

A Differentiating Factor between Unitarism and Federalism: Police Powers and National Security in Nigeria

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Abstract

Underpinning the philosophy of governments (whatever their types – constitutional monarchy, democracy etc) are the provision of ‘good life’ and maintenance of law and order, the absence of which is a relapse into ‘the state of nature’. This therefore presupposes that government does not only fork itself into various institutions, each constitutionally charged with specific functions directly stemming from the foregoing but also that government institutionalizes power-“sharing” framework stating how, where and when these institutions should and will function; hence, the philosophy behind adoption of either a unitary or federal system by states the world over. Premising its argument on these phenomena and reviewing necessary literature for easy contribution to the on-going debate on police power in Nigeria, the paper relies on documentary method of study. It argues that police organization or control does not only strike a difference between unitarism and federalism but also the difference has significant implications on the Nigerian national security. The paper concludes by stressing that effective policing or effective maintenance of law and order in an ethno-culturally heterogeneous and “federal” state like Nigeria requires that its components’ chief security officers are so not only in theory but also essentially in praxis; and to this end, argues for a decentralized police force.

Key words: federalism, unitarism, police power, colonialism, national security.

1. Introduction

From the etymology of government, it is easily discernible that its (government) various institutions are put in place to ensure *good life* and forestall any relapse into a situation where life is brutish, solitary, nasty and short. Observers of the Nigerian state of security will easily find it very disturbing that despite the fact that the police responsibilities of maintaining public peace, safety and general security of Nigerians within its boundaries are constitutionally stipulated, the spate of insecurity in Nigeria, most especially since the return of democracy in 1999, can pass for a *State of Nature*.

Events of insecurity in well over a decade of democratic dispensation and the present bombing and killing of Nigerians by the sect, *Boko Haram*, confirm a total breakdown of public order and security in the country. The police has not been useful or helpful in promoting its own image before the general public as there were persistent cases of violent robbery, inter-ethnic conflicts religious crises, extra-judicial killings by security agents, political assassinations. These constitute major internal threats to public order, maintenance of peace and security. Mostly, these are blamed on the ineptitude and inefficiency in the performance of police statutory duties. The civil society as a result tends to find solace in ethnic militias and other ‘self-help’ security outfits to provide the much-needed security for their lives and property (Ajayi and Aderinto, 2008).

However, what succinctly are the objectives of this study? Since Nigeria’s renewed attempt at democratic polity 1999 (and) with enthusiasm comparable to the mood in the country on the eve of national independence in 1960 (Aina 2004), the issue of a balanced federal structure that guarantees atmosphere for the full realization of the diverse potentials of the federating units, has dominated political discourses. The current federal structure seems to lack the capacity to place some control on extreme centripetal forces (police power inclusive) which consequently make our federalism too limiting and constricting to the federating states. The study therefore revolves around two primary objectives. The first is to investigate the problem/situation of police power in a

federal bargain where the federating units did not create the federal/central government. And the second attempts a fresh and different investigation into the nature of police organization as one of the differentiating factors between federalism and unitarism.

Given the Nigerian present state of insecurity and the seeming incapacitation of the law enforcement agencies (especially the police), to restore normalcy, the following hypothetical statements are inferred directly from the objectives: (1) In a federal bargain where police power is centralized, the state governors are chief security officers only in theory not in practice. (2) In a federation, police power is usually a shared power, occasionally concurrent or joint, but actually federal. (3) The more centralized the formation of police organization a federation adopts, the less federal the political organization ends up being. We should note that the above hypotheses are not formulated to be tested in any quantitative method. Be that as it may, they are designed to further buttress the central theme of the study and to help structure the study's contribution to existing knowledge on federal bargain and police power.

2. Theoretical Framework

Theories are required in every academic discipline in order to have guided research, and to provide foundations for analyses. Theory is "systemic reflection on phenomena, designed to explain them and to show how they are related to each other in a meaningful, intelligent pattern, instead of being merely random items in an incoherent universe" (Dougherty and Pfaltzgraff, 2004:17). Thus, as a basis for explanation, the study adopted General Systems Theory. We must note at once that systems analysis, though notable today in Political Science, does not originate from the discipline. Taking root from the writings of Ludwig Von Bertalanffy (a Biologist), it has taken analytical excursions through Anthropology, Sociology to Political Science. A system as conceived by Osaghae (1988) "is an abstract constructed to represent what goes on in real world for purposes of analysis". He noted further that for any system to be called system, it must have five major characteristics of systems:

- a. A system is made of parts.
- b. Each of these parts performs important functions which sustain the system and ensures its survival.
- c. The parts interact, that is, they have patterned relationships.
- d. The parts are interdependent, meaning that what happens in one part directly or indirectly affects the other parts.
- e. A system has boundaries which may either be concrete or abstract.

The relevance of the systems theory to our study stems directly from the fact that systems "emphasize relationships and not individuals" (Olaniyi, 2001:70). Given the fact that systems analysis is relationship oriented, it can aptly explain Federal-State relations that we undertake in this study. The Federal-States relations as far as police control is concerned, are such of stress. They have made demands for security (which is of course the pivotal contractual role of government) stemming, at once, from decentralization of police power, imperative. For the Nigerian federal system to attain harmony, integration and equilibrium within its boundaries, police power must not be *centripetal*, but rather diffused into federating states' controlled police.

3. Issue-Specific Conceptualization of Federalism

The central issue, which this work seeks to examine, is the issue of location of police powers in federal systems. However, an attempt must be made first to conceptualize the nature of federalism before situating police powers in it. Federalism is a process and practical means of organizing political powers in territorially delineated and ethno-culturally heterogeneous entities. To Suberu (1989), the territorial, as distinct from non-spatial-dimension to power dispersion is widely regarded as the key feature of the federal bargain and it is usually accompanied by a number of constitutional attributes and institutional devices. Arend Lijphart (1981), as quoted by Suberu (1989) has identified five of these:

- i. *A written constitution which specifies the division of power and guarantees to both the central and regional governments that their allotted powers cannot be taken away;*
- ii. *A bicameral legislature in which one chamber represents the people at large, and the other, the component units of the federation;*
- iii. *Over-representation of the smaller component units in the federal, chamber of the bicameral legislature.*
- iv. *The right of the component units to be involved in the process of amending the federal constitution and to change their own constitutions unilaterally*
- v. *Decentralization government in which the regional governments' share of power is relatively large compared with that of regional governments in unitary states.*

Federalism is generally regarded - with justification - as the most deliberate, purposive and delicate system of government. This is because in contrast with unitary systems, federalism is a goal oriented 'man-made' device,

which entails carefully designed, constitutional crafting and unique instrumentalities (Osaghae 2006). Paramount to the federal studies, therefore, is the careful examination of the conditions that precipitate the adoption of federal systems as against the unitary systems; how powers are shared, the extent to which the “federalness” (non-centralization) Elazar 1981, as quoted by Suberu (1989), is constitutionally clearly stipulated.

To this extent, what broadly distinguishes federal systems from unitary systems is that legislative power rests with the central government in a unitary system, but is divided and shared between the different levels of government in a federal system. The division of powers in a federal system is generally governed by a constitution. In a federal system of government, sovereignty is shared and powers divided between two or more levels of government each of which enjoys a direct relationship with the people.

4. Police powers and Federal Systems

We next turn to police powers. Police organization is normally used to differentiate between decentralizing (unitary) and non-centralizing (federal) systems. A common feature to both unitary and federal systems is a centralized military whose origin, formation and function(s) are premised on state’s monopoly of the use of force. However, in a non-centralized political system, police power is so diffused that it cannot be legitimately centralized or concentrated without breaking the constitution of federation. The variation to the above is as Ayoade (1996) observes that in a federation under military rule, the Center is independent of, and superior to, the states. Federations under elective civilian administrations are different because the Center is linked to the constituent states and co-equal to them in their respective sphere of authority.

However, to understand the sources of police powers, the allocation of jurisdiction, and administration of justice, we must have some understanding of the federal systems under which it operates. This is because not all systems that claim to be operating federalism are federal in the real sense of the concept, especially when the issue of police powers is brought to the fore. Police power, in an ideal federalism, is usually a shared power, occasionally concurrent or joint, but really federal. The more centralized the formation of police organization a federation adopts, the less federal the political organization ends up being. The corollary to the above, where we have a constitutionally established unitary state that decentralizes its police organization, the tendency is for such a state to run what is close to genuinely federal political arrangement. Federalism generally, refers to a government with at least two layers of government so that they can check and balance each other out. In this manner, no one level becomes too powerful. To underscore the foregoing, brief instances are cited from Canada, Australia and the United States of America.

The administration of policing in Canada is diffused because it involves three levels of governments. The federal government, as empowered by the constitution, has established a federal police force, the RCMP, which has jurisdiction over all federal laws throughout each province and territory of Canada. While each of the provinces has the power to establish their respective provincial police forces, only the province of Ontario and Quebec have exercised that right. The other provinces have opted to contract with the federal government through various provincial attorneys general. The eight provinces pay a fee to “rent” the services of RCMP to enforce the criminal code, the provincial statutes, and the municipal laws. (Walma and West 2002).

Also, Australia has a national police force - the Australian Federal Police – that investigates offences against federal law. All states of Australia and the Northern territory have their own police forces that deal with crime under state or territory laws. (<http://www.dfat.gov.au/facts/legal-system.htm>). The United States of America’s Constitution ensures that all the levels of government establish their separate police forces with the federal police enforcing the federal law, and regulating the rates charged by public service corporations. (<http://www.history.com/encyclopedia.do>).

5. Police Power in the Nigerian Federalism

Federalism in Nigeria has come under a great deal of scrutiny by Nigerian political scientists, scholars of allied disciplines as well as non-Nigerians alike, because Nigeria’s federalism (apart from its experimentation of it from 1954 and 1966) is nowhere near anything federalism both in theory and practice. “A federation often regarded as a sovereign state formed voluntarily by the union of a number of states/provinces or political units which retain for themselves control over local matters, never really existed in Nigeria” (Ogban-Iyam, 1998:57). The driving force of federalism, where it is both in theory and practice like the United States of America, Canada, Australia, is that “the federal government did not create the states; the state created the federal government” (Amuwo, 1998: 6), but this is not the case with Nigeria’s federalism.

Police organization in Nigeria is antithetical to the principle of federalism. This phenomenon forks its root into the country’s colonial past and the nature of government and politics since independence. First, The Nigeria Police Force, most of the colonial era, served as a centralized paramilitary organization of the colonial masters

and also as a civilian outfit for peace and order maintenance in the colony of Nigeria. Ekeh (2004:24) observed that:

Up until the 1950s, the Nigeria Police Force had served as both a paramilitary of arm colonial rule and as a civilian outfit in the administration of peace in colonial Nigeria. It had emerged from the British West African Frontier Force formed in 1897 in an attempt to compel compliance with British colonial interests in various communities in West Africa. In addition to the Nigeria Police Force, Native Authorities, either on a provincial level or at a district level of colonial administration, had their own police formations in Northern Nigeria and Western Nigeria, while the Eastern Nigeria had only the Nigeria Police Force. Second, the minorities' fear of domination and intimidation aborted the negotiations and debates that would have engendered regionalization of the police organization the periods leading up Nigeria's independence. As noted: In the debates and negotiations that accompanied the Constitutional restructuring of Nigeria in the 1950s, all the majority ethnic groups argued for regionalization of the police. This would be a radical departure from previous times in which the Nigerian Police had a unified command. But all three regions of the North, East, and the West, there was a common strong opposition from the minority ethnic groups who feared that the police under regional control would become a tool for oppressing them, as indeed the Native Authority police units had been so employed in Northern and Western Nigeria. In the end, the conservative and self-protecting position of the minorities was adopted; although there was an understanding that regional government would have an input in the leadership of the Nigeria Police Force in their territory.

It is not surprising that the centrality of the control of Police Organization in Nigeria is basically constitutional. This is in spite of whatever sentiment anyone may express. For instance, provisions in section 214 to 216 are to the effect that the establishment of the Nigeria Police, appointments of its key personnel and control are centrally supervised. Section 215 particularly, states in sub-section 1 that there shall be:-

- a) An Inspector-General of Police who, subject to Subsection 216 (2) of this constitution shall be appointed by President on the advice of the Nigeria Police Council from among serving members of the Nigeria Police Force;
- b) A Commissioner of Police for each state of the Federation who shall be appointed by the Police Service Commission.

Sub-Section 2 states that: "The Nigeria Police force shall be under the command of the Inspector-General of Police and contingents of the Nigeria Police Force stationed in a state shall, subject to the authority of Inspector-general of Police, be under the command of the Commissioner of Police of that state."

Sub-section 3 stipulates that: "The President or such other Minister of the Government of the Federation as he may be authorized in that behalf, may give to the Inspector-General of Police such lawful directions with respect to the maintenance and securing public safety and public order as he may consider necessary, and the Inspector-General of Police shall comply with those directions or cause them to be complied with."

Subsection 4 provides: "Subject to the provisions of this section, the Governor of a state or such Commissioner of the Government state as he may authorize in that behalf, may give to the Commissioner of Police of that state such lawful directions with respect to the maintenance and securing of public safety and public order within the state as he may consider necessary, and the Commissioner of Police shall comply with those directions or cause them to be complied with: Provided that before carrying out any such directions under the foregoing provisions of this subsection the Commissioner of Police may request that the matter be referred to the President or such Minister of the Government of the Federation as may be authorized in that behalf by the President for his directions."

Sub-Section 5 provides that: "The question whether any, and if so what, directions have been given under this section shall not be inquired into any court."

The implications of the foregoing are captured succinctly in The Nation news paper of Tuesday, March 16, 2010. Deducing from its account, it becomes clear that, given the provisions cited above, state governors are chief security officers only in theory not in practice. They only carry this appellation in vain as they lack the powers to direct the deployment of police when the need arises, without the consent of the central authority. Also, the centrality of police organization results in shortage in distribution of security personnel against the strength of the nation's population.

Contemporary security challenges, especially, regionally orchestrated crimes like kidnapping, robbery and terrorism by *inter alia* the dreaded Islamic sect – *boko haram*, has stole its way into the ongoing deliberation for the review of the Nigerian Constitution, as well, resurrected the debate for the strengthening of the federal system with regards to 'state police', proponents of state police has argued that it would go a long way into

tackling crimes that are neighborhood oriented, more so, when most of this crimes has certain regional peculiarities – making the Executive Governors of the states to be in practice the Chief Security Officer of their states. This is an argument that stem from the fact that national cohesion is in doubt among the diverse ethnic groups of Nigeria; which axiomatically houses monumental paradoxes. For instance the immediate post independence case is easily referred to substantiate the need to strangle the debate for state police. Argument in this regard (against state police) is that due to lack of national cohesion also, that the regional *powerfuls* will brandish the availability of state police to strangle national/central drives which they feel at odd to. There is also a fiscal perspective to it, arguing that the cost of maintaining the state police is a burden that most states in Nigeria are not equal to. What makes these arguments novel is that even most state governors who ought to be the protagonist of the state police creation debate have found reasons to antagonize the stance. In all the state police debate in Nigeria is wobbled in the following mix; diversity burden and lack of national cohesion, self-rule, dominion mandate mentality, fallacy of financial burden, defective states nearly incapacitated without central government rescue.

6. Concluding Remark

Students of ethno-culturally heterogeneous countries are aware that federalism, properly so called, is only adequately capable of managing diversity and secure the federating people when the autonomy (by autonomy we mean the power of the states to enforce law and secure their people by their police force) of the federating units are ensured. Also, since Nigeria's return to democracy on May 29, 1999, the polity has been through series of ethno-religious and politically motivated killings crises that wantonly claimed lives but which could have been nipped in the bud had the state Governors been made constitutionally chief security officers not only in theory but in practice. Our study also argues that a decentralized police force is one of the claims Nigeria can lay to its being called a "Federal Republic"; and that law and order maintenance and security of the Nigerian populace may only be effective when police organization is not *centripetal*. In the final analysis, and simply put also, if a federation does not have non-centralising police power, such cannot make claim to federalism as a system of government in power sharing formula.

References

- Aina, A. D. (2004). "Party and Electoral Politics" in A. A. B. Agbaje, L. Diamond and E. Onwudiwe (eds.) *Nigeria's Struggle for Democracy and Good Governance*. Ibadan: University Press.
- Amuwo, K. (1998) "Federal Systems: A Theoretical Perspective" in Babawale, T., Olufemi, K., and Adewumi, F. (ed) (1998) *Re-inventing Federalism in Nigeria: Issues and Perspectives*. Lagos: Friederich Ebert Foundation.
- Ayoade, J. A. A. (1996) "The Changing Structure of Nigerian Federalism" in Elaigwu, J. I. and Akindele, R. A. (ed) *Foundations of Nigerian Federalism 1960-1995*. Abuja: National Council on Intergovernmental Relations.
- Dougherty, J. E. and Pfaltzgraff, R. L., JR. (2004) *Contending Theories of International Relations* (Fifth Edition).
- Ekeh, P. P. (2004), "Minorities and the Evolution of Federalism" in Agbaje, A. A. B., Diamond, L. and Onwudiwe (ed) *Nigeria's Struggle for Democracy and Good Governance*. Ibadan: Ibadan University Press.
- <http://www.dfat.gov.au/facts/legal-system.htm>
- <http://www.history.com/encyclopedia.do>
- Ogban-Iyam, O (1998) "Federalism in Nigeria: Past, Present and Future" in Babawale, T., Olufemi, K., and Adewumi, F. (ed) (1998) *Re-inventing Federalism in Nigeria: Issues and Perspectives*. Lagos: Friederich Ebert Foundation.
- Olaniyi, J. O. (2001) *Introduction to Contemporary Political Analysis*. Lagos: Fapsony Nigeria Limited.
- Osaghae, E. (1988) *Political Analysis*. Ibadan: Department of Universal Adult Education.
- Osaghae, E.E. *Federalism and Political Accommodation: "Nigerian Experience in Comparative Perspective"* (Nigerian Institute of Social and Economic Research (NISER) Ibadan, Lecture Series No.1 2006) 4. Publications)
- Suberu, R. T. "Federalism and Political Instability: A Nigerian Case Study, 1979-1983" (PhDdiss. University of Ibadan, 1989) 6-7
- The Nation, March 16, 2010.
- Walma, M.W. & West, L. (2002) *Police Powers and Procedures*, Canada: Ermond Montgomery
- Ajayi, J. O. and Derinto, A. A. (2008), *The Nigerian Police and Crime Control in Lagos Metropolis*. *African Journal for the Psychological Study of Social Issues*, Vol. 11

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