Aduba and Oguche (n. 13) 92.



This was because according to the British Colonial Secretary he did not feel able before the conference concluded to accede to the request of the Nigerian political leaders for self-government in 1959 because a number of important issues remained unresolved. One was the question of how best to allay the fears of minority groups in each of the three regions who were demanding certain safeguards as a condition of giving their consent to independence for the whole country. The conference accordingly agreed that a Minorities Commission should be set up by the Secretary of State to take evidence in the field and report back to him ... Both the Minorities Commission and the Fiscal Commission after visiting Nigeria and taking oral evidence in various parts, duly reported respectively in May and July, 1958 and their recommendations were considered in detail by the Resumed Constitutional Conference held in Lancaster House London.

The chapter on Fundamental Rights and the Section on Allocation of Revenue in the Chapter on Finance in the Independence Constitution of 1960 were based upon the respective recommendations of the two Commissions.

Another means of allaying the fears of minorities which was agreed to, concerned the Nigeria Police. Contingents in the Regions were to be ordinarily subject to directions from the Regional authorities but in the last resort ultimate control was to rest with the federal government.

Commenting on the 1960 Independence Constitution Kalu Ezeru had this to say: "While minorities rejoiced at the provision for the creation of new states, it was the entrenchment of fundamental human rights in the Constitution that was their greatest victory".<sup>2</sup> It should be pointed out that the Constitution probably in an attempt to make room for centripetal forces contains some important deviations from this principle of co-ordinate relationship.

It was not until August, 1963 however that Mid-western Region was carved out of the Western Region after a referendum organized under the provisions of the Constitution Referendum Act 1962.<sup>3</sup>

<sup>2</sup> See Elias (n. 15) 44- 45.

<sup>3</sup> *Ibid.* 45.

<sup>4</sup> *Ibid.*

<sup>5</sup> Kalu Ezeru, *Constitutional Developments in Nigeria* (Cambridge University Press 1964) 268.

<sup>6</sup> *Ibid.*

<sup>7</sup> See Aduba and Oguche (n. 13) 92.

Professor Elias commenting on the 1946 Richards Constitution stated: "that among the remarkable features of that Constitution was the fact that the regionalization scheme was among other factors based on the fact that "... by frankly acknowledging the diversity of the cultures and peoples that made up Nigeria, it provided a central forum for the much needed dialogue between North and South."<sup>23</sup>

A civil war had to be fought. It cannot be doubted that one of the reasons for the session attempt by Eastern Region was the fear of domination by the Northern Region. It is interesting to read recently from the former Head of State General Yakubu Gowon (Rtd) who created the twelve state structure in an interview with the Guardian, he had the following to say in-response to a question.

"... was it not because of the fear of the political domination of the North? What took place showed certainly that it was to give the North authority and if you give the North authority using that to take over political control of the politics of the country which probably you could say the educated elite who were mostly from the South-West and the East. The Mid West was a new creation. Mine was to be able to deal with exact problem of the fear of domination especially political domination I hope people could recall too that there was also fear of economic and educational domination. There were also other areas but these three were the most prominent but the most serious was the political domination. So one had to try and the only way to allay fear was by creation of new states. There was also the fear of secession at that time. We tried as much as possible to be fair in the creation of those states. There was again the fear in the south that the North by size was nearly three quarters of the entire country and fear of domination by northern population too at that time. It took almost 50 per cent of the population of the country with that one you could discern the fear of southern politicians. In democracy, majority wins the vote. This of course means that

<sup>23</sup> See Elias (n. 15) 37.

<sup>24</sup> See generally Enefiana Ezeani, In Biafra Africa Died: The Diplomatic Plot (2<sup>nd</sup> ed., Veritas Lumen Publishers 2013).



the North would be in perpetual control through that particular system. So there was that fear that had to be removed and how could it be done? I believe in the Army, as far as I am concerned we are apolitical ...”<sup>6</sup>

One of the few top Northern civil servants Adamu Fika in a recent tribute to General Gowon at 80 said the following: “one of the reasons for the creation of the states was to constitutionally remove Calabar, Ogoja and Rivers provinces from Eastern Region, in accordance with the expressed desire and wishes of the people.”<sup>7</sup> This had been their wish for quite some time.

For all intents and purposes it was the 1979 Constitution that for the very first time in a Constitutional document took on the issue of the multi-ethnic nature of Nigeria in the governance of the country. This was done in the novel chapter two of 1979 Constitution named *fundamental objectives and directive principles of state policy*. In the report of the drafting committee, it said as follows: As the idea of writing provisions concerning Fundamental Objectives and Directive Principles of State Policy into the Constitution is completely new in this country. It is expedient to begin this part of our report with a definition of both terms. By fundamental objectives we refer to the identification of the ultimate objectives of the Nation whilst Directive Principles of State Policy indicate the paths which lead to those objectives. Fundamental objectives are ideals towards which the Nation is expected to strive whilst Directive Principles lay down the policies which are expected to be pursued in the efforts of the Nation to realize the national ideals.”<sup>8</sup>

The rationale for the chapter was that: “Governments in developing countries have tended to be pre-occupied with power and its material perquisites. Given the condition of under-development, power offers the opportunity of a lifetime to rise above the general poverty and squalor that pervade the society. It provides a rare opportunity to acquire wealth and prestige to be able to distribute benefits in the form of jobs contracts scholarships and gifts of money and so on to one’s relatives and political allies such as the pre-occupation with power and its material benefits that political ideals as to how

<sup>6</sup> Interview in The Guardian Monday October 20, 2014, 16.

<sup>7</sup> See Weekly Trust, Saturday October 25, 2014, 38 “Gowon: Celebrating a rare General at 80” by Adamu Fika.

<sup>8</sup> See detailed story of their struggles in Sir Udo Udoma History and the Law of the Constitution of Nigeria (Malthouse Press Limited 1994) 158-170.

<sup>9</sup> See Report of the Constitution Drafting Committee containing the Draft Constitution Vol. I, 1976. Fed. Ministry of Information Printing Division, Lagos. P.(v).

society can be organized and ruled to the best advantage of all hardly enter into the calculation.<sup>26</sup>

Another serious issue which the drafting committee was to confront after identifying Nigeria as a multi-ethnic society, was how to promote national loyalty in a multi-ethnic society. In finding solution to the above, it stated that "The text which was found acceptable to the majority of members reads as follows: The composition of the Federal Government or any of its agencies and in the conduct of their affairs shall be carried out in such manner as to recognize the federal character of Nigeria and the need to promote national unity and to command national loyalty. Accordingly, the predominance in that Government or in its agencies of persons from a few states or from a few ethnic or other sectional group shall be avoided . . . . The composition of a government other than the federal government or any of the agencies of such government and the conduct of their affairs shall be carried out in such manner as to recognize the nature and character of the peoples within their area of authority and the need to promote a sense of belonging and loyalty among all such peoples . . . ."

The term "federal character" was defined in section 210(1) of the Constitution as follows: "federal character of Nigeria" refers to the distinctive desire of the peoples of Nigeria to promote national unity, foster national loyalty and give every citizen of Nigeria a sense of belonging to the nation notwithstanding the diversities of ethnic origin, culture, language or religion which may exist and which it is their desire to nourish, harness to the enrichment of the Federal Republic of Nigeria. . . ."

Whilst credit must be given to 1979 and 1989 Constitutions as reflecting the "federal character" principles in its provisions the point remained that they were consigned to the provisions that were "non-justiceable". Besides no Commission was created to ensure compliance in case of breach. Despite the bad image that characterized Abacha's regime. It is to his credit that for the first time in our history. The principle of federal character was made not

<sup>26</sup> *Ibid.* p.(v) for detailed examination of the chapter. See B.O. Okere "Fundamental Objectives and Directive Principles of State Policy under the Nigerian Constitution in *The Nigerian Juridical Review*, Faculty Silver Jubilee Edition, 1978-1988, 74-85.

<sup>27</sup> See Report of Constitution Drafting Committee 1976 p.(viii)

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.* p.(x)

<sup>30</sup> *Ibid.*

<sup>31</sup> See A.N. Aniagolu, *The Making of the 1989 Constitution of Nigeria* (Spectrum Books Limited 1993).



only justiceable but a commission to implement the policy or protect infraction of the right was created."

Sadly whilst the 1999 Constitution retained the Commission its legal and justiceable nature was lost. The 1999 Constitution in Section 6(6)(c) states: The judicial powers rested in accordance with foregoing provisions of this section - (c) shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with fundamental objectives and Directive Principles of State Policy set out in Chapter II of this Constitution ..."

## CONCLUSION

In this work attempt was made after the preliminary definition of terms to trace the legislative efforts in addressing problems arising from the multi-ethnic nature of Nigerian Society issues ranging from distribution of power, creation of Region, States, federal character provision with the intention of ensuring equity in the distribution of government resources especially human resources. For now the non-justiceability of the federal character provision remains an open sore which must be treated for the overall health of the polity.

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<sup>1</sup> See Report of the Constitutional Conferences containing the Draft Constitution Vol 1, 1995. (xv).

<sup>2</sup> See also I.O. Smith, *The Constitution of the Federal Republic of Nigeria* (Ecowatch Publications Limited 1999) 17-19. See the provision of Section 147(3) which state as follows

<sup>3</sup> Any appointment under sub-section (2) of this section by the President shall be in conformity with the provisions of section 14(3) of this Constitution: Provided that in giving effect to the provisions aforesaid the President shall appoint at least one Minister from each state who shall be an indigene of such state.

<sup>4</sup> See criticism in Okwudibia Nnoli (n. 11) 268-275.