

RENOVATING THE ARCHITECTURE OF FEDERALISM IN NIGERIA: THE OPTION OF NON-CONSTITUTIONAL RENEWAL

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Introduction

Nigeria is arguably Africa's leading experiment in the building and remodeling of federalist institutions to manage the challenges of unity, democracy and development. Over the course of four-and-half decades of independent nationhood, including 30 years of military rule, the Nigerian federation has evolved from a colonial federal legacy that was based on three unwieldy component regions into a union of 36 states and 774 constitutionally entrenched localities. Yet, pressures for fundamental federal reforms have remained a persistent, intense and divisive feature of contemporary Nigerian politics.

Reflecting the influence of the constitutional reform movement in Nigeria, a National Political Reform Conference (NPRC), comprising some 400 nominees of President Olusegun Obasanjo and the 36 governors, is currently sitting in the country's capital city of Abuja. The latest of several official and unofficial constitutional reform initiatives, the NPRC is charged with forging a national consensus on a new constitutional blueprint for 'reinforcing the unity, cohesion, stability, security, progress, development and performance of the Nigerian federation' (Obasanjo 2005, 72). Yet, halfway into its proposed four-month tenure, the NPRC is already embroiled in the contradictions and divisions often associated with the politics of mega-constitutional change in deeply divided societies. Especially palpable is the increasing polarization of the Conference along a broad geo-political fault-line that pits putative southern Nigerian constitutional reformers against more pragmatic northern conservatives.

Although it emanates from real flaws in the operation of the federation, the preoccupation of influential segments of the Nigerian political elite with constitutional change is not only regionally divisive but also potentially politically unproductive. In

addition, it tends to trivialize both the real achievements of the country's current federal arrangements and the immense opportunities for the *non-constitutional* renewal and reform of those arrangements.

The Genius of Nigerian Federalism

For all its tribulations and failures, Nigeria must be acknowledged as a relative political success in avoiding the tragedy of state collapse or large-scale internal insurgency that has recently convulsed other African states like the Democratic Republic of Congo, Somalia, Sudan, Burundi, Liberia, Sierra Leone and Cote d'Ivoire. This outcome is largely reflective of the genius of Nigerian federalism in curbing ethnic domination, dispersing or decentralizing sectional conflicts, promoting inter-regional revenue redistribution, fostering inter-ethnic integration, and generally defusing and subduing the combustible pressures inherent in the country's ethnolinguistic, regional and religious fragmentation. Indeed, the Nigerian federation has significantly attained most of the ends and mechanisms that students of institutional design in divided societies associate with the effective federalist management of ethnic conflict (Horowitz 1985, Young 1976). These include:

- The compartmentalization and decentralization of ethnic conflicts in separate multiple sub-federal arenas, thereby reducing the capacity of such conflicts to destabilize or polarize the entire federation. In spite of the unfortunate bloodletting it initially generated (mainly confined to Kaduna state), the crisis over the implementation of Islamic Sharia law in the Muslim north has been largely contained through the workings of a complex federal structure. This has allowed 12 Muslim-majority states to implement *different* versions of Sharia law without threatening the religious neutrality of the federal government or the cultural autonomy of the non-Sharia states.
- The fragmentation and relegation of each of the three potentially hegemonic and/or secessionist nationalities of Hausa-Fulani, Ibo and Yoruba into several sub-federal states, none of which can dominate or destabilize the federation.
- The establishment of several more or less culturally heterogeneous or multi-ethnic minority-populated states, thereby promoting the political accommodation and empowerment of Nigeria's smaller non-Hausa/Fulani, non-Ibo and non-Yoruba ethnic groups.

- The ingenious use of the federation's internal boundaries to partially crosscut Nigeria's combustible ethnic fault-lines through the creation of a multiplicity of *sub-ethnic* and *multi-ethnic*, rather than purely *ethnic*, constituent states.
- The implementation of inter-regional economic distribution through the devolution of centrally collected oil revenues to the states and localities on the basis of inter-unit equality, relative population, and other ostensibly equity-oriented distributive principles. At the same time, the revenue sharing system has sought to accommodate the special needs and claims of the oil-bearing states in the Niger Delta region. This accommodation has involved: (i) the constitutional reassignment of at least 13 percent of centrally collected oil/gas revenues to the oil-bearing states on a derivation basis, and; (ii) the establishment of a centrally coordinated Niger Delta Development Commission (NDDC) to respond directly to the ecological and developmental problems of the oil-producing communities.
- The promotion of equitable inter-ethnic political integration through the constitutional requirement that the composition and conduct of public institutions at federal, state and local levels reflect the 'federal character' or diversity of constituents at each level. A particularly innovative aspect of the federal character principle is the constitutional requirement that, to be elected, the federal president must obtain at least a quarter of the votes in two-thirds of the states, plus a plurality of votes nationally. In addition, the federal character principle has spawned a vast repertoire of formal and informal consociational practices that seek to distribute, balance and rotate the federal presidency and other major public offices among the country's diverse ethnic, religious, regional and geo-political zones or constituencies.

These mechanisms clearly establish Nigeria as a leader and innovator in the building of institutions of inter-ethnic accommodation and conflict management (cf. Joseph 2003, 166). What then is the basis of the country's present constitutional conundrums?

The Pathologies of Nigerian Federalism and the Quest for Constitutional Change

The virtual reduction of the federal system into a conduit for the dissemination of centrally collected oil revenues to sub-national communities and constituencies is Nigeria's basic political pathology. This oil-centric distributive federalism, in which all governments in the federation (federal, state and local) derive an average 80 percent of

their budgets from a common national pool of oil revenues (the Federation Account), has fuelled the worst pathologies of Nigerian politics:

- Although it endows the sub-national governments with considerable powers of patronage, the system of centralized revenue sharing ultimately negates the development of the multiplicity of points of political and economic power that is a defining feature of democratic federalism. Given Nigeria's diversity, this economic and political centralization has engendered considerable frustration and a centrifugal backlash.
- Given the concentration of resources and real powers at the center, the competition for the control of the federal government has tended to be vicious, corrupt, and politically and ethnically explosive. Despite the imaginative elaboration of various consociational power-sharing strategies, Nigeria's ethnic and regional groups feel they must control the federal government or the presidency in order to feel secure or thrive. This produces an excessive and unhealthy obsession with the sectional provenance, rather than political competence or programs, of presidential candidates.
- The fiscal dependence of all governments in the federation on the redistribution of unearned oil rents destroys the nexus between expenditure authority and revenue raising responsibility, which is a cardinal axiom of accountability and efficiency in fiscal federalism. This has promoted truly monumental levels of political corruption and economic inefficiency at all tiers of the Nigerian federal system.
- Pervasive political corruption has nudged the federation towards economic bankruptcy, stagnation, instability and chaos. This intensifies inter-group contention, social frustrations, political violence and the recruitment of economically disillusioned youths into militant and chauvinistic social movements (the ethnic militias or vigilantes).
- The perverse political consequences of Nigeria's over-centralized and corrupt fiscal federalism have been most evident in the syndrome of youth militancy, state violence, and anarchy in the oil-rich Niger Delta, 'from which much has been taken but little has been returned, except environmental disaster, economic destitution, and political repression' (Diamond 2001, xv).

- A final liability of the Nigerian federation's fiscal centralism is the inducement it has provided for the proliferation of new units of centrally funded constituent state and local governments as an easy avenue by communities to national resources. This not only abets the process of hyper-centralization, but also fuels inter-group rivalries over new boundaries as well as conflicts between new groups of 'state indigenes' (defined constitutionally not in terms of residence or even birth place but of ancestor's place of origin) and non-indigenes.

These multiple pathologies of Nigerian federalism have largely animated the clamor for: (i) a Sovereign National Conference (SNC) of ethnic nationalities and other civil society groups to restructure or amicably dissolve the federation, and/or; (ii) the rewriting, revision or amendment of the current 1999 Nigerian Constitution to create a more decentralized federation. Yet, both the SNC and constitutional review are problematic and complicated options in Nigeria for several reasons.

The SNC model originally evolved in the 1990s in Benin and other French-speaking African countries as a strategy for effecting the displacement of dictatorial regimes by diverse coalitions within civil society. The SNC is, therefore, inappropriate for a country like Nigeria, where some formally democratic institutions already exist. Given the multi-layered fluidity of ethnic boundaries in the country, proponents of the SNC have also failed to fashion generally acceptable guidelines for selecting the ethnic and other delegates to the conference. Finally, suggestions that the SNC would revisit the viability and modalities of Nigerian unity have often evoked suspicion and antipathy in a country where a million lives were lost in the 1967-70 civil war of national unity, and where some 75 percent of the population would not contemplate the dismemberment of the country (Lewis, Bratton, Alemika and Smith 2001, 45-46).

Proposals to rewrite the constitution to create a more decentralized and consociational federation are equally problematic. The proposed constitutional changes include: the restriction of chief executives to single 5-6 year terms (in order to accelerate the inter-group rotation of power and discourage electoral fraud by incumbents); the consolidation of the current states into larger regional units; and the incorporation of new constitutional provisions for effective sub-national control of policing, natural resources, the judicature, land, and local government.

Yet, there is hardly a strong national consensus behind many of the proposed constitutional changes in Nigeria. The politically dominant north, in particular, has been unenthusiastic about proposals for radical decentralization, given the heavy dependence of the region on the redistribution of oil revenues derived from the Niger Delta in the south. What is more, some of the more widely supported constitutional reform proposals, such as single-terms for political executives, are unlikely to advance the cause of good, democratic, transparent governance in the country. Meanwhile, any amendment to the Nigerian Constitution will generally require the endorsement of a two-thirds majority of the total membership of each house of the bicameral National Assembly, or a four-fifths majority if the amendment relates to the fully entrenched clauses on fundamental human rights, the rules for altering the boundaries of the federation, and the constitutional amending procedure itself. In addition, all constitutional amendments would require the supporting resolution of the unicameral legislative houses in two-thirds of the states. This appears to be a tall order indeed given the conflicts and divisions associated with the constitutional reform movement in Nigeria. As we have seen, the NPRC, which is supposed to generate consensus for constitutional change, is itself a deeply divided body. What is more, no relationship or accommodation has developed between the NPRC and the critically important National Assembly, which has actually opposed the establishment of the conference.

The Option of Non-Constitutional Renewal

Short of a successful initiative by Nigeria's current leaders to mobilize national consensus behind positive constitutional change, or a democratic breakdown that would lead to a fresh round of constitutional review under military auspices, the country's best hope for political reform lies in working pragmatically but creatively through the current institutional framework to promote non-constitutional renewal. As it has developed in the Canadian context, following two failed attempts during 1987-92 at mega-constitutional change, the idea of non-constitutional renewal assumes that a troubled federation 'has the capacity to adapt to changing needs and evolving circumstances regardless of the difficulty in implementing constitutional amendments' (Lazar 1998, 3-4).

Although it has not been explicitly articulated in Nigeria, the strategy of pragmatic, piecemeal, non-constitutional renewal has been implicit in several political developments in the country since the restoration of civilian rule in 1999. These include:

- The bold, balanced, and broadly anti-centralist jurisprudence of the independent Supreme Court as it has arbitrated a series of constitutional or federal-state disputes over revenue allocation, local government, anti-corruption legislation, urban planning, and party registration.
- The enactment of the on-shore/off-shore oil dichotomy abrogation law in 2004. This underscored the possibilities for a political and legislative, rather than constitutional or narrowly legalistic, resolution of the persistent clamor for resource control in the Niger Delta.
- The proposed new national revenue allocation law which, if imaginatively crafted, can go beyond merely devolving more oil revenues to sub-national governments. Rather, the law can include provisions for promoting efficiency, transparency and accountability in the utilization of revenues at all levels of the federal administrative system.
- The proposed Fiscal Responsibility Act, which has been initiated by the reformist federal minister of finance, Ngozi Okonjo-Iweala. This law is designed to address ‘the culture of inconsistency, indiscipline, waste and corruption’ in Nigeria’s public finance by committing all tiers of government to effective, disciplined and coordinated budgetary planning, implementation and reporting; by institutionalizing a stabilization strategy for saving, managing and investing windfall oil revenues; and by establishing high standards of financial disclosure and public access to comprehensive information on government finances (Okonjo-Iweala 2004, 61).
- The relatively peaceful, although deeply flawed, conduct of the 2003 elections. In producing a significant turnover in the composition of the national legislature and sub-national governments, these elections underscored the potential role that democratic electoral politics can play in mediating the federal process and forging a dynamic balance between the forces of centralization and decentralization.

Yet, the considerable fraud that characterized the 2003 elections also underscored what is perhaps Nigeria’s only real constitutional deficiency. This is the absence, outside of the

Supreme Court, of truly constitutionally autonomous oversight agencies (electoral commissions, anti-corruption bodies, etc) that can check and balance the exercise of political power, lessen the scope for corrupt behavior, and reduce the ethnopolitical stakes in winning political office.

Conclusion

Nigeria's post-civil war federalism has functioned remarkably well to prevent state disintegration or a recurrence of large-scale, systematic, or sustained, ethno-secessionist violence. At the same time, the federal system is implicated in the proliferation of sporadic lower-scale communal conflicts, the misallocation of billions of dollars in oil revenues, and the persistent agitation and disillusionment about the country's political future. Yet, ongoing pressures and proposals for mega-constitutional change not only tend to trivialize Nigeria's real achievements in federalist institution-building, but also to unnecessarily polarize the federation along geo-political lines, while promising very little in the delivery of concrete governance reforms. In that context, concerted intellectual and civil society support for non-constitutional renewal strongly recommends itself as a strategy for reforming Nigeria's federal institutions to better serve the country's aspirations not only for national unity, but also for robust democratic developmental governance.

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