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ABSTRACT

From the late 1940s to the present Nigeria has negotiated various constitutional arrangements with a view to meeting group claims to difference and equality. The dissertation identifies and evaluates the arrangements using principles derived from the theoretical arguments of Michael Walzer, Charles Taylor and Will Kymlicka, and prescriptions drawn from the empirical arguments of Donald Horowitz, Donald Rothchild, Crawford Young and Eric Nordlinger. It offers a detailed account of the constitutional devices that have been used to accommodate ethnic difference and evaluates them in light of the normative and empirical arguments.

The evaluation reveals that some of the arrangements were morally defensible in the very circumstances in which they were negotiated, but were either not deep enough to make for adequate political inclusion or were not combined with some strategies that would have minimised problems of group proliferation and institutional instability. There were some that either generated tension among groups or were driven by strategic considerations for power, but were morally defensible. There were others that were pragmatic at the very period they were negotiated, but not morally defensible.

The most important theoretical claim of the dissertation is that, where there are multiple non-immigrant groups in a country, as in the case of Nigeria, constitutional structures that express difference have the prospect of generating social instability. However, structures that deny difference promise intense conflict and lesser stability than those that give it recognition do. Thus, recognition does not generate fundamental tension between justice and stability; rather recognition has to be carefully worked out to ensure unity between justice and stability.
ACKNOWLEDGEMENTS

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I would like to acknowledge the Centre for Advanced Social Science, Port Harcourt, my institutional base in Nigeria while I was on field research. Its staff offered a lot of assistance searching for, and photocopying, relevant documents. The Staff of the National Assembly Archives, Abuja, and of the National Archives, Ibadan, all in Nigeria, were generous in digging out and photocopying baskets of documents on colonial and modern day Nigeria constitutional debates. I thank them all.
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CHAPTER ONE
INTRODUCTION

PROBLEM DEFINITION

In what ways, if at all, should political institutions in Nigeria try to recognise and accommodate ethnic difference? This is the central question the dissertation addresses. The question is informed by the persistence of ethnic conflict in Nigeria, a country whose history has been characterised by a cycle of instability and constitutional debates aimed at devising strategies for coping with diversity and reducing conflict.

To date, no fewer than four constitutional approaches have been adopted at different historical periods. The first, spanning the 1940s through the 1957/58 Willink Commission, was the result of series of debates held in Nigeria and Britain. It involved recognition of the three most numerous ethnic groups through the division of the country into three political regions and constitutional arrangements for a federal system, but denied recognition to several other smaller groups despite their expressed fears of domination. A second approach, spanning the early 1960s through 1969, paid more attention to difference. It adopted a quota system for appointment into national bodies and re-divided the country into twelve states to take account of smaller groups that were previously denied recognition under the contingencies of Biafra’s attempted secession and civil war.

After the civil war, a new set of constitutional debates and government inquiries produced yet another approach. This third approach, beginning from the-mid 1970s through the early 1980s, involved the adoption of a “federal character” strategy. It
consisted of two elements: one was a further division of the country into a greater number of states to take account of ethnic ties (without explicitly acknowledging ethnic recognition as the purpose of the formation of new states). The other was a requirement that the composition of national bodies reflect constituent states of the federation which were assumed to be synonymous with ethnicity and that election to the highest offices of state be based on a plurality of votes. The strategy proved inadequate as federal power remained under the firm control of one ethnic region and the re-emergence and consolidation of military dictatorship further froze the control.

The mid-1980s marked the beginning of yet another set of debates and negotiations that have continued to the present. It yielded a fourth approach that was largely a revision of the “federal character” strategy of the 1970s. The revision involved further division of the country into a greater number of states and local government units to reflect ethnicity more adequately. It also involved an agreement on proportional representation of parties (assumed to reflect ethno-regional interest) in the executive cabinet and on the rotation of the highest offices of state among ethnic regions. However, these innovations seemed to have been compromised by the perpetuation of military rule controlled by people from the Moslem north.

In sum, there has been a cycle of political instability and mutable constitutional strategies for coping with ethnic diversity. This recurring cycle cannot be disconnected from the problem of justice, that is, the failure to design arrangements that adequately reflect reasonable claims and interests of groups. This dissertation critically evaluates key debates in Nigeria from the immediate post-World War II period to the present over the
question of how ethnic claims ought or ought not to be reflected in political arrangements. The debates are grouped into four historical sets in terms of the issues that were at stake and the constitutional approach that was adopted. Competing group claims advanced in each set are evaluated for their normative importance, while taking account of their strategic character. The constitutional arrangements adopted in response are then evaluated for their desirability and fairness, given the normative importance of the claims and in light of the requirements of justice. If they were not fair and desirable, alternative approaches that were feasible under the same circumstances are considered.

FORMS OF GROUP RECOGNITION IN NIGERIA

There are specific devices Nigeria has used within its constitutional approaches to accommodate conflicting group interests. I identify five.

The first device is the creation of states and the equitable distribution of national revenue among them. State boundaries followed ethnic groups very closely with the effect that the latter were granted state status, and the distribution of resources from the center to the states was a distribution of resources to groups.

The second device is the distribution of positions within federal institutions among states. With this device, appointment and recruitment into national institutions were made to reflect the component states. The overall goal was to avoid dominance of national institutions by a few groups. In the 1960s the device was used in the form of quota system of appointment and in the 1970s it was incorporated into the federal character strategy.

The third device is political representation within the central legislature. It involved
the drawing of legislative districts to follow the boundaries of ethnic communities very closely with a view to assuring group representation. This device was an outcome of the 1957 constitutional agreement that made for the delimitation of the country into 312 equal constituencies whose boundaries followed colonial administrative boundaries that helped define ethnic groups and subgroups.

The fourth device is rotational presidency, wherein geo-ethnic areas were drawn up to ensure the circulation of the presidency among geo-ethnic groups. The division of the country into geo-ethnic areas was for the exclusive purpose of circulating the office of the president. This device was worked out in the 1990s.

Fifth is local government status within states, wherein positions in local civil service and agencies, and social infrastructure projects were distributed equitably among the local government units that were assumed to reflect ethnic or sub-ethnic membership. With this device, the office of the governor was also to circulate among the local government units.

Several of these forms of recognition were combined in each of the four constitutional approaches described earlier on.

THEORETICAL FOUNDATION.

There are three literatures that converge on the relationship between ethnic identities and the state. The first is philosophical and it debates the type of political community that ought to be constructed if cultural pluralism is to be taken seriously.¹ The

second literature is empirical and it discusses the design of democratic institutional arrangements for minimising ethnic conflict. The third, also empirical, debates the invention of identities.


At the centre of my theoretical argument is the debate in contemporary normative philosophy over what principles would be required to accommodate deep diversities in a country. One strand of the debate regards human beings as culture-producing creatures and whatever they create as having social meaning. In the political community, justice would require that each social good be respected for its meaning. This argument, mostly associated with Michael Walzer, translates into internal autonomy for cultural groups since each cultural community would have different understanding of social goods.

Another strand associated with Charles Taylor, regards identity as shaped by the recognition of others, and the demand for equal recognition requires a model of liberal society in which culturally diverse groups are treated as equal partners. This calls for formal recognition of groups as equal political partners and some form of federal arrangement. There is yet another strand, developed by Will Kymlicka, which regards cultural membership as the basis for meaningful life choices that liberalismcherishes. It views political institutions of the liberal state as reflecting the majority culture while minority cultures are threatened. If everyone has to make life choices then the liberal state has to ensure that minorities have access to their culture. Institutionally this translates into federal sub-units, special representation, and veto rights for minorities.

The three strands could be regarded as being on the same end of a continuum with

regard to their openness to pluralism.\textsuperscript{4} They all accept federal arrangement as the most desirable mode of accommodating groups and they all prescribe differentiated citizenship rights.

I accept some of the arguments in the philosophical literature but also highlight the dangers inherent in some of the prescriptions that are made. For example, the prescription that federalism offers the best arrangement for accommodating groups could lead to endless demands for, and fragmentation of, internal political units. Also, the prescription for some form of differentiated citizenship rights could elevate ethnic membership over legal state membership as the criterion for citizenship identification. This could lead to official state sanctioned discrimination against individual citizens and constraints on their freedom.

With regard to the second set of literature, I review the empirical arguments of Crawford Young, Eric Nordlinger, Donald Horowitz, and Donald Rothchild for the design of inclusive political arrangements in Africa. I focus on them because their arguments contain important normative prescriptions for the type of democratic arrangements that are required in ethnically plural states. For example, each of the last three writers uses empirical facts to demonstrate that proportional distribution of political offices and resources among groups make for moderate and co-operative behaviour. This marks a shift from the Anglo-American democratic practise of allocating offices strictly on the basis of political competition. All four writers show that a federal system is necessary to

\textsuperscript{4}An opposite end of the arguments is that which regards deep diversity as not morally permissible. This is the position of Rawls. His doctrine of overlapping consensus identifies a moral foundation which all groups, despite diversities, can accept as the basis for a single conception of justice.
accommodate cleavages, to disperse powers to those that would not have had the chance of exercising it, and to make for equitable distribution of societal goods. This also marks a shift from the dominant liberal view that separates the state from ethnicity. Following Arthur Lewis, some of them advise African states to rewrite the rules of liberal democracy to take account of ethnic cleavages.⁵

Though I accept the normative arguments in the empirical literature, I also subject them to the same criticism as the philosophical prescriptions. More especially, I highlight the possibility of politically ambitious elites using ethnicity as a vehicle for personal ends, or of interpersonal elite conflict being conflated into group conflict.

Observations about potential weaknesses in the prescriptive arrangements are connected to a discussion of the third literature, which explores the post-modern idea of identities as invented. While accepting the idea of ethnic groups as inventions, I also locate the political space occupied by groups. I argue that the latter constitute the real civil society in Africa, that they overlap both the private and the public spheres, and that they are the medium through which citizens relate with the state.⁶ On the other hand, I acknowledge the importance of the discourse in helping to understand the plasticity of some groups and their tendency to differentiate, and how this could be manipulated by elites in search of power and privileges. However, I caution that the personal interest of elites does intersect with their communities' interest in having access to power and resources. As Richard

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⁶This argument is made in chapter 3.
Joseph has rightly noted: "the fundamental social process in Nigeria is one in which these two propositions - (a) I want to go ahead and prosper, and (b) my group (ethnic, regional linguistic) must go ahead and prosper cannot logically be separated, whether in the context of behaviour, actions or consciousness." I also caution against a total denial of the political relevance of groups by drawing attention to their place and role in the state system since colonial times. Their political relevance derives from the very fact of their use as core elements in state construction, a fact that has shaped political behaviour since the advent of the modern state in Africa.

THE ARGUMENT

The core of the dissertation analyses group claims over how political arrangements should be designed to accommodate diversities. It makes a normative analysis of competing claims made in each of the four sets of historical debates mentioned above, and of constitutional arrangements that were adopted. Opposing claims in each set are evaluated to determine their normative importance and compatibility with the requirements of justice. In turn, feasible alternative constitutional arrangements that would have been best from a normative perspective are considered.

Group based claims are sometimes strategic in character. They could be smokescreens behind which are some deeper economic or political agenda. For example, claims for unitary system of government may have been made in the 1950s by the

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leadership of National Council of Nigeria and Cameroons (NCNC) to rationalise economic and security needs of Ibos who were sojourning in various parts of the country. Or, 1950s demands for political separation of minorities may have been a strategy by Opposition minority elites to gain access to power and wealth. The same could be said of the 1970s demands for states-creation. The ideological character of claims are recognised but at the same time one goes beyond ideology to assess the claims for their normative merit. Ideologies are advanced because they have some qualities and merit that may be acceptable to a wider public. For example, 1950s arguments by key Yoruba elites for regrouping the country into ethnic regions may have been rationalisations of their political interest in expanding the territorial area of the Western Region to include Yorubas in the North and Lagos by the coast, and at the same time reducing the Northern and Eastern Regions to insignificant sizes. But the arguments about regrouping the country according to ethnic regions appealed to non-Yorubas as well. My project does not simply dismiss competing group claims because they were strategic; rather, it critically evaluates them to determine their merit and normative relevance. The evaluation of claims for their merit generates a range of alternative political arrangements. These, in turn, are evaluated in light of principles drawn from a synthesis of the philosophical and empirical arguments to determine the one that would have been most desirable and practicable given circumstances on the ground and the historical experiences of the country.

An evaluation and determination of the most desirable and feasible arrangement during the four periods in Nigeria’s constitutional history leads, in turn, to an evaluation
and criticism of philosophical prescriptions in light of the empirical Nigerian experience. Prescriptive arguments of normative theory were developed mostly in response to developments in Europe and America and are reflective of cultural realities in these parts of the world. Unanticipated difficulties are bound to arise when they are applied to other parts of the world where ethnic relations are quite different. Evaluating them in light of the empirical Nigerian experience would reveal the practical difficulties they are likely to generate. For example, one strand of normative philosophy prescribes special rights for minorities but in countries outside North America there are countless minority groups whose recognition would raise the issue of institutional stability. Also the benefits of special rights would prompt majority subgroups to differentiate and make claim to minority status thus further raising the political cost. It is this type of empirical reality that the dissertation uses to reveal the inadequacies of the philosophical argument. The central point the dissertation makes is that arguments for group recognition are meaningful for the Nigerian political environment and would support claims for the expression of difference. However, the multiple groups in the country create tensions between the need for the expression of difference and stability. The tensions would have to be bridged in order for the theories to acquire universal validity.

\[8\]This is not to suggest that morally right arrangements that serve as the basis for evaluating the empirical case are unjust. Rather the idea is to show that theoretical prescriptions have to be practicable and should have minimal side effects. This is the test of their universal validity.
SIGNIFICANCE OF STUDY.

The significance of this study lies in its normative evaluation of competing group claims and the alternative constitutional arrangements it generates and also examine. This is distinguishes it from most writings about ethnic accommodation in Africa that are conducted strictly from an empirical viewpoint. The most important empirical literature on ethnicity in Africa either dwells on the importance of identity in politics, or argues for political recognition of groups, or evaluates policies that have been used by some states to accommodate groups and pulls out successful ones as examples for others to adopt. There are some that criticise strategies adopted by some states but do not spell out possible alternatives that could have been. Such literature, very often, does not consider contending group claims that have to be balanced and socio-historical circumstances that state officials consider to arrive at particular strategies. Criticisms tend to be negative in the sense that they condemn and reject, rather than correcting by presenting alternatives that reflect conditions on the ground.

This dissertation goes beyond criticisms to make normative judgements of opposing group demands and to consider feasible alternative constitutional arrangements that were

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9I identify the insightful and excellent recent works of Crawford Young as belonging to the first and second categories, and those of Donald Horowitz, Donald Rothchild, Arend Lijphart and Eric Nordlinger as belonging to the third. The 1976 work of Crawford Young is partly prescriptive and could be regarded as a different form of the third category.

10This is true of articles in African studies journals, and more especially articles by some Nigerian academics on the country’s federal character policy. With regards to the latter see Peter Ekeh and Eghosa Osaghae, ed., Federal Character and Federalism in Nigeria. Ibadan: Heinemann Educational Books, 1989.
required by justice. It listens to and evaluates conflicting claims the way a judge or jury
hears and deliberates opposing claims in a civil suit. It then presents the best solution (from
a range of alternatives) that reflects the interests of the opposing parties. Thus, the project
brings a perspective that complements the empirical literature on democratic arrangements
and ethnic conflict reduction in African states.

On the other hand, contemporary liberal philosophical literature on group
recognition offers principles for reorganising societies to accommodate cultural difference.
The principles, like all philosophical principles, are supposed to be universally valid but
they are informed by experiences that are contextually specific to the West. Their specific
cultural assumptions may render them inadequate if applied to non-Western states. This
dissertation tries to generate awareness about the requirements of theory by using the
Nigerian case regarding political accommodation of groups to reveal some weaknesses in
the philosophical literature. It uses a particular case to criticise general principles in order
to elicit awareness about a theory that cuts across cultures.

OVERVIEW OF THE WORK.

The project is organised in chapters and each has a two-part structure. The chapter
that follows immediately reviews the contemporary debate among normative liberal
theorists about the potential relevance of cultural and ethnic difference to politics. It also
discusses critically the empirical literature on ethnic difference in politics and democratic
institutional arrangements for conflict reduction. It then sets a framework for the
discussion that will follow in subsequent chapters by identifying and comparing relevant
issues raised by the two approaches. It also discusses the normative relevance of ethnic identity in politics by addressing the invention and class arguments.

Chapter 3 presents a factual history of Nigeria and discusses the question of ethnic identity in the country. It presents the ethnic composition of the country and the colonial policy of supporting and using ethnic groups for political governance. It also responds to the sociological argument that identity groups are constructed and too illusory to be given political relevance. Chapter 4 evaluates group claims and constitutional strategies for coping with diversity in the period from the immediate post-World War II era through 1958 when the Independence Constitutional Conference discussed the report of the Minorities Commission. It was during this period that the country put in place constitutional arrangements that recognised the three most numerous groups but denied same recognition to minority groups. The chapter spells out claims advanced in the 1949/50, 1953/54, 1957 and 1958 Constitutional Conferences and the arrangements that were negotiated. It also evaluates the claims and considers what feasible alternative arrangements could have been best.

Chapter 5 evaluates opposing claims and strategies adopted during the period from Independence through 1967 when a quota system was adopted and the Biafra secession prompted a re-division of the country into 12 states to take account of minority groups that were previously denied political recognition. It presents a descriptive account of the issues and makes a normative evaluation.

Chapter 6 is on group demands and constitutional strategy negotiated in the 1970s. It was during this decade that the country was divided into 19 states and 301 local
government units to further reflect ethnicity and a negotiated constitution required that appointments and recruitment reflect membership of the states and local units. The chapter presents the 1975 Government Panel’s assessment of the demands for states. It also gives a narrative account of the opposing views of the constitutional negotiating team regarding the best way to accommodate ethnic diversity. It then conducts a critical assessment of the panel’s recommendation for the creation of new states and considers what alternative there was. It further evaluates the constitutional agreement to determine if it was a desirable strategy for ensuring equity in government, and what should have been done if it was not.

Chapter 7 is on claims and constitutional strategies adopted over the last 15 years. It was a period during which the federal character strategy of the 1970s was revised and new claims emerged and were discussed in a 1994/95 Constitutional Conference. The chapter first presents the revisions, new claims that emerged, and constitutional agreement for a more equitable arrangement. It then carries out an evaluation in a manner not different from the analysis conducted in other chapters. Chapter 8 provides a conclusion by using the empirical Nigerian experience to evaluate the arguments of the normative theorists.
CHAPTER TWO

NORMATIVE AND EMPIRICAL APPROACHES TO ETHNIC ACCOMMODATION

One of the greatest challenges facing most political societies as the twentieth century draws to a close is how to meet claims to equal treatment in the public sphere. Increasingly, public policy and institutions in both the Occident and the Developing world have come under severe criticisms for failing to take account of the interests of all citizens. The nature of the challenge is not really a lack of commitment to justice, but a disagreement on what it really means to respect equality. In liberal theory, the assignment of uniform rights for all without consideration for ascriptive criteria has been the standard mode of ensuring equal respect. This has come to be regarded in recent times as partial, exclusionary and oppressive. Instead, there is the insistence that equal respect entails recognising what is specific to each. The challenge is therefore one of explicit recognition of difference in the assignment of rights.

Until recently, liberal theory had no difficulty devising a model of society in which persons with diverse social and cultural backgrounds receive fair treatment. In the model, the public was separated from the private - for instance the separation of state from religion - and anything particular to an individual or group was banished from the former. The political public provided a neutral ground for individuals to stand as equals in the distribution of rights, privileges and power without regard to social particularity. Thus, the project of ensuring justice required people to proceed from a neutral turf to put in place a
difference-blind system of rights and liberties. An example of such a project is John Rawls "original position" whose "veil of ignorance" denies people knowledge of their social background. A similar example is Bruce Ackerman's spacecraft journey, or Ronald Dworkin's desert island with its insurance scheme. In all these projects, a system of rights and liberties is defined without the influence of particularist interest and is considered to be impartial and fair.

The definition of rights in a manner that abstracts from the social background of people has, in recent years, been criticised as failing to meet the requirements of justice. A number of theorists within and outside the liberal mould have argued that the supposedly neutral turf is pervaded by the cultural values of a dominant set of people, and the so called uniform rights negotiated in that sphere are not free of their values. The difference blind conception of justice is not difference blind after all. It is regarded to be hegemonic and oppressive. Consequently, an alternative conception of justice that recognises social difference has been suggested.

Just as an alternative theoretical conception of justice is being worked out, so are empirical political scientists conducting inquiries of ethnic relations and governance in African and Asian states with a view to deriving constitutional mechanisms that would nurture democracy. Their studies have yielded the new view that ethnically plural states

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would have to revise the Anglo-American model of democracy to make for political inclusion. The surest way of fostering injustice and unrest in such states, they argue, is to replicate the liberal democratic model that emphasises majority rule. Studies that have generated this new insight include Donald Horowitz’s *Ethnic Groups in Conflict* and his *A Democratic South Africa?*, Donald Rothchild’s *Managing Ethnic Conflict in Africa*, and Arend Lijphart’s *Democracy in Plural Societies*. This chapter will attempt to examine the prescriptions of both the theoretical and empirical arguments.

**THEORETICAL ARGUMENTS ABOUT JUSTICE AND DIFFERENCE.**

There are different strands of the theoretical arguments for the recognition of cultural difference. Some are identity based while others are based on sexual orientation. What I intend to discuss is the first, and what quickly comes to mind is the relativist argument of Michael Walzer.

A strong opponent of universalist conception of rights, Walzer puts forward a conception of justice that tolerates difference. In *Spheres of Justice* he lays out his theory by taking on the argument of Rawls that individuals in an original position prevented from making particular claims would adopt universal principles for the distribution of primary goods. The original position, according to Walzer, is abstract and removed from realities. In real life goods have different meanings in different societies and it is the meanings that would determine how they are distributed. To spell out the argument, Walzer says:

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13Walzer, *Spheres*, pp. 4 - 6, and p. 8.
goods do not fall from space, they are made by people and have social meaning among those who make them;

- the social meaning of goods determine their movement, how they are distributed.

- justice is done if the values that govern distribution in one sphere of life (or a particular social good) is not used to govern distribution in another sphere life or another social good).

Walzer is a relativist. His theory of justice, to use his words, “is alert to differences” and “sensitive to boundary crossing.”14 Culture is implicated in this form of value pluralism because different cultural communities would come up with different values that should govern distribution in different spheres of life.

In a culturally heterogeneous country, Walzer’s relativism would defend constitutional structures that are erected to recognize difference. He alludes to this in *Spheres* when he makes the point about adjusting principles of justice operative in the political community to meet the requirements of historic communities.15 In *Thick and Thin* the argument gravitates towards autonomy for groups. Moral understandings of a culture, according to him, are thick and should not be overriden by external understandings. Criticisms have to come from within, and the standard, which the critic appeals to, has to be internal to the culture as well as to other cultures. He calls it “Minimal Universal Moral

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Standard”, which I take to mean basic human rights. It is thin, according to him, not thick enough to provide details of how life should be lived. Moral minimalism, therefore, cannot be the basis of political unity for diverse cultures. It rather evokes the conscience to make people solidarise in its defence whenever it is violated, thereafter people separate to their rich, thickly constituted moral life.

For Walzer, then, pluralism of values is the most meaningful life; to supplant it with unity is to throw people into a moral wilderness. For him, the most justifiable arrangement is that derived from, and grounded on, thickly developed moral values. For this reason he settles for the right of cultural groups to self-determination. However, the chaos and anarchy that will result from the assertion of independence by one group after the other makes him think that self determination does not provide a single best answer to all situations. The best alternative, he thinks, is a confederal or federal arrangement whose

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16In his discussion of the Spanish intervention in Aztec cultures (Mexico) to stop human sacrifice, Walzer makes the point that the local understanding of sacrifice was not commonly shared by all Aztecs, that it was contrary to the conscience of some, and that traces of human rights could be seen within the local culture. In his words: “they (the Spaniards) had, to be sure, a Catholic understanding of natural law, but they may still have been right to oppose human sacrifice, for example, not because it was contrary to orthodox Christian doctrine, but because it was “against nature”. The Aztecs probably did not understand, and yet the argument did not have the same degree of externality as did arguments about the blood and body of Christ, Christian communion, and so on (and it may well have been connected with the feelings, if not the convictions, of the sacrificial victims),” (Interpretation, p.45). Conclusively, the moral minimum is basic human rights that are part of, and not a substitute for, local meanings that are thickly constituted.

17Walzer’s theory is opposed to the dominance of one cultural world by another. To judge people with an external moral standard amounts to imperialism, rather like an imperial judge in a colony who uses principles derived from the mother country to bring the natives to justice. See his Interpretation, p. 38.
institutional checks will prevent the domination of one group by the other.\textsuperscript{18}

Walzer’s arguments have received criticisms that need not be rehearsed here.\textsuperscript{19} What needs to be pointed out, as far as this project is concerned, is the false assumption that differentiated rights or internal autonomy for groups would ensure justice and political unity. The argument takes cultural groups as cast and fixed, not subject to self-multiplication in the event of goods being distributed on their terms. Goods, like rights, power and opportunity are not just end in themselves. They are means to further goods. Consider power, for example, it could be a means to wealth, security, and even more rights and opportunities. Now, if by Walzer’s argument, values are used as criteria in the distribution of goods, what is the guarantee that cultural groups claiming different values would not duplicate themselves in order to have a greater share? There is even the possibility of elites encouraging group differentiation in order to have access to power, as they often do.

One of the attractions of difference blind theories of justice is that the principles by which rights and privileges are assigned to individuals are shielded from particular interest or claims and, as a consequence, provide an authoritative standard for regulating conduct.

\textsuperscript{18}For the normative prescriptions of Walzer see his \textit{Thick and Thin}, pp. 66 - 80. The normative arguments in this section of the text were first developed by him in an article titled “The New Tribalism” \textit{Dissent}, Spring 1992, pp. 164 - 171.

in civil society. The principles are disinterested in the sense that they are unaffected by particular social interest, for which reason they are accepted as authoritative. Rawls makes the point when he speaks of each of various religious and moral doctrines overlapping to "accept this conception of justice as a reasonable basis for political and social co-operation."\(^{20}\) Authoritative for their impartiality and disinterestedness, the principles of justice are codified as rule of law, made the object of public knowledge, and legitimately enforced. Thus, the rule of law defines a common standard for judgement. Cases are evaluated by following what is specified in a constitutional text.\(^{21}\) It is the emphasis on settled universal rules for governance that has won the name of "procedural liberalism."\(^{22}\)

Now, the elevation of cultural identity over universalist principles has the danger of toppling the rule of law. The loss of publicly known laws could open a floodgate to particular claims. A group of families could seek political recognition by claiming to be culturally different, or some elites in search of power could mobilise members of a group of villages to claim difference. Without a universally known standard of judgement, the grounds for assessing such claims would be highly arbitrary. In any event, they have to be recognised since cultural identity has become the criterion for the distribution of goods and, on Walzer's account, no culture ought to judge the other. So, groups would proliferate all

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\(^{21}\)For a discussion of this see Williams, "Justice Toward Groups . . .," pp. 82-5.

over and chaos rather than stability would prevail in the polity.

The problem of unity and stability in the polity has caught the attention of Charles Taylor. In "Shared and Divergent Values," an article written in acknowledgement of the Canadian political scene, he explains why Quebeckers are pressing for autonomy. This is in spite of their having language rights at the federal level, a de facto special status (through their special immigration regime, income tax, pension plan etc), and command of powerful positions in the federal government.

The paradox, according to him, has to do with Quebec’s understanding of Canada as a pact between two nations - English Canada and French Canada - and of the country as existing to contribute to the survival of both nations. However, for a long time the nation of French Canada had been demeaned by being refused recognition. In recent years, Taylor argues, the transformation of the country into a multicultural mosaic has buoyed English Canada to build political unity around a Charter of Rights adopted in 1982. The Charter, according to him, accords some powers to collectives by providing for linguistic rights and aboriginal rights, but imposes a procedural model of liberalism by providing a set of individual rights and prohibiting discrimination on irrelevant grounds, such as race.

However, Taylor argues, procedural norms enunciated in the Charter clashed with and thwarted Quebeckers’ aspiration of seeking their good - the survival and flourishing la nation canadienne franque - in common. A constitutional amendment, the Meech Lake Accord, to provide a “distinct society” clause was defeated despite a de facto special status enjoyed by the region. Taylor regards the imposition of a procedural model of liberalism in which the state is uncommitted to a conception of the good as diametrically opposed to
what Quebeckers opt for. Namely: a liberal society organised around a definition of the
good life without having to demean those who not share in it. He speaks of
multiculturalism; that is, the sorts of individual rights as provided in the Charter, as a first
level diversity that does not come close to what Quebeckers want. It is hegemonic because,
in substance, people are required to conform to procedural norms. For Quebeckers and
Aboriginals, he says, their sense of being Canadian rest on the survival of their national
communities. There has to be a “a second level or deep diversity in which a plurality of
ways of belonging would also be acknowledged and accepted.” So, recognition of
cultural difference is not for profitable ends. Rather, it has to do with the survival of a
national community that is being deprecated or wiped out. But the possibility of groups
proliferating to undermine stability of the arrangement that would emerge still remains and
Taylor does not address it.

Taylor’s arguments have been given a higher theoretical cast in a relatively recent
book in which he argues that there is no real tension between fundamental liberal
commitments to the principle of autonomy and recognition for cultural minorities whose
survival is threatened. In it he says our identity comes from within but is affirmed by the
recognition we receive from others. Non recognition or mis-recognition can inflict harm
or can be a form of oppression, as in the case of women in patriarchal societies or the case

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25I am referring to his Multiculturalism: Examining the Politics of Recognition.
of colonial subjects who are induced to internalise a depreciatory image of themselves. In pre-modern times, he argues, recognition was not a problem because honour was intrinsically linked to social hierarchies. In the modern world it is a problem because social hierarchies have collapsed and in place of honour we have equal dignity of persons. The identity of each comes from his/her inner self, but has to be affirmed by others because “we become full human agents, capable of understanding ourselves” through our interaction with those who matter to us.26 The understanding that identity is formed in relation with others has engendered, in the social plane, a demand for equal recognition.

Equal recognition, according to Taylor, has come to mean two different things. For some it means “an identical basket of rights and immunities,” the basis for this being a universal human potential, namely the capacity to direct lives. For others, it means “recognition of the unique identity of this individual or that group.” The basis for this is also a universal human potential, but it is the potential to form an identity either as an individual or a group.27 The latter view difference blindness as the reflection of a hegemonic culture, as particularism masquerading as the universal, and as an attempt to assimilate or disparage others. One results in a proceduralist model of liberal society as defended by Rawls, Ackerman and Dworkin, the other produces a model of liberal society organised around collective goals.

Taylor regards both models as mutually opposed, exemplifying with the case of

26Taylor, Multiculturalism, p. 32.
27Taylor, Multiculturalism, p. 38-42.
Quebec where the commitment to the collective goal of survival constrained individual rights to school of their choice, to carry out transaction in English, and to put up commercial signage in English. However, he endorses the second view, arguing that a society with collective goals can be liberal, “provided it is capable of respecting diversity, especially when dealing with those who do not share its common goals,” and provided it defends fundamental rights recognised in the liberal tradition. Taylor does not show how this can be achieved. He does not make arguments for a synthesis of the two models, neither does he show that those who do not belong to the favoured culture or do not share the collective good will not suffer violation of right.

Taylor reproaches procedural liberalism for discriminating against those who do not belong to the dominant culture but the alternative he presents suffers from similar defect. His arguments for a society organised around community goals do not yield a rule that tells us when to and when not to extend recognition to those that claim it. Nevertheless, they boil down to internal autonomy for territorially concentrated groups and differentiated citizenship rights - different kind of membership and different citizenship rights. Within this arrangement, the hopes and aspirations of those individuals who do not share in the collective goal could be diminished by what Steven Rockefeller referred to as the “elevation of ethnic identity over universal human potential.”

Take the example of Quebec that Taylor uses to exemplify his argument. There, law prohibits immigrant and

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28 Taylor, Multiculturalism, p. 59.

29 Steven Rockefeller, “Comment,” in Taylor, Multiculturalism, p. 89.
Francophone Canadians living within the same jurisdiction from sending their children to English language schools. So, those them who have no preference for French language schools cannot help but follow what has been officially decreed. Taylor acknowledges the constraint in fundamental rights and liberties of individuals but does nothing to deal with it.

Will Kymlicka has given some attention to the reconciliation of collective goals and individual liberty. He argues in two very important books for recognition of difference, notably in respect of Canadian Aboriginals. Following J. S. Mill and Immanuel Kant, Kymlicka shows the distinctive feature of liberalism to be its ascription to individuals of freedom to choose and revise their conception of the good life. Two preconditions are required: first, that individuals lead their lives from the inside, in accordance with their belief of what gives value to life; second, that they have the freedom to question and revise their conception of the good in light of whatever information is available. There is therefore the liberal concern for education, freedom of association and of expression. The two preconditions, according to Kymlicka, underlie liberal conception of freedom. Citing Ronald Dworkin, Kymlicka argues that a societal cultural membership provides the basis for freedom, the ability to understand and to make and remake meaningful life choices. Besides, it provides a secure sense of belonging and identity without limiting freedom of choice. So viewed, cultural membership is necessary for the individual to live a good life.

30 The two works I refer to here are *Liberalism*, and *Multicultural Citizenship*.

However, in multicultural liberal states, the political process and institutions (unintentionally) reflect the culture of the majority national group. Worse still, the system of liberties and rights serve to assimilate minorities as they lose control of their land and resources. For them to enjoy the primary good of cultural membership which majority members take for granted, they should have a variety of special rights including a right to self government within the polity, guaranteed representation on intergovernmental bodies, and veto rights on issues affecting them. Kymlicka says these rights are not to be considered advantages, rather they secure for minorities the cultural context which members of the majority national group take for granted. And powers of self-government are not to be considered as temporary but inherent and therefore permanent.

Group-specific rights may contradict common citizenship and trigger political disunity or separation. Kymlicka addresses this problem by differentiating between representation rights and self-government rights. The former, according to him, facilitates the inclusion of minorities within the mainstream society and this strengthens rather than erodes shared civic virtue. He sees self-government rights as posing the danger of secession but does think the latter is an option because of the problem of viability of minority groups. Multi-nation states, according to him, should promote unity not by denying difference but by respecting and nurturing it.

32 Kymlicka, *Liberalism*, chapters 7 and 9; also *Multicultural Citizenship* chapters 2 and 3 and pp. 139-44.


The model of society that emerges from Kymlicka’s arguments is one in which minorities are accommodated in sub-units organised around their collective good with the inevitable danger of compromising the autonomy of those who do not share the collective good. In chapter nine of *Liberalism*, he tries but fails to reconcile the autonomy of members with the community’s good. Like Taylor, he does not show how the rights of those members who have different conception of the good can be defended.

There are other difficulties with Kymlicka’s arguments that are well known and need not be recited here. What needs to be discussed is his assumption about justice and stability in the political community. Like Walzer and Taylor whose arguments presuppose the immutability of groups, Kymlicka assumes minority groups to be discrete and immutable. Consequently, he thinks if they are accorded special resources or rights to pursue their conception of the good life, a just and stable normative order will be achieved. It is understandable why Kymlicka assumes that groups would not proliferate to take advantage of special rights. His argument present special rights as creating conditions for equality and discounts the possibility of regarding them as benefits. But the reality is that they are not just formal rights. They are also tangible for they entail internal self government that goes with the setting up legislative and executive positions that have to be filled, political representation at the centre, and job opportunities in government. Being tangible, and the fact of granting them on the criterion of ethnicity, would instigate new

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claims to minority status even from within the majority group. It automatically opens a leeway for others to claim minority status in order to receive similar treatment. The general attitude would be: "You've had yours, We need ours because we are also a minority suffering domination." Kymlicka might respond by pointing to the use of political judgement in determining and rejecting spurious claims to recognition. This could be effective if groups are homogenous, but this is not the case if some consist of sub groups with different dialects and are attached to definite territorial homelands.

The feasibility of Kymlicka’s prescriptions becomes a real issue if a country is made up of one or two major groups and several minority groups. In this scenario the prescription will require disentangling multiple minority groups for special recognition in separate sub political units. This would trigger a slippery slope that may elevate the concern for stability over justice.

In sum, the theoretical approaches of Walzer, Taylor and Kymlicka make normative arguments in defence of constitutional arrangements that give recognition to group identities. The problem with the arguments is that the constitutional structures, which they defend, could give rise to elite’s unrestrained use of ethnic identity as means to power. The could also give rise to demand overload in the political system and to over-politicization of ethnicity, all of which could, in turn, either cause regime breakdown or institutional instability.

The problem of stability has been raised by some critics of multiculturalism in the United States of America who worry that group recognition might lead to the disintegration of the country. For example, in a polemical work, Arthur Schlesinger Jr. argues that, from
the start, America, like most countries, has been multiethnic. But, unlike most multiethnic countries, it has cohered, endured, and achieved greatness because “individuals from all nations are melted into a new race of men.”36 Although he regards the American practise of citizenship as falling behind its theory, he sees the latter as modifying the former without any contradiction by the assimilation ideal. He therefore assails multiculturalism for encouraging “separate racial and ethnic communities” and advancing “the fragmentation of American life.”37 In another polemic, Alvin Schmidt likens multiculturalists to soldiers seeking to conquer and destroy the American melting pot. He regards the introduction of bilingual education and the revision of the curriculum of American colleges to reflect the concerns of diverse racial groups as a Tower of Babel that brings ethnic separateness, disunity and conflict.38 Using Canada as an example, he shows that the ingredients of the present secession tendency in the country were prepared in the 18th and 19th centuries when the British Colonial Government rejected a melting pot philosophy for bilingualism.39

The criticisms that emphasise the danger of balkanisation are similar to the ones I have made above but they are also different in the sense that the empirical basis for the concern is less valid in the American context than in the Nigerian context. In fact, both

37Schlesinger, jr., The Disuniting of America, pp. 136 and 151.

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Kymlicka and Taylor are conscious of the dangers of group proliferation in North America for which reason they limit recognition to minority historical communities (not immigrants) whose survival is threatened. Thus, groups covered by this limitation would constitute a small number of cultural groups and, perhaps, a small percentage of the population. This narrowing of cultural groups that would be entitled to special protection rescues the arguments of the normative theorists and renders the instability argument less compelling than claims to group recognition. The arguments are attractive to my study of the Nigerian case because the concerns that motivate the theorists to argue for special rights for minorities in North America would also support the demands of countless groups in Nigeria for political recognition. However, unlike North America where the demands for recognition and problems of governability and stability may not be at odds, in Nigeria the tensions exists and would need to addressed in order to minimise them.

THE EMPIRICAL VIEWPOINT.

The empirical literature on ethnicity attempts to understand actual relations among groups and the formal and informal rules which regimes use to respond to demands for political inclusion. On the basis of such empirical observation, general rules that make for

40See Kymlicka, *Multicultural Citizenship*, pp. 11-15, 77-9, 181-9; Taylor, *Multiculturalism*, p. 41fn. In one of his most recent works, Nathan Glazer endorses the limits set by multiculturalists for equal recognition. However, he argues that “even after one has confined the beneficiaries of multiculturalism to the oppressed . . . one discovers that, even among victims of the oppressed, not all groups are entitled to . . . attention.” See his *We Are All Multiculturalists Now*. Cambridge: Harvard University Press, 1977, pp. 14-15.
political accommodation and take account of individual and group sense of worth are prescribed. Horowitz has emerged as one of the most outstanding in this field, but some of the earliest empirical arguments for conflict reduction were actually advanced by Eric Nordlinger and Crawford Young. It would be worthwhile to dwell on them.

In one of his works that was published over 20 years ago, Crawford Young presented ethnicity as a variable that is dependent on the political. He saw it as coming into being and altering in accordance with changes in the political arena. With specific reference to Nigeria, he showed that the transition to independence triggered the emergence of previously non-existing identities (e.g., the Yoruba, the Hausa-Fulani) for social goods and that the creation of more states in 1967 fragmented the identities and engendered the emergence of new ones. He argued that ethnic labels would always feature in the competition for scarce resources and group conflict would be inevitable. He prescribed ways by which African states could cope with conflict. The prescriptions were: a) the provision of group security through the adoption of policies that are sensitive to difference; b) the principle equality has to be envisaged for groups as well as individuals; c) institutionalised group access to power through political representation or by grant of cultural autonomy; and, d) group autonomy through federal arrangements.

In his more recent works Young modified his earlier position by presenting the nationhood of the African state as an invention by nationalists who thought that nation-

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41See Young, *Cultural Pluralism*, chapters 4, 5 and 8.

building would open the door to modernity, and by scholars who were bent on rediscovering the African past. He argued that in the contemporary world in general, the imagined nation-state is being challenged by ethnic movements and, in Africa, the illusion that nation building would lead to modernity has been dispelled by the upsurge and intensification of ethnic pressures. Unlike his early work, he does not prescribe strategies for conflict reduction.43

Prior to the 1976 work of Crawford Young, Eric Nordlinger had published a monograph in 1972 surveying six countries - Austria, Holland, Switzerland, Malaysia and Lebanon - whose open regimes were able to bring intense conflict under control at various periods in their history.44 By open regimes he meant the free functioning of interest groups, and bargaining rather than repression as the principal means of conflict reduction. Drawing from the six countries, Nordlinger proposed six conflict-regulating measures. They are: “stable governing coalition between . . . the major conflict organisations”; the “principle of proportionality” whereby offices are distributed according to relative size of “segments”; the mutual veto which requires government decisions to be agreed upon by all “conflict organisations”; and “depoliticisation” whereby conflicting groups agree not to involve government in policy areas that might touch on segments values. Others are “compromise” which entails mutual adjustment of interests, and “concession” (by a stronger to a weaker

43For these arguments see his “Evolving Modes . . . ,” pp. 61-86; and his “The Dialectics of Cultural Pluralism . . . ,” pp. 3- 35.

44See Nordlinger, Conflict Regulation in Divided Societies.
According to Nordlinger, only conflict group leaders can use the above practices to reduce conflict. He did not regard federalism as a conflict regulating process, rather it could be an outcome of the above mentioned six practices. He also regarded the then conventional strategies like creation of an integrative national identity and spatial isolation of conflict groups as ineffectual and counter productive.

While Nordlinger’s six practices are a great contribution to strategies for conflict regulation, they seem to apply to a broad range of conflict. His use of concepts like “conflict organisations,” “conflict groups,” “segments” etc, suggest that his study covers all forms of conflict including class. Also, as Milton Esman has rightly argued, the restriction of his study to countries with “open” regimes, and in which there are two parties to a conflict, severely limits the relevance of his prescriptions to deeply divided societies.

Nordlinger’s central thesis that Anglo American majoritarian democracy is unsuitable for plural societies also powered Arend Lijphart’s argument for consociational democracy as an instrument for conflict regulation. He presented four defining characteristics of consociationalism that overlapped with, but also differed from, the six conflict regulating techniques of Nordlinger. They are: segmental autonomy expressed through federal arrangement; coalition of ethnic parties; mutual veto in decision making;

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45 Nordlinger, *Conflict Regulation in Divided Societies*, pp. 21-9

and the proportionality principle in the allocation of offices. 47

Like Nordlinger, Lijphart studied techniques used by some European countries – Belgium, Holland, Switzerland, and Austria – to regulate conflict and presented them as models for Africa and Asia. Both wrongly assumed that ethnic group dynamics in Europe and the developing world are similar. They also assumed that each ethnic group is a unitary actor and has united leaders who would come up with a single party that would rationally enter into coalition with others. As Horowitz has argued, intra-group competition or rivalry does not make for a single set of leaders with authority to speak on behalf of the entire group. 48 A political party supposedly representing an entire group may have limited leadership latitude because of intra-group fissures and factional leadership. Both Lijphart’s and Nordlinger’s conflict reduction techniques grant too much autonomy to elites and do not consider the structural constraints imposed by the dynamics within their groups. No one would object to the argument that inter ethnic co-operation is required to reduce conflict and some techniques are needed to achieve it. However, competition and conflict within groups tend to undermine coalition formation, and if formed it gets too fragile to last.

Horowitz tries to go beyond the above limitations by arguing for a conflict reduction strategy that contains incentives for altering intra-group structural constraints that prevent interethnic co-operation. His strategies are: the creation of lower level political


units with a view to proliferating points of power and taking heat off the centre, and an electoral system that places high premium on multiethnic support in the election of state officials and induces coalition building. Others are the adoption of policies that encourage alignments based on interest other than ethnicity, and affirmative action programs to reduce disparities between groups.\textsuperscript{49}

Horowitz regards his prescriptions as having the potential of producing both politics of bargaining and minority representation in national institutions.\textsuperscript{50} He warns against special rights because they do not last. Citing the case of Zimbabwe,\textsuperscript{51} he shows that group rights that offer too many benefits are likely to be abolished by the majority group. They also provide too little because they do not aim minorities at the seat of power.\textsuperscript{52} Horowitz

\textsuperscript{49}See Horowitz, \textit{Ethnic Groups}, pp. 597 - 599 and chapters 15 and 16. These prescriptions encapsulate prescriptions which Crawford Young had made for African states in the mid 1970s. Young had prescribed that, for African states to cope with the upsurge of ethnic identities they should a) adopt policies that are sensitive to cultural differences; b) recognise that the principle of equality must be envisaged for groups as well as individuals; c) have institutionalised access to power for identity groups either through representation or by granting cultural autonomy in some policy areas; d) grant a large measure of autonomy through federal arrangements. See Crawford Young, \textit{Cultural Pluralism}, pp. 523 - 526.

\textsuperscript{50}See Horowitz, \textit{Ethnic Groups}, pp. 612 - 613. These arguments of Horowitz encapsulate the bargaining approach to conflict management presented by Rothchild and Olorunsola. For the latter see Rothchild and Olorunsola (eds.), \textit{State Versus Ethnic Claims}, pp. 233 - 249.

\textsuperscript{51}Whites were guaranteed temporary over-representation by the Independence Constitution of 1980, but this was abolished by the majority government at the earliest lawful time.

\textsuperscript{52}See Horowitz, \textit{A Democratic South Africa?}, p.136. Horowitz criticises international lawyers who have “little knowledge of ethnic relations but have been creating a whole new set of understandings about group rights in international law.”

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also cautions against the drawing of internal boundaries around homogenous groups because it is not the only way of making minorities share power.\textsuperscript{53} Excluded groups, according to him, could be made to share power through an electoral arrangement that requires party executives to be drawn from wide ethno-regional sections, and that victory at the polls be based on plurality of votes. He regards this electoral arrangement as having internal incentives to harness selfish calculations for inter ethnic co-operation. Political actors and groups co-operate not because they want to, but because the cost of not co-operating is to be out of power. Nigeria and Sri Lanka whose constitutional measures provided the strategies he prescribes heavily influence Horowitz. He particularly extols the usefulness of the Nigerian measure in producing incentives for ethnic realignment, balancing and toleration, and therefore offers it as a model for racially and ethnically inclusive post apartheid South Africa. In his words:

If one is looking for African democracy in a divided society, the place to look is . . . Nigeria . . . That is where many of the African lessons are, but they seem far away, little known, and less understood in South Africa.\textsuperscript{54}

One major difficulty with Horowitz’s argument is its treatment of group claims as unmediated by elites. As a consequence, he does not foresee his prescriptions clearing a leeway for a deluge of demands by elites interested in advancing their own agenda. This difficulty arises from Horowitz’s strong view that group worth most powerfully explains

\textit{Democratic South Africa?}, p. 136, fn. 30.

\textsuperscript{53} Horowitz, \textit{A Democratic South Africa?}, p. 216 - 217.

\textsuperscript{54} See Horowitz, \textit{A Democratic South Africa?} pp 136 - 137.
ethnic conflict and that economic motives of elites have little to do with its intensity or the claims that are made. He finds materialist theory deficient because it does not link elite and mass concerns to explain why the followers always follow, the role of symbolic issues, and the sheer passion with which participants engage in conflict. In his words: "it is necessary to account, not merely for ambition, but for antipathy." 55

The argument (that concern for identity and group esteem is what unites elites and the masses into political action) does not completely refute the class argument because the problem of representational legitimacy remains unexplained. Elites claim to act on behalf of groups even when they are not elected to do so, and very often they are not. It is therefore very easy for those in quest of power and privilege to use ethnicity as a vehicle once it is given constitutional recognition. Horowitz does not recognise that his prescriptions, when adopted, could induce a spate of elite demands that may wreck political arrangements.

Donald Rothchild recognises the above difficulty and has tried to make room for it in his very pragmatic but dense prescriptive arguments. He presents ethnic groups as people that have consciousness of common identity that may be socially constructed. They have corporate interest that leaders maximise by pressing demands on the state. 56 Ethnic demands and state responses, according to him, are not a fixed process of one side making demands and the other side responding. The policy choices of regimes could determine

55 Horowitz, Ethnic Groups, p. 140.
56 Donald Rothchild, Managing Ethnic Conflict, pp. 3-4.
how group leaders frame their demands and the nature and intensity of demands could
determine the readiness of regimes to co-operate. It is a two way process that is mutually
reinforcing. But because regimes wield power and formulate policies for society in general,
they have significant impact on conflict management. Regime types are therefore critical
in the determination of responses, and Rothchild offers three types: namely hegemonic,
elite power sharing, and polyarchic regimes.

Hegemonic regimes are authoritarian. They not only regard claims by group
leaders as threatening to the political system but respond by imposing their own preferences
that range from subjection to ethnic cleansing. Elite power sharing regimes are
combinations of authoritarianism and consociational democracy. They come into being
when elites in hegemonic regimes co-opt and strike bargains with powerful ethno regional
entrepreneurs in order to contain pressures from civil society. They treat demands in
pragmatic terms, and their informal rules for coalitions and balanced representation in
national institutions are responses to ethno regional pressures. Polyarchic regimes are
democratic and are characterised by “extensive societal participation” in governance and
“low state control over the political process”.\(^{57}\) By fact of their institutional electoral
competition and accountability, they tend to have regularised public access to decision-
makers.\(^{58}\)

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\(^{57}\)Rothchild, *Managing Ethnic Conflict*, p. 11. It is not clear if he draws from
Robert Dahl’s definition of polyarchy. If he does, the problem of permanent minorities
would arise, but the two paragraphs that follow address the issue a bit.

\(^{58}\)In an article written earlier on with Victor Olorunsola, Rothchild did present
two models of state response to ethnic claims. The two are hegemonic and bargaining
Both elite power sharing and polyarchical regimes are more inclined to promote unity and stability by accepting the legitimacy of autonomous groups in civil society and by accommodating them politically (p. 43). However, Rothchild qualifies this by noting the tendency for some authoritarian regimes to incorporate various ethnic elites into high governmental positions. This is when dominance becomes terribly expensive either in monetary terms or in terms of intense conflict (e.g. Nigeria in the early 1970s, Guinea under Sekou Toure, Kenya before the 1992 election and Zaire under Mobutu Sese
do). The readiness to respond, according to him, has the positive effects of encouraging ethnic elites to frame demands in moderate terms and of facilitating negotiation by creating opportunities for them to withdraw from inflexible positions without loss of face. So, polyarchic regimes, and to a lesser extent elite power systems, and to a still lesser extent hegemonic regimes, have the effect of providing incentives for co-operative relations.

Rothchild identifies four main incentives that encourage ethnic groups to moderate and co-operative behaviour. They are: inter-group equality as a major rule in the allocation of offices and resources; an electoral system that ensures the inclusion of various ethnic elites in decision making; representing various ethnic and other interests in the ruling coalition (e.g. the Transitional Constitution of South Africa, “federal character” principle in Nigeria); and a form of federalism designed to separate geographically concentrated models. See “African Public Policies . . .” pp. 233-49. Certainly the views expressed in Rothchild’s more recent work are a refinement.

groups into distinct sub-units, thereby dispersing power among a great array of actors. These are not very different from Horowitz's recommendation.

Tempered but optimistic, Rothchild cautions that his prescriptions might not necessarily produce regime stability because of elites' political ambition and corruption, demand overload, and resource scarcity. Nonetheless, he hopes that if political routines for inclusion are established and repeated over time, elites would get used to norms of reciprocity and accommodative behaviour. In his words, "the initial act of forging a constitution is not an end in itself but of a larger process of confidence building that leads to repeated interactions."

So, unlike Horowitz who assumes that his prescription would definitely minimise conflict and produce stability, Rothchild is more circumspect. He recognises that elite competition and corruption could cause a reversal, and deals with it by insisting on perseverance. It is in this respect that he goes one step ahead of Horowitz and the normative theorists.

RELEVANT ISSUES RAISED BY THE EMPIRICAL AND NORMATIVE ARGUMENT

The empirical and normative arguments shed some light on what it means to recognise difference in politics. For Walzer, it means respecting group claims to regulate their social space according to their own values, in which case justice will require granting them autonomy. For Taylor, it means a formally recognised internal autonomy for groups

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60 Rothchild, Managing Ethnic Conflict, p. 49

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whose culture or continued existence is under threat. For Young, Horowitz and Rothchild, taking difference seriously means decentralising power to enable groups to have some share of it, and putting in place an electoral system that induces inter-ethnic accommodation at the centre. At the extreme, the Walzerian position means political separation, and at the minimum an arrangement that provides minorities with federal sub-units and whose constitutional checks could be enforced by international bodies when violated. On the other hand, the positions of Young Horowitz and Rothchild mean a federalism by which minorities (in the case of Young it is simply groups) have their own states. For Horowitz the states need not be homogenous in so far as a supportive electoral system makes it impossible for a few groups to exercise monopoly of national institutions. In between, but close to Walzer, lie Kymlicka for whom taking recognition seriously means securing minorities by giving them sub-units of government and guaranteed representation on inter-governmental bodies. The sub-units are rightful entitlements and should be permanent, while guaranteed representation is derivative of the right to units. When all these are unpacked we have the following emerging as the most relevant issues in the normative and empirical prescriptions.

First is the desirability of federal system as a common theme among both the normative and empirical writers, but they seem to differ on why it is desirable. Horowitz's federal prescription is inspired by its utilitarian value, while that of Kymlicka and the prescription of Walzer, which ranges from political separation to federalism, are inspired by a sense of justice. Walzer prescribes federalism because, even when separation occurs, there would be new minorities in the new state. He sees the institutional checks of
federalism as an arrangement which enables minorities to control their local political space and if the checks are violated then an international intervention would be necessary to enforce justice. Kymlicka also finds it justifiable because the internal autonomy which it gives minorities would "compensate for the unequal circumstances which put the members of minority cultures at a systemic disadvantage in the cultural market place..." So for Walzer and Kymlicka, federalism is desirable because it is what justice requires.

Young, Rothchild and Horowitz, on the other hand, prescribe federalism because it devolves power to groups who would otherwise not have had a share of it, and reduces the power of majority groups over minority groups. These are desirable because they expresses institutional pluralism more adequately and, above all, provide the basis for the establishment of conciliatory institutions, more especially an electoral formula for mitigating zero sum politics. It is all these that make federalism appealing to the empirical writers. The importance is particularly exemplified by Horowitz when he argues that inter ethnic-conflicts may be reduced by a devolution of power that activates intra-ethnic conflict because "if intra-ethnic conflict becomes more salient it may reduce the energy available for conflict with other groups". Unlike the projects of Walzer and Kymlicka that aim at fair treatment of groups, Horowitz's federal project requires the shift of part of the burden of conflict resolution to groups and he justifies it with the over-all

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61Kymlicka, Multicultural Citizenship, p. 113.


63Horowitz, Ethnic Groups, p. 598.
utility of the project. He cites some countries where this has occurred;

The complexity of Indian society has facilitated the flow of conflict in linguistically homogenous states into sub ethnic channels, just as it has in Nigeria’s homogenous states. Under such circumstances devolution of a generous share of federal power upon largely homogenous federal units promises a dramatic reduction in conflict at the centre. Many issues will be contested within ethnic groups, rather than between them, simply because many contested issues become state level issues. It is difficult to infer causality from Switzerland, because it has not had intense conflict. But it has been argued that Swiss federalism with its powerful and mainly homogenous cantons, is effective in dampening ethnic conflict because of the sparseness of contentious issues at the federal level of politics and the “tranquillising effect” of compartmentalising them.\footnote{Horowitz, *Ethnic Groups*, p. 614.}

The critical issue at stake is whether federalism is desirable because it makes for peace or because it makes for a just arrangement. This question could be addressed by looking at what unites the liberal universalist theorists and those who argue for the recognition of difference. They disagree on what justice requires in the political community, but they are united on the quest for justice. Once this is recognised, then any prescribed arrangement should aim at being just. But a low view should not be held of Horowitz’s federal prescription because its utilitarian cast aims at reducing domination of one group by any other, very much like the projects of Walzer, Taylor and Kymlicka, and could therefore be said to have a democratic framework.

Prescriptions of the normative theorists are on the same level as Horowitz’s, for they require the redrawing of internal political boundaries around groups, (at least minority groups in the case of Kymlicka and Taylor), and a massive decentralisation of power. As
Horowitz argues in the case of Nigeria and India, the contest for power within the subpolitical units has the effect of triggering intra-ethnic divisions and conflict thus shifting the burden of conflict from the centre. In this respect the arguments of the two sets of writers are not different. In fact, Horowitz is positive about his democratic framework when he declares that his project is "peaceful and compatible with democracy". He tries to justify this claim by exploring ways of achieving an inclusive democracy in a divided South Africa where any group would not be able to establish its hegemony over others.

The second relevant issue in the normative and empirical prescriptions is difference over the constituent federal units. While Walzer’s and Taylor’s arguments require minority groups to have their own federal units, Horowitz holds that internal political boundaries need not be drawn around homogenous groups. Young and Rothchild are silent on this but their views would lean towards the drawing of boundaries around homogenous groups. For Kymlicka, the boundaries of federal units could be blind to groups, but where there are national minorities they should have their own units in order to exercise self-government rights and limit their vulnerability to the decisions of the majority. Implicit in his argument is that each national minority should have its own unit. Among both the

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65 Horowitz, Ethnic Groups, p. 599.
66 See Horowitz, A Democratic South Africa?, chapters 5 - 7.
67 See Multicultural Citizenship, pp. 182 - 183.
68 His position is even more explicit in paragraphs like this: "So what is a fair way to recognise languages, draw boundaries, and distribute powers? And the answer I think is that we should aim at ensuring that all national groups should have the opportunity to maintain themselves as a distinct culture, if they so choose. This ensures
normative and empirical writers, Horowitz is most explicit in suggesting the non-homogeneity of federal units. What is most important to him is the putting in place of conciliatory institutions that would do away with census type politics, that is, a political process whose outcome is determined by pre formed majorities and minorities. In this type of politics minorities know their fate in advance of an election. For him, devolution of power to homogenous groups is "neither the only nor the best way out." This is because conciliatory institutions could thaw frozen majorities and minorities.69 His prescription is derived from his empirical study of the Nigerian Second Republic where half the total number of 19 states enclosed multiple ethnic minority groups.

Walzer would assent, on grounds of principle, to the view that units should not be homogenous. But the problem of separating small groups living on small contiguous lands and the issue of their non-viability would make him qualify the view that units be homogenous. He particularly makes room for the adjustment of moral principles to circumstances on the ground while rejecting arrangements that are determined in an a priori way. 70

The third salient issue the prescriptions raise is minority group-rights. For

that the good of cultural membership is equally protected for the members of all national groups. In a democratic society, the majority nation will always have its language and societal culture supported, and will have the legislative power to protect its interest in culture affecting decisions. The question is whether fairness requires that the same benefits and opportunities should be given to national minorities. The answer, I think, is clearly yes”. Kymlicka, Multicultural Citizenship, p. 113.

69 Horowitz, A Democratic South Africa?, pp 99 - 100, and pp. 216 - 213.

Kymlicka, federal units in which minorities have self government and by which they have representation on intergovernmental bodies are special rights, rights without which members would not be as free as the majority group members. This is what his project is all about. Walzer does not say much about minority rights, but does argue that groups separated in federal units would need to be protected by constitutional checks and by the possible use of international sanctions if the checks are violated by the majority. Both Rothchild and Taylor say nothing about special rights, except that the latter argues for equal recognition.

Horowitz is strongly opposed to any form of special rights - reserved seats, veto rights, federal units etc - for minorities, because they are agreements based on constraints which the majority will readily violate if their interests so demand. The quick though lawful abolition of special representation rights for Whites in Zimbabwe makes Horowitz regard group rights as "providing illusory security, easily pierced." On this score, he makes a scathing remark about international lawyers who, "with little knowledge of ethnic relations, . . have been creating a whole new set of understandings about group rights . . ."71

The fourth relevant issue raised by prescriptions the problem of disunity. Federalism, from the viewpoint of all the writers, is the best possible arrangement for accommodating diversities. However, there is some wavering by Walzer and Kymlicka on how unity can be achieved. Walzer's cultural relativism, which locates common authoritative moral values within groups, makes political union conditional upon

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71Horowitz, A Democratic South Africa?, p. 136, fn. 30. The above views of Horowitz could apply to any constitutional arrangement that seeks to protect minorities.
convergence of values. In the absence of the latter the federal sphere of unity would be without a moral foundation, in which case it would be a modus vivendi. On this Kymlicka is not different either. He explicitly says that both minorities and majorities have different cultural values, and that both groups would have to accommodate each other on the basis of a modus vivendi if they cannot adopt each other's moral principles. 72

Horowitz rejects constitutional arrangements grounded on modus vivendi because they are transient. Citing constitutional arrangements like the Lebanese National Pact of 1943, the Malaysian constitutional bargain of 1956, the Indian Punjabi Regional Formula of 1956, and the B-C Pact in Sri Lanka, Horowitz says that:

ey are all “bargains”, “pacts”, “contracts.” They are treaties between semi-sovereign peoples based on reciprocity, and they have all the characteristic problems all contracts have: the preferences of the parties change over time; conditions also change; the returns to the parties from the deal are uneven; . . . If incommensurables are traded - X in return for Y - and if X proves more valuable over the long term, the party that received Y may nurse a grievance. Unless provision is made for amendment contract alone is not a lasting basis for accommodation. Inter-group contracts tend to be their own undoing. 73

In order to achieve unity, he presents a design for living together premised on incentives for accommodative behaviour without sacrificing immediate group interest. The design, drawn from Nigeria's Second Republic, is the already-mentioned agreement on an electoral system that induces political parties to ethnic inclusion and requires wide ethno-regional

72 Kymlicka, Multiculturalism, p. 168.

73 Horowitz, A Democratic South Africa?, p. 149, also; Ethnic Politics, p. 581.
support in the election of the President.\textsuperscript{74}

Horowitz regards an agreement on an electoral system that places high premium on accommodative behaviour as similar to the “original position” contract of Rawls.\textsuperscript{75} The “original position” is a device that model parties who want to enter into social co-operation. It is characterised by a “veil of ignorance,” that is; parties are ignorant of their class positions and social circumstances and as a consequence, do not know who will be at the top or lower scale of the social ladder in the society they are trying to form. So situated, they would agree on principles that are fair and just.\textsuperscript{76} Horowitz takes after Rawls by saying that, in an electoral arrangement where there is high premium on multiethnic support in the election of officials, each contesting party have to reach out and accommodate other groups. Since no group knows who would gain office each would have to strive to reach out. The cost of not reaching out is electoral defeat or violence. And, what is more, a combination of two or a few large groups behind a single party is not enough to reach the required geographically spread votes even if they make up two-thirds of the country’s total population. Horowitz regards this arrangement as “not merely reflect(ing) transient interests but a design for living together premised on incentives for accommodative behaviour transcending group interests at the moment of enactment.”\textsuperscript{77}

\textsuperscript{74}See Horowitz, \textit{A Democratic South Africa?}, pp. 184 - 186.

\textsuperscript{75}Horowitz, \textit{A Democratic South Africa?}, p. 151.

\textsuperscript{76}See John Rawls, \textit{A Theory of Justice}, pp.136 - 142.; \textit{Political Liberalism}, pp. 304 - 305

\textsuperscript{77}Horowitz, \textit{A Democratic South Africa?}, p. 151.
Horowitz acknowledges that in Nigeria, where he draws his model from, the electoral arrangement was not enough to produce an enduring unity. The arrangement failed because of politicians' ambitions and intense competition. In spite of the failure of the Nigerian innovation to arrest conflicts, Horowitz thinks that it will produce the much-desired stability if it is continuously refined. He receives some support from Rothchild who argues that the incentives for co-operative behaviour if built upon and nurtured, would dispose politicians to learn and get acculturated to the politics of reciprocity.\textsuperscript{78}

The four relevant issues provide a helpful framework for discussing Nigeria's attempts at coping with ethnic difference. They set the agenda not in the sense of providing models for dealing with problems on the ground, but in the sense of providing a departure point for discussing ethnic based claims in Nigeria and responses to them. However, modern sociological view of ethnicity as a modern invention and the neo Marxist view of it as vehicle for class privileges raise fundamental challenge to the relevance of the prescriptions that should be considered.

**POTENTIAL RELEVANCE OF THE NORMATIVE AND EMPIRICAL ARGUMENTS.**

There has been growing acceptance in the social science community of the contemporary idea that regards ethnicity as a social construction. Its origin is closely associated with Benedict Anderson's idea of the nation as "imagined community" first developed in the 1983. According to Anderson, in Europe the emergence of the print word

\textsuperscript{78}Rothchild, *Managing Ethnic Conflict*, p. 49.
made it possible for anonymous individuals who inhabited the same homogenous space to imagine sovereign communities with which they could identify.  

The arguments of Anderson have given rise to a growing body of literature that has sought to elaborate the idea of identities as social inventions. There are two versions of the idea. One holds that modern tribal groups were expanded from kinship corporations that were formed as security networks during the age of slavery and state sponsored terrorism. Another version presents contemporary ethnic groups as coterminous with the development of colonialism. It argues that the determination of colonial administrators to define what they thought to be the traditional African community, and desperate attempts by local chiefs and literate to stake a claim in the new colonial political economy resulted in the invention or making of custom and tradition. The immediate utility of the contemporary understanding is that it compels recognition of groups as dynamic, fluid and prone to endless differentiation.

The idea that identity groups are colonial creations has been implicit in colonial history. The history shows that ethnic differences were fostered by administrative policies adopted by the colonisers. After the partitions and wars of conquest, the small crop of administrators recruited from the metropole could not make government acceptable. A solution was found in the policy of governing through local intermediaries but this required


the drawing of internal administrative boundaries around people who were 'believed' to have similar culture and whose affinities were based on co-residence on a contiguous stretch of land. Such political compartmentalisation enhanced ethnic consciousness among those so enclosed, without necessarily transforming some into fully integrated unitary groups. Other policies which discouraged horizontal interactions, e.g., governmental policy against national political parties in Nigeria and Gold Coast in the early 1920s, and in Kenya in the 1950s, widened cleavages and enhanced internal awareness. Thus, a sense of solidarity was fostered and groups were created that probably had little in common. So within groups were heterogeneity or coalitions of sub-groups. The consequence was the emergence, at the group level, of elites who organised and negotiated common positions within the group to compete at the wider state level. Sometimes, intense rivalry or competition among subgroups could generate conflict or prompt leaders of one sub group to ally with leaders of a rival ethnic group, e.g., in Nigeria the Yoruba speaking people of Ibadan joining forces with Ibo elites against other Yoruba.

The positive thing about the invention discourse is that it draws attention to the salience of ethnicity during colonial rule. It helps to understand that governance within the colonial framework was not possible without its use. So, ethnicity as a principle in governance was entrenched during colonialism. In fact, it emerged step in step with the modern state system in Africa and both have marched along ever since. The invention discourse also helps us to understand that some groups did not emerge as coherent unitary actors and, as a consequence, are prone to splintering or redefinition. So the salience of ethnicity in governance is contradicted by the fluidity of groups.

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The above contradiction could be reinforced by class interest. In Africa, as in most postcolonial societies, the dominant class does not have its material base in industrial economic production, and this is largely a legacy of colonial political economy. During colonialism, economic transformation was fostered by the state. It monetised the economy, introduced cash crops and enforced their production, opened mines and recruited labour to work in them, and adopted policies that favoured the operation of monopoly firms. Like a true entrepreneur that it was, the state was directly immersed in the economy, and together with monopoly firms, dominated it.81 This dominance blocked the path of the colonised for upward social mobility, especially the trading class whose transition into industrial entrepreneurship was constrained by monopoly firms, and the educated class denied positions in the colonial system.82 Thus, the indigenous educated and trading class regarded political power as the chief medium for economic betterment and one that must be captured from foreign rulers by all means.

The importance of political power to a fragile class of elites determined to improve their material well being may intersect with group fluidity to open a big gap in the

81An example of state dominance was the setting up of Marketing Boards to purchase export crops from peasant farmers at stabilised prices for sale in Europe. The difference between the market determined international price and the stable domestic price provided huge profits for government. See Richard Sklar, “Contradictions in the Nigerian Political System,” Journal of Modern African Studies, Vol. 3, No. 2, 1965, pp. 203-4

prescriptive arguments discussed above. But one has to be cautious here. Groups aspire to have their elites in power regardless of the latter's agenda. It is by having their elites in the state that they are able to advance their interests in the larger society. Elites might initially be motivated by personal gains but as they go deeply into the business of politics pressures from their group overwhelm them. The interest of both (elites and their groups) converges to some extent and power is used not simply for one’s personal gains. One thing that has emerged in Africa today is that a public official might occupy an office but its powers are actually exercised by his/her kin groups. A known official would head a ministry or an organisation but some chiefs in the official’s ethnic community determine its actual operation. Fred Riggs has referred to this as the “sala bureaucracy.” Claude Ake sees it as antinomies of the state’s form and content. According to him:

the person who holds office may not exercise its powers, the person who exercises the powers of a given office may not be its holder, informal relations often override formal relations, the formal hierarchies of bureaucratic structure and power are not always the clue to decision making power. Positions that seem to be held by persons are in fact held by kinship groups; at one point the public is privatised and at another the private is “publicised.”

Elites are not so single-minded in their quest for and use of power as some would like to think. This is not to mean that corruption is part of political ethics. Rather the presupposition here is that public institutions ought to be functionally responsive to diverse groups within the polity.

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SUMMARY.

On the whole, this chapter raises two key questions for my project.84 One is normative and the other is empirical, and they are both related. The normative question is: Under what circumstances should the interest in-group recognition be displaced by concern for political and social stability? The empirical question is: Under what circumstances are constitutional structures that express ethnic difference more likely to increase political and social stability than structures that deny difference. The answer to the normative question is that, where recognition has the prospect of generating intense conflict – social and political, – the concern for stability has to supplant the moral claims of groups. The answer to the empirical question is that, where the expression of difference promises greater stability than its denial, justice would require some form of recognition. In this case, there is no grave tension between the moral claims of groups and the concern for stability (or between justice and stability). What is needed is a form of recognition that would not prejudice stability.

84I owe the framing the sentences in this section to Melissa Williams.
CHAPTER THREE
ETHNICITY IN NIGERIA

Are there identities in Nigeria that matter? If there are, how do they matter in politics? These are questions this chapter will attempt to answer. It will present the range of groups in Nigeria and discuss the most distinguishing aspects of colonialism, being the use of ethnic identities in political governance and the emergence of a nationalist movement fractured on ethnic lines. These explorations would create a foundation for a discussion that would challenge sociological claims that identities are constructed and too illusory to be accommodated in the design of political institutions.

ETHNIC COMPOSITION

Geographically, Nigeria is divided into north, east and west by two rivers, the Rivers Niger and Benue, which merge at a point below the centre of the country into one and then flows southwards to the Atlantic Ocean. The north occupies the entire northern portion of the country for which it is geographically referred to as “north,” while the east and west occupy the southern portion of the country and, for the same reason, are collectively referred to as the “south.”

Each of the three geographic regions - the north, east and west - houses a numerically dominant ethnic group and significant number of minority ethnic groups. The north consists of the numerically dominant Islamic Hausa-Fulani, and several minority groups most of whom are non Islamic and live mostly at the south-eastern and north-eastern
portion of the region. Formerly, the Hausa-Fulani were two different groups. But, in present times, they are regarded as one because of near fusion caused by inter marriages, Fulani conquest and imposition of theocratic rule during the 19th century, the use of common Hausa language, and common Islamic religion.

The eastern geographic region houses the numerically dominant Ibo and several other minority groups including the Efik and Ijaw who exercised political overlordship before the advent of colonial rule. The west consists of the numerically preponderant Yoruba, and a number of minority groups including the Edo whose monarchs were the suzerains of Lagos and other Yoruba towns, and were also recorded to have exchanged diplomatic missions with the Portuguese during the 16th century.

There are no exact figures on the total number of groups in Nigeria but they are conservatively put at 250. Most, especially the larger groups, are not entirely homogenous as there exist linguistic /communal cleavages within. However, there is often collective group loyalty vis a vis other groups when it comes to issues that are of political social and economic concerns. Of the over 250 groups, none is large enough to claim numerical dominance. The Hausa-Fulani comprise no more than 30%, the Ibo about 16% and the Yoruba 17%. The remaining 37% are shared unequally among minority groups, ranging

85 The Yoruba are highly fractured and live in mutual distrust while the Ibo are equally divided within. It is generally acknowledged that the Yoruba were in the process of fission, and that the process was stalled by the 19th century British conquest which put an end to fratricidal wars among various factions of group.

from the relatively large Islamic Kanuri in the extreme north-east to the very small Itsekiri in the mid-west. Though it must be stated that all these figures are only approximations and both individual membership and group boundaries are sometimes contested.

EMERGENCE OF THE STATE

The political composition of Nigeria, like that of all other Anglophone African countries, was prompted by the raw materials needs of British industries. Instead of slaves, raw materials were required. The industrial revolution changed the trade in slaves conducted at the coastal seaboards to trade in palm oil. Trade in the latter was conducted at coastal city-states established by the Ijaw and the Efik. European traders did not arrive alone, there were also Catholic and Protestant missionaries to convert and educate Africans. But, they all confined their presence to the coastal areas, or what is known as the south, because the north had little to offer in terms of raw materials, and in religious terms it was a closed shop to Christian missionaries.

While the south was specialising in export commodity production and orienting itself towards western education and individualism, the north, partly Islamic and partly non-Islamic, remained in its own world with a greater portion of it economically and culturally oriented towards Arab civilisation. British traders still found it necessary to establish their presence in the region in order to ward off the French who were closing in on account of the stampede triggered by the scramble for Africa. This was how the United African

See Donald Horowitz, *A Democratic South Africa?*, p. 86.
Company, a British trading firm, obtained a Royal Charter in 1886, set up an army, declared sovereign power over the region and began routine political administration. The colonial office took over in 1899 to begin formal colonial rule. So, the Nigerian State was first a merchant.

INTERNAL POLITICAL BOUNDARIES AND ETHNIC GROUPS.

An issue that has always received comment in Nigerian political history is the administration of northern and southern Nigeria as two separate territories. The British treated their possessions as two distinct territories. In fact, the possessions were divided into two separate colonies, each with its own administration. Each had its own name, the Protectorate of Northern Nigeria and the Protectorate of Southern Nigeria. Economically and culturally, the two had nothing in common so it was understandable. However, to shift the cost of administering the north from British tax payers to the economically solvent south, the British appointed Lord Lugard as Governor General in 1912 with the express purpose of uniting the two territories. Muslim rulers were opposed to amalgamation, preferring the north to remain separate from the south. They were however persuaded into

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88 Southern Nigeria had been financially self supporting right from the time of British occupation in the late 19th century, to the extent of financing the cost of its own occupation. Its prosperity hinged on its economic relations with European merchants but more specifically on export of agricultural produce and on custom duties on imports. On the other hand, the cost of administering the north was offset by grant from the South and by money voted by the British parliament. The official mind was that the economic burden on British tax payer could be removed if the two territories had a common revenue. See Margery Perham, Native Administration in Nigeria. London: Oxford University Press, 1962, pp. 61 - 62; See Kirk-Greene, “Introduction, “ in Sir Frederick Lugard, Lugard and the Amalgamation of Nigeria: A Documentary Record. Compiled with Introduction by A. H. M. Kirk-Greene, Frank Cass, 1968 p. 6; and Sir Charles Orr, The Making of Northern Nigeria. London: Frank Cass, 1969, pp. 77 - 78.
it by Lugard’s promise to; a) separate northern administration from that of the South; b) ensure the continuous functioning of the Emirate system of rule in the north; and, c) shield the north from proselytisation by Christian Missions. The British kept their promise. After amalgamation was effected in 1914, the two units continued to be administered as two different territories. Each had its own civil service and lingua franca - English in the south, Hausa in the north.

The real challenge to the British was that of making foreign rule legitimate and acceptable to the general population that had been subdued. First, the north-south political boundary that roughly coincided with, but in some places went beyond, the territorial limits of the Sokoto Caliphate was retained. This was on grounds that the two units had been

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89 *Emirate* refers to provinces into which territories conquered by 19th century Fulani crusaders of the holy war (*jihad*) were divided and administered. The ruler of each *emirate* (province) was known as *Emir*, meaning representative of the *Caliph*. Caliph was a titled adopted by the leader of the holy war, and it meant Successor of Prophet Mohammed. The title was corrupted by European explorers into *Sultan*. The *Sultan* or *Caliph* was therefore the supreme leader of the Sokoto Caliphate and all Emirs owed him political and spiritual allegiance for which they paid him periodic visits at his headquarter in Sokoto.

90 This is not to suggest that the emirs were not militarily subdued by the British. They were, except that after military conquest the Emirs promised obedience on condition that their religion was not desecrated. For example, when Aliyu Babba, Emir of Kano was subdued in 1913, Wambai Abbas who was appointed to replace him promised “in the name of Allah and Mohammed his Prophet” that he would “serve well his Majesty King Edward VII and his representative the High Commissioner... provided they are not contrary to my religion.” Cited in Jibrin Ibrahim, “Religion and Political Turbulence in Nigeria,” *Journal of Modern African Studies*, Vol. 29, No.1, 1991, p. 128.

91 *Caliphate*, meaning Muslim Territory, was the territorial area conquered by the jihadists and its headquarter was established at Sokoto. The Caliphate was held together by the values of Islam embodied in Islamic laws which were written by the Caliph.
under different sets of laws and government, and that it would be politically safe to have
two sub political units. However, the boundaries were adjusted to unify groups that were
divided when the Northern Protectorate was declared in 1900. Margery Perham,
Lugard's official biographer, was later to declare that this was “a frank recognition of
differences, some inherent, some due to divergences in our administration, between the two
parts.”

Second, the country was divided into 21 provinces, 12 in the north, 9 in the south
and British Residents were appointed to administer them. The boundaries were drawn for
administrative convenience, but attempts were made to avoid the splitting of homogenous
groups into different provinces. According to Lugard, the boundaries “follow tribal limits
as far as possible,” though there were cases of homogenous groups who were divided into

which were strictly enforced. It was also held together by the appointment of the
Caliph’s followers as emirs; by the practise of having an annual gathering of all emirs,
known as the Manya Sarakuna - meeting of Big Chiefs, - at Sokoto, and; by a
machinery of government which placed premium on obedience and subordination of
emirs to the Leader of the Faithful while making room for the former to enjoy
independence in their emirates without infringing on the Sharia.

The adjustment did not unify the Yoruba of Ilorin and Kabba in the North with
their kin groups in the south. The Yoruba of Ilorin and Kabba were conquered by the
Sokoto jihadists during the 19th century and became an Emirate within the Caliphate.
Like other people in other parts of the Caliphate they became Islamic, and looked
towards Sokoto as the spiritual capital. There was therefore some attention to cultural
history in the decision to retain the boundary separating the two units. Lugard,

See Margery Perham, Native Administration in Nigeria, London: Oxford
University Press, 1962, p. 64.
separate provinces. The provinces were further divided into districts, and District Officers posted to each.

With the above divisions, an Indirect Rule policy was adopted. It involved administering the people using their customary political institutions. Chiefs that had been subdued were reinstated and given executive authority to govern, not as independent rulers but, as salaried agents accountable to District Officers. Their governments were known as Native Authorities in the north, and as Native Councils in the south. In areas where the institution of chieftaincy was weak it was shored up, and where it was non-existent individuals were randomly chosen and given warrants (Warrant Chiefs) to preside over Native Courts that were created for purposes of dispensing justice.

The policy of Indirect Rule was adopted on the wrong assumption that there were chieftaincy institutions in all parts of the country and on the wrong premise that traditional

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95 The division of each of the sub political units into provincial units and in turn into divisions made most of the northern emirates consist of a number of division. In this context, British political officers, acting behind the scene not to be seen by the people, gave instructions to Emirs who had to execute. Now, the British, in becoming the superiors of the emirs, also replaced the Caliph who was the supreme leader of the Caliphate.

96 Indirect rule was an adaptation of the emirate administrative structure characterised by relationships of supra ordination and subordination, the existence of Islamic courts presided by Moslem Judges administering Islamic laws though purged of their canonical aspects, and a fiscal system by which taxes were collected directly from the people. The British liked the emirate administrative structure because it made for neat and ordered administration, shielded the British from the masses, and made colonial rule appear as self rule. See Lord Lugard, Political Memoranda. London: Frank Cass, 1969, p. 182 pp. 296 - 300, and p.312.
political institutions in all parts of the country were centralised and hierarchical like the emirate system. In northern Nigeria, the policy ignored the fact that the region contained sizeable non-Islamic areas that resisted Sokoto jihadists and maintained their independence up till the British conquest. In some of these areas where the institution of chieftaincy existed, the people were divided into districts, but unknowingly merged with emirates to form provinces, and then delivered to the political rule of Emirs, something the latter could not achieve by holy war. In other areas where the family and lineage system prevailed and boundaries were open the people were federated at successively higher stages to form districts. Chiefs, some of whom were Hausa agents of the British, were then appointed as integrative symbols.97

In southern Nigeria, the policy of indirect rule was generalised without regard for differences in political organisation. For example, in the west Chiefs of Yoruba towns who were traditionally accountable to, and could be removed by a council of titled chiefs, acquired executive authority that was anathema to the people. In the Niger delta and in the east, there were no chiefs, instead decisions were taken by consensus at the village assembly. In these areas the British federated clans and appointed Warrant Chiefs to preside over courts whose jurisdictional areas had no bearing with ethnic groups.

Between 1919 and 1920 there was tension and restiveness among some non-Islamic groups in the north over the introduction of indirect rule. And, between 1921 and 1930

there were uprisings in the south.\footnote{According to C. K. Meek, "... the manner in which the riots had been conducted had made it evident that there were other predisposing causes of discontent, and chief among these was the widespread hatred of the system of Native Administration conducted through the artificial channel of Native Courts, ... Had there been a genuine system of Native Administrations based on the institutions of the people and giving full freedom of expression, the riots, if they had occurred at all, could not have attained the dimensions they did." C. K. Meek, \textit{Law and Authority in a Nigerian Tribe}. London: Oxford University Press, 1937, p. ix.} In reaction, the Secretary of State for Colonies criticised the colonial government in Nigeria for not having adequate knowledge of social groups and their institutions. These developments prompted the recruitment of anthropologists, including the well-known Dr. Charles Kingsley Meek, to carry out surveys of ethnic groups.\footnote{As a matter of policy, all Divisional Officers were required to carry out an anthropological survey of groups in their units. They were therefore required to study and have knowledge of the indigenous languages within their units. It was these political officers who doubled as amateur anthropologists.} The results provided relevant information that was used to adjust provincial and divisional boundaries and to remove the non-Islamic peoples of the north from emirate rule. The results of the ethnic survey were also used to reform indirect rule to suit the cultural peculiarities of different groups. It must be said that the recognition of group difference in the readjustment of administrative boundaries was within the limits of knowledge provided by colonial anthropologists most of whom were amateurs.

James Coleman has discussed the internal ethnic integration that resulted from indirect rule.\footnote{See James Coleman, \textit{Nigeria: Background to Nationalism}. Los Angeles and Berkeley: University of California Press, 1958, pp. 52-3} According to him, the policy encouraged both the fragmentation and integration of groups who had either failed to achieve unity or were disintegrating on
account of wars. He cites the example of the Yoruba who were locked in self-consuming wars before British conquest. Yoruba sub groups, according to Coleman, were split into a number of administrative units and chiefs appointed for each. This facilitated the fragmentation that had been taking place since 1780, but at the same time a pan Yoruba consciousness was fostered by the bringing of first class Chiefs (hereditary monarch of pre-colonial kingdoms) together to participate in annual conferences.

Ethnic integration, according to Coleman, was also enhanced among those who were organised in lineages and clans and whose boundaries were undefined. Federation into compact units of native administration created some sense of defined their boundaries and fostered common consciousness. Coleman concluded that the policy centred public life in the traditional communities and complicated the task of welding diverse groups into one Nigeria.

THE PLACE ETHNICITY IN COLONIAL CONSTITUTIONAL POLICY.

Constitutional policy in colonial Nigeria was developed with some regard to ethnic differences. Apart from the north and south having separate administrations after their political unification, northern emirs were encouraged to have conferences (the Conference

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101 History records that the Yoruba country was beset by warfare during the whole of the 19th century. Chiefs were desperate for peace but could not bring themselves to negotiate it because of mutual hostility and distrust. According to Ayandele, a Yoruba historian, a universal appeal had to be made by Yoruba rulers to the British, who had annexed Lagos, to put an end to their wars. This was how the British entered Yoruba hinterland and made several treaties, agreements and proclamations of protection with individual towns. See E. A Ayandele, *Nigerian Historical Studies*. London: Frank Cass, 1979, pp. 19 - 20, and pp. 30 - 33
of Emirs) which first met in 1912, and more frequently in the early 1930s. Chiefs of the non Muslim areas of the north were also encouraged to, and some did, attend the gatherings. They were gatherings in which Emirs and Chiefs met to discuss common issues of administration, to advise their British superiors, and to vent their resentment against rules that affected their religions and customs. These annual gatherings helped to create an integrated northern political elite having common political commitments despite religious and ethnic differences.

Unlike the north, the whole south with its spirit of laissez faire did not and could not have had a common annual gathering of Chiefs. Instead, a Nigerian wide advisory body called the Nigerian Council was established way back in 1913. This was abolished in 1922 and replaced with a Legislative Council that theoretically had the south as its jurisdictional area but actually legislated for the north as well. This council had four African elected members (the first in British Africa) but the north was not represented. This gave the south an edge over the north in terms of constitutional development.

Separate constitutional development was maintained until the 1930s when colonial

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102 Perham points out that the Emirs Conference established some bond among rulers who, in 1900, could not even unite against an infidel. See Perham, Native Administration, p. 126 - 131.

103 Its members were appointed chiefs but no northern Emir sat on it, instead it was British Residents who attended on their behalf.

104 There had been a Legislative Council in Lagos since 1861 when it was annexed and made a crown colony by the British. As part of British policy for all crown colonies, it was invested with a Legislative Council when it was annexed. However, the council acted as an advisory body for the Governor in making laws for the colony. In 1922 it was expanded to serve both The Colony and the south.
governors posted to Nigeria decided to treat the country as one polity "without mental reservations." They felt that it would be wise to take a holistic political approach because, at the stage of the country’s evolution, no part of it, for geographic and economic reasons, would “likely be a separate, self contained political and economic unit” in the future.\textsuperscript{105} To ensure the development of the country as one polity, Bernard Bourdillon, the Colonial Governor who assumed office in 1935, produced a memorandum in which he developed the idea of a three regional legislative councils for the northern, eastern and western parts of the country. Memberships of each would be drawn from Emirs and Chefs of the Native Authorities (in the case of the north) or Chief of the Native Councils (in case of the east and west) in the its area. In addition, there would be a central legislative council whose membership would be drawn from the three regional legislative councils.

Bourdillon’s memorandum for what amounted to a unitary state with three regions was opposed by both Emirs and British political administrators in the north because they preferred separate political development.\textsuperscript{106} British administrators in the north tried to kill


\textsuperscript{106}Bourdillon defended his proposal by pointing out the advantages the north would derive from it. One was that, the north had no voice in the then Legislative Council which the Governor consulted for problems which affected the country. A regional council would create a voice for the north. Second, a regional council would not be enough because there could be matters in which there would be differences among regional councils. In which case it would be necessary to bring them for discussion in a Nigerian assembly in which all were represented. He summed up: “To put it quite simply, has the time not come when we must persuade the Emirs, for their
it by pointing out that regionalism would encourage separatist tendencies. Bourdillon challenged this view by arguing that the fact that “Regional councils may ‘think regionally’ and foster separatist tendencies is one which cannot be altogether overlooked, but, if their deliberations are properly guided, it can be averted. A certain measure of ‘regional thinking is not only inevitable but even desirable.”

Preliminary steps to effect the above discussed proposal were taken in 1939 when the country was divided into three administrative units by splitting the south into east and west. With this division the north was more than double the combined area of the east and west and more than equalled them in population. Sir Arthur Richards, the successor of Bourdillon, introduced a unitary constitution in 1946 that recognised the three units as political regions, and also instituted the legislative bodies as proposed by Bourdillon. The institution of three political regions was defended in terms of fundamental cultural differences between the Hausa/Fulani, the Ibo and the Yoruba. In the words of Arthur Richards: “... Socially and politically there are deep differences between the major tribal groups. They do not speak the same language and they have highly divergent customs and ways of life and they represent different stages of culture”

own good and that of their people, to say, not “We will not tolerate Southerners advising the Governor in our affairs,” but, “We insist that we and our people should have an equal right with the South to advise the Governor in Nigerian affairs?” Sir Bourdillon, “A Further Memorandum . . .,” p. 3.


DIFFERENTIAL RESPONSES TO BRITISH RULE

The Colonial State was originally a trading company. Its economic role did not change fundamentally throughout the colonial period. In fact, it played a leading role in the socio-economic transformation of the country by setting up centres to research the cultivation of export crops whose seedlings were introduced from other parts of the world. It also assumed this role by introducing the use of money as a medium of exchange, and by imposing taxes the payment of, which compelled people to produce export crops, or to work in mines located in the north and in the east. Furthermore, it constructed ports at the coast, and built vertical railway lines from the coast to selected points in the north to expedite the evacuation of both commodity crops and hard minerals.

The above roles accelerated the emergence of modern social differentiation - wage labourers, transporters and middlemen supplying exporting companies with commodity crops. The changes were most remarkable in the south where there was no resistance to laissez faire. The north, with the exception of its non-Islamic areas, remained impervious to change because of the policy of preserving the region from western civilisation. Workers and traders in the miner-fields and other modern sectors that were opened in the region were immigrants from the south, most of whom originated from Ibo land. In accordance with the policy of closing the region to Western influence, southern immigrants were made to live in special quarters (Sabongaris) outside the city gates where they remained segregated from Muslims.

Unlike in the north, the reception of laissez faire in the south led to the proliferation
of schools and the emergence of the western educated. Many were Yoruba, mainly because intensive missionary contact first began in the west, and also because liberated slaves returned to Yoruba land with a Western outlook and constituted an emergent middle class in the Lagos - Egba axis. By the 1930s the Ibo had equalled them, and a rivalry ensued between the two over educational progress. The Yoruba lost ground, and a latent hostility developed.

While there was competition between the Ibo and Yoruba over educational progress, the north remained as it was. The policy of preserving the region in its Islamic state inhibited the emergence of a western educated class. For example, the region did not have a university graduate until 1951. This had two consequences. One was that lower administrative positions in the region were filled by southerners, especially Ibos and Yorubas. The other was that educated corps who led opposition to continued British rule was all southerners. As a matter of policy, the colonial rulers closed the higher levels of the superstructure to Nigerians with university education. And because they would not accept lower level positions, the university educated corp all of whom were southerners fractured along ethnic lines, had to seek self employment in journalism. It was their control of the press that they used to mobilise opposition to colonial rule. First, they asked to be

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109 The Ibo were forced to migrate to all parts of the country on account of their high population density and poor agricultural land. They were generally perceived as hard working, aggressive and go-getters.

110 This rivalry gave birth to community self help projects. Not to be undone in the race for Western education communities began to establish their own secondary schools, and in turn successful graduates built schools for their communities.
accommodated at the higher levels of government, especially in the legislative branch. Their demands were rebuffed. In reaction they asked the British to surrender power, and then used their press to mobilise the masses to make colonialism unworkable. In all this the north remained aloof, as there were few educated people in the region to speak the grammar of popular politics.

When the Richards Constitution was introduced in 1946, the educated class in the south vehemently denounced it as “one rotten fruit of imperialism.” More specifically, the constitution was rejected for its innovations. It was criticised on ground that memberships of the regional and central legislatures were undemocratic. The three-regional structure - the most distinguishing innovation - was also criticised. Some argued that the three regions were created without regard to ethnological factors. In a letter to the Colonial Governor, Obafemi Awolowo, a member of the Yoruba educated elite, argued for thirty or forty states for the diverse groups in the country so that each could maintain its cultural tradition and develop at its own pace. Nnamdi Azikiwe, an educated elite of Ibo origin argued for a quasi federation of eight units, some of which would coincide with

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111 Cited from Coleman, *Background*, p. 280.

112 The bodies were composed of British officials and Chiefs. Members of the regional legislative councils were chiefs appointed from Native Authorities/Native Councils, and members of the central legislative council were chiefs drawn from the three regional legislatures.

ethnic groupings. These criticisms were joined by protest by some minority groups over inadequate representation in the central legislative council introduced by the Constitution.

In response to the above criticisms, and also to pre-empt revolutionary uprisings which were already sweeping across colonial territories, the Labour Government in Britain took steps to entrench liberal democracy. Sir John Macpherson, a newly appointed Governor under the Labour Government, began the process of de-colonisation by inviting Nigerians to hold a conference to decide on the political arrangement they desired. A number of questions were administered to serve as a guide. Two of them were:

a). Do we wish to see a fully centralised system with all legislative and executive power concentrated at the Centre or do we wish to develop a federal system under which each different region of the country would exercise a measure of internal autonomy?

b). If we favour a federal system should we retain the existing regions with some modification of existing regional boundaries or should we form regions on some new basis such as the many linguistic groups which exist in Nigeria? Conferences were held and recommendations were made to the colonial government. The recommendations resulted in the Macpherson Constitution introduced in 1951.

In sum, the British colonial power respected ethnic differences and reinforced them in some respects and ignored them and undermined them in others, but the reinforcing (reconstructing) tendencies were strongest.

114See Awolowo, Awo, p. 167

115See Awolowo, Awo, p. 173
PART II

SHOULD ETHNIC DIFFERENCE BE GIVEN POLITICAL SALIENCE?

From the above narrative, should one regard ethnic identities in Nigeria as genuine or mere illusions? If they exist (as illusions or as realities), do they matter? I will attempt to answer these questions in what follows.

ARE ETHNIC IDENTITIES REAL?

Recent sociological and historical studies have heightened awareness about identities as non-givens. The studies have revealed that ethnic groups are formed and reformed and that earlier conception that they are primordial is false. Studies focusing on Africa show that identities were socially constructed during both the pre-colonial past and the colonial period, although those constructed during the latter period were fundamentally different. There are various versions of the argument but I would try to piece them together.

The sociological and historical arguments regard ethnicity in African as the outcome of continuous but conflict-ridden interaction between political and cultural forces and the reaction of the latter to the former. Peter Ekeh argues that in the pre-colonial world identities were security reactions to the violence and disruptions of slavery and to the wantons of despotic rulers. People formed network of alliances and defences on the basis

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116See Crawford Young, “Evolving Modes of Consciousness and Ideology.”

of unilinear descent as a sort of safety net from violence.\textsuperscript{118} Thus, the bases of classification were mainly kinship ties. Crawford Young shows that the vocabularies of classification were fluid, but usually gave recognition to ancestral descent, ritual practice, political groupings, and language.\textsuperscript{119} So ethnic groups of the twentieth century, such as the Yoruba, had no conscious or institutional existence but there were several culturally similar kinship groups who would later to be ‘imagined’ as one community called ‘Yoruba.’

The sociological and historical studies show that the emergence of the colonial political order also marked a change in identity. The latter became a product of the hegemony of the colonial state and the responses of the local population. According to the argument, the colonial state constructed its hegemony by mapping the local population into ‘tribal’ units of political rule. Creating the tribe was essentially an expansion and classification of kinship groups who were believed to be linguistically related, or who lived in a discrete territorial space and were believed to look similar in physical features. According to Bruce Berman, the incorporation of the ethnically mapped-out administrative units involved alliances with local “Big Men” (chiefs and headmen) who could link the state with, and enforce its mandates in the networks of, society. As the principal agents of the state and the linkage with the peasants below, the ‘Big Men’ became the most powerful in the networks of local society. They determined and enforced codes of behaviour with the

\textsuperscript{118}Ekeh, Social Anthropology . . . ,” pp. 673-83.

\textsuperscript{119}Young, The African Colonial State, p. 232.
backing of state power, for which reason they emerged as the embodiment of custom. Terence Rangers shows that both local chiefs (who could no longer carve out conquest polities for themselves) and the young literate gave moral content to what the state had invented. They gave moral content to the empty boxes of “tribes” by imagining common history, common language and common descent, and by inventing custom.

But Mahmood Mamdani argues that substantive custom was neither a “fabrication, arbitrarily manufactured without regard to any historical backdrop,” nor “a kind a historical residue carried by groups resistant to modernisation.” Rather, as the change from an old regime of force and commodity market in slaves (legal slavery of the pre-colonial era) to colonial markets in wage labour and export crops occurred, people with and without interest in the old order sought to make claims in the new one. Every claim presented itself as customary and there was no neutral arbiter. In this context of contradictory claims, those without access to colonial authority could not press their views. The chiefs who were the makers and executors of the law, and were also the prosecutors, adjudicators and jailers, decisively shaped the substance of custom.

The dialectic unfolded as Africans picked on ethnic identity as a weapon for autonomous action either to constrain the oppression of the state or for welfare and security

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121 Rangers, “The Invention of Tradition Revisited,” pp. 84-7.

purposes.123 Young argues that uneven penetration and transformation of the economy by forces of modernity reinforced the dialectic. People living in areas where capitalism had greater presence gloated in ‘advanced’ stereotype and mobilised to seize what opportunities there were in the colonial economy. On the other hand, people in areas where capitalism had relatively little impact were stereotyped as ‘backward’ and they mobilised to reverse their status.124 Thus, as Mamdani argues, ethnicity was a form that colonial rule took, and also made for a form of politics as migrants in urban areas organised ethnic associations both as a protective shields in their new habitats and as links with their rural homes.125

I accept the argument that contemporary ethnic groups are socially constructed, not dating beyond the colonial period. What I want to address is whether groups qualify for recognition within the arguments of Walzer, Taylor and Kymlicka.

SHOULD SOCIALLY CONSTRUCTED GROUPS BE GIVEN POLITICAL RECOGNITION?

Should ethnic identities matter in politics if they are social constructions? Some invention theorists hold that identity groups should not be given political relevance because they lack cohesion, and are highly fluid and dynamic.126 There are some who argue that groups should be given political salience because they were constructed during


125Mamdani, *Citizen and Subject*, pp. 192-3.

126For example see Jean-Fançois Bayart, *The State in Africa*, p. 49.
the colonial era for purposes of governance, and became the medium of citizenship. There are validates in both claims but they will not be evaluated here. Instead, I will attempt to situate the political importance of groups within the arguments of the normative writers.

One point that emerges from the constructivist theory is that ethnicity issued from two interconnected processes: one, and a primary one, was the colonial rulers’ (mis) perception of traditional African community and the attempt at giving political salience to what they regarded to be African custom. The other was the attempt by the colonised to find cultural and political defences against the disruptions of modernity. Both processes produced networks of kinship alliances, loyalty, patronage, clientilism and reciprocal obligation, which Bruce Berman regarded as the real civil society in Africa that overlaps both the public and the private. These networks, which constructivist theory regards as constituting African ethnicity, produced what Patrick Chabal has referred to as the “communal individual.” Meaning that the interest of the individual is tied to those of her family, her village, clan etc, very much like Rousseau’s republican citizenship.

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131See his Power in Africa, p. 204.
The way the interest of the individual is connected to that of her (colonial constructed) community is best understood in terms of the linkage that is usually made between political incumbents and their communities. It is a fact that positions occupied by public officials are usually linked to their communities. The interests of officials and those of their communities are locked together, and it is hard to differentiate one from the other. As in most relationships of reciprocal obligation, both are obliged to service each other's interest. For example, General Colin Powell in the United States would have no obligation to African-Americans if he becomes the country's president or vice president. He would even use his position to strike down affirmative action without qualms. In Nigeria not so. Upon coming to office a Colin Powell would have to channel social amenities, infrastructures, educational and developmental projects to his community. The price of not performing is a range of informal sanctions that include forced disengagement from the community's activities, rather like the way clients would abandon a patron or a partner when the latter fails in her obligation. Chabal made the point about the interest of the individual being locked with that of his community when he noted that:

No one disputes the connection between individual and communal self-interest. Houphouet Biogny's fantastic extravagance in the development of his 'village', Yomassoukro, is objectionable not because the President is lavishing millions on his 'village' but because he is lavishing too many millions. The same applies to Mobutu's 'village', which includes a private runway to accommodate the Concorde hired for his foreign travels.132

Some regard the connection between the individual's interest and that of her community

as the root of political clientilism, prebendalism and corruption in Africa (Berman); others see it as holding the possibilities for democracy and stability (Mamdani). Here, and following Chabal, I argue that it provides the basis for legitimate representation in government.

The idea of the ‘communal individual’ gives a clear picture of how public policies are determined by the identity of public officials. For individuals to be in office is to represent their ethnic communities. To know the identity of public officials is to know the ethnic communities whose interests determine what government does. Ethnic background is not separated from office. So those in higher governmental offices advance and secure the interest of their communities, and doing so is the basis for securing and maintaining their personal interests. In this context, democratic contest does not amount to choosing representatives having a set of desirable issues but to choosing those that would best take care of one’s community’s interests. It serves no purpose choosing someone from another community because she/he is expected to serve her community’s interest. Democratic elections may be competition among individuals but such competition is subsumed in competition among ethnic communities.

The point to recognise is that, a truly representative and legitimate government would be that which reflects the various communal groups that constitute the real civil society. As Naomi Chazan et al have argued non or under representation of some groups creates a feeling of inequality that opens into violent conflict. Indeed, the important violent confrontations that occurred in Congo (1960-3) and Nigeria (1967-70), the genocide in Rwanda and the ongoing serious conflict in Burundi, Sudan, Chad, and Angola arose
from the adoption of constitutional structures that did not give adequate political representation to various communal groups. The constitutional defects, as Crawford Young has shown, had to do with the obsessive concern of nationalists and academics with "nation building" and "political integration" projects. Both classes of people stigmatised ethnicity as tribalism that worked against national unity and modernity, and as a consequence, rejected it as a legitimate basis for political claims. Paradoxically, in countries like Nigeria, most of the nationalists were trained by their ethnic communities. The communities taxed themselves to establish their own secondary schools and to send their promising sons to Cambridge and Oxford so that they would have their own share of elites who would engage the colonisers in the context for power. Even as challengers of foreign rule, the nationalists were defined in terms of ethnicity. They remained fractured on ethnic lines and mutually non-agreeable as they mounted opposition to foreign rule. But when they came into office they acted on the advice of the modernisation theorists by embarking on nation building projects that entailed legislating against groups. Leaders like Samora Machel of Mozambique was to declare in the 1970s that: "For the nation to live, the tribe must die." But, as Chazan as shown, the several ethnic conflicts that have questioned the legitimacy of specific regimes and challenged the territorial integrity of

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135 Quoted in Mamdani, *Citizen and Subject*, p. 135.
some states have made both rulers and ruled to realize that political representation of ethnic communities is a foremost requirement for stability.\textsuperscript{136}

SOME GREY AREAS.

I have already shown that the Nigerian State was initially a merchant and its successor colonial state was no less so. Throughout the colonial period the state fostered the transformation of the economy and, together with foreign monopoly firms, dominated productive activities including peasant production of commodity export crops.\textsuperscript{137} The argument has been made, and forcefully too, that dominance of the economy by both state and foreign monopoly firms blocked the path of the colonised for upward social mobility. This blockage meant that the state, with its control of resources, was seen as an avenue for upward social mobility, especially for the educated class who were excluded from the colonial superstructure, and for the trading class whose transition into industrial entrepreneurs was constrained by monopoly firms.\textsuperscript{138}

I acknowledge the centrality of the state in the economy and the economic fragility of the indigenous classes that were anxious to improve their material base. The state as a

\textsuperscript{136}See Chazan et al., \textit{Politics and Society}, pp. 191-5.

\textsuperscript{137}Marketing Boards were set up by the colonial government to purchase export crops from peasant farmers at stabilised prices for sale in Europe. The difference between the market determined international price and the stable domestic price provided huge profits for the colonial government. See Richard Sklar, "Contradictions in the Nigerian Political System," \textit{Journal of Modern African Studies}, Vol. 3, No. 2, 1965, pp. 203-4

means for accumulation of wealth is not disputable and does not escape my understanding of the contest for power. What I emphasise is that, elites were not isolated or lone actors. They were part of identity groups that were constructed and given political salience during colonialism. The desire of elites to acquire power for their own well being intersected with and was integral to their groups' desire to have access to power for material improvement.
CHAPTER FOUR

THE FIRST POLITICAL STRATEGY FOR COPING WITH DIFFERENCE.

Nigeria has adopted no fewer than four different approaches for coping with its problem of ethnic difference and conflict. The first, beginning from the immediate post World War II period through 1958, involved recognition of the three most numerous groups in the political arrangements of the country but denied equal recognition to several minority groups who asked for similar treatment. A product of hard constitutional negotiations, this approach was adopted in response to competing claims made by group elites in several constitutional conferences held in 1949/1950, 1953/54, 1957 and in 1958. This chapter will attempt to evaluate claims and counter claims made in the several constitutional conferences and the important agreements that were negotiated. It will begin by spelling out the claims and proceed with a normative evaluation.

COMPETING GROUP CLAIMS DURING THE PRE INDEPENDENCE CONSTITUTIONAL CONFERENCES.

Pre-independence claims by group elites were not made at random. Rather, they were channelled through constitutional conferences that required representation of the three regions and political parties operating in them. While representation was not on the basis of ethnicity per se, the process was dominated by elites of the majority group in each region.139 Thus, claims advanced in the constitutional conferences were mostly those that

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139 Even the three-phase conference of 1949/50 that was structured to ensure wide representation of views turned out to exclude minority voices at the higher stages because the regional and national conferences were dominated by elites of the majority ethnic group in the regions. See Nigeria, Proceedings of the General Conference on the
reflected the views of the majority ethnic groups, and they were presented in a manner that Donald Rothchild would regard as non-negotiable.\textsuperscript{140} That is, representatives took positions they were not ready to compromise, and did not wish to make concessions that would be interpreted by their opponents as signs of weakness. Claims and counter-claims, mostly on issues of political arrangement, the basis for political representation, and revenue allocation, were, therefore, repeated in one conference after another and with greater intensity in every succeeding one. In this respect, Eric Nordlinger’s argument that conflict group leaders alone are capable of negotiating agreements on behalf of those they represent could be regarded as valid because representatives to the conferences were not prepared for conciliatory behaviour on the issues mentioned above.\textsuperscript{141} It was the British mediators who used their position as sovereign rulers to influence leaders of the three large ethnic groups to adopt \textit{a modus vivendi} that entailed their retention of the three-regional structure and the sharing of national assets.

It was when elites of some ethnic minority groups realised that constitutional agreements being forged among elites of the major groups would subject them to domination that they formed opposition parties or allied with the ruling party in another region. This gave them access to the Resumed Lagos Conference of 1954 and the 1957 Conference for the review of the Lyttelton Constitution where they voiced demands for


\textsuperscript{140}See Rothchild, \textit{Managing Ethnic Conflict}, p. 31.

\textsuperscript{141}See Nordlinger, \textit{Conflict Regulation}, p. 40.
political separation. The outcome was the institution of the Willink Commission to examine their fears and look for ways of allaying them. In what follows I lay out competing claims relating to the issues I have mentioned and I begin with those pertaining to the political system.

**Political System:** The type of political system adopted during the de-colonisation period was particularly important because it would structure power relations and determine which ethno-regional group would be politically dominant. The issue of power was important not only because it was a means to an end but also because group honour had become a big issue in the 1940s. This was when local newspapers were either flashing story of Ibo accomplishments in education or of some ethnic groups producing yet ‘another’ medical or law graduate with first-class honours from Cambridge or Oxford. Such irritating measures of group worth, which was also a subtle way of deprecating other groups, instilled sensitivity regarding the form of political arrangement and who would be at the top. It is in this respect that we see leaders of the Western and Northern Regions espousing forms of arrangement that would make for the respect of difference.

In the General Conference of 1950, the Western Region’s representatives advanced claims for a retention of the three-regional structure within a federal framework but with adjusted of boundaries to take account of ethnicity. They used ethnic principle to ask for a redrawing of the northern boundary of the West to enclose the Yoruba speaking people

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142In his memoir, the Yoruba leader Awolowo dwelt extensively on what he regarded as the annoying publicity of Ibo achievements by their journalist politicians who, in their arrogance, also propagated the notion the “Ibo nation was created by God to lead the people of Africa from darkness to light.” See Awo, pp. 137-9.
of Ilorin and Kabba Provinces of the North, and of the southern boundary to enclose Lagos and its Colony. They coupled it with demand for an indirect system of election so that Ibos could be locked out of the region's political positions. The quest for territorial expansion, which was also a quest for national political power, was justified on ground that people in the affected areas had been clamouring for reunion with their kin groups from whom they have been separated by colonial administrative boundaries. On the other hand, the demand for indirect election was defended on the ground that over 90% of people in the Region were illiterate. The idea behind the illiteracy justification was that the people had no knowledge of national political issues, could not make leadership choice, and did not even know how to cast the ballot.

In the 1953 London Conference, the Action Group (AG), the dominant party of Yoruba elite and also the governing party in the West from 1951 onwards, made arguments for recognition of the federal quality of the country. The quality was identified to be the existence of ethnic groups territorially contiguous, having different political and social institutions, different educational and general development, yet desiring to unite. It identified ten main ethnic groups in the country - five in the north, two in the West and three in the East - and called for the grouping of each into a state. Meeting this demand would have made the Western Region, minus its minorities, one of the largest units in terms

143 The concern with Ibos was that their educational achievements and rapid rise in national politics would give them some competitive advantage in mass election.

of size and population.

The Eastern Region, like the West, argued for a political federation of three regions during the 1950 General Conference but objected to arguments for the redrawing of internal boundaries to reflect ethnicity and for the indirect electoral system. By the commencement of the 1953 Conference, the National Council of Nigeria and the Cameroons (NCNC), the most dominant party of Ibo elites, had backed off the federalist position to argue for a unitary system. The leadership argued that a political federation would undermine unity of the country, while a unitary constitution with a strong centre would make for political cohesion. They referred to the regional structure as the ‘Pakistanisaton’ of Nigeria - an analogy for the splitting of India into India and Pakistan. Their position was informed by the dominant influence of the Ibo State Union in the party after 1950, which required that the latter responds to the need of migrant Ibos for equal political rights.\textsuperscript{145}

Like the Easterners, Northern leaders stood for a federal system during the General Conference of 1950. Suspicions about the relative educational advancement of the two southern regions translating into political dominance influenced them to opt for a retention of the three regions so that each can advance at its own pace towards self government. They opposed any boundary adjustments that would transfer their territory to the West, arguing that the area conquered by the Sokoto jihadists in the 19th century extended far into

\textsuperscript{145} Ibos had migrated to all parts of the country to take advantage of whatever the modern market economy could offer and also to make a living because their land was not fertile enough to support their numbers. See Sir Udo Udoma, \textit{History and the Law of the Constitution of Nigeria}, Lagos: Malthouse Press, 1994, p. 146; also Awolowo, \textit{Awo}, p. 180.
the East and West but had already been reduced when the British imposed the regional boundaries. Besides, at the northern fringes of their region there were groups that were split by the international boundary drawn by the French and British. A revision of boundaries to unite groups would be the beginning of a slippery slope. If the Yoruba of Ilorin and Kabba Provinces had genuine grievances, which they believed was not really the case, there could be better ways of resolving them. However, if the West insisted on its position, then the affected people should migrate while the territory remained.  

The Northern position changed in 1953 when the AG sponsored a motion in the central legislature calling for self-government for the country in 1956. The Northern People's Congress (NPC), the dominant party of Northern elites especially those of the Hausa-Fulani ethnic group, went to the London Conference with an 8 Point Plan demanding a political confederation in which the three regions would enjoy complete autonomy. The idea was that if the southern regions were bent on political dominance by virtue of their relative educational advancement, then each should go its own way.

The above competing claims were hardly reconcilable, and unless each of the three parties was prepared to make some concessions a compromise would be elusive. The British Colonial Office whose officials presided over the constitutional conferences had decided after the 1953 self government motion crisis that a loose federal association of the three regions was the best way of keeping Nigeria together. It was this objective that the

colonial Office had in mind when the London Conference was convened and, in fact, the
Colonial Secretary had declared it in the House of Commons in May of 1953. Oliver
Lyttelton (later known as Lord Viscount Chandos), the Colonial Governor during the
period, further made the point when he wrote that “the only cement which kept the rickety
structure of Nigeria together was the British . . .. What was the present Conference for? It
had been convened by us to keep the diverse elements in Nigeria together: left to
themselves they would clearly fall apart in a few months . . .. It was clear that Nigeria, if
it was to be a nation, must be a federation, with as few subjects reserved for the Central
Government as would preserve national unity.”\textsuperscript{147}

Perhaps the commitment of the British to forge an agreement that would keep the
country together influenced the AG, the NCNC and the NPC to make compromises. For
example, the AG dropped its demand for a reconstruction of internal boundaries on ethnic
lines while the NCNC shifted from its unitary position to accept a federation of three
regions.\textsuperscript{148} In turn the NPC backed off its confederation demand to settle for a loose
federation in which the centre had limited list of subjects while the three regions had an
unspecified list of subjects (Residual List). This compromise agreement which technically
accorded semi-sovereign status to the regions, together with a promise from the British
Government that any region desiring self government could have it in 1956, subsequently

\textsuperscript{147}See Oliver Lyttelton (Viscount Chandos), \textit{The Memoirs of Lord Chandos},

\textsuperscript{148}See Udoma, \textit{History and the Law}, pp. 147 - 148; also, Awolowo, \textit{Awo}, p. 181;
and, “Joint Memorandum by the National Council of Nigeria and the Cameroons and
the Action Group,” \textit{Record of Proceedings}, p. 172
fuelled political demands by minority elites for recognition in separate states.

**Political Representation:** In a Westminster system, the party with a majority of seats in parliament forms the Executive cabinet. Parliamentary election acquires greater importance because it also produces the sovereign ruler. Legislative elections had very high stakes because each of the dominant parties was identical with a majority group, in consequence of which it controlled majority of the votes within its region. Elections were no more than what Horowitz has referred to as “census election,” meaning their outcome were determined in advance by ethnic arithmetic. The criteria for political representation in the legislature could, therefore, determine in advance the party that would form the executive cabinet, or the ethno regional group that would produce the sovereign head. It was for this reason that the basis for political representation became a big issue.

Territorially the Northern Region more than doubled the East and West combined, and it had a population larger than the other two regions combined. To avoid Northern political dominance, Eastern and Western representatives took a common position in the General Conference of 1950 by demanding equal regional representation. They grounded their claim on arguments about the constituent regions of a federation being equals and about the legislature being a body that deals with issues of common interest to all the units. Although they softened their claim to recognise the population of the North, and asked in return for an acceptance of the membership ratio of 30:22:22 for the North, East and West respectively.¹⁴⁹

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¹⁴⁹See speeches by Mr. S. Oluwole Awokoya, Mr. M. Ajasin, Mr. Bode Thomas, Mr. T. M. Bankole, and Rev. I. O. Ransome Kuti. Also, speeches by The Hon. A Ikoku,
On the other hand, Northern representatives demanded the population principle in representation and considered any figure not commensurate with the numerical size of the region to be arbitrary. Democracy, according to them, meant government by the people and if the people were to be represented, it should be on population basis. They initially demanded 59% of the legislative seats to reflect the real weight of their region but decided to bring it down to 50% on grounds of compromise. There was the expressed fear that the southern regions would club together to dominate if equal regional representation was conceded.\textsuperscript{150}

Whereas in 1950 there was deadlock on the issue of political representation and it was left for the Legislative Council to impose its own ratio, in 1953 there was a compromise for fifty-fifty representation between the north and the south. It was part of the mutual concessions made to avert the political break up of the country.\textsuperscript{151} The 1957 Conference for the review of the practical operation of the 1953 agreements resulted in the delimitation of the country into 312 equal constituencies each consisting of 100,000

\begin{flushleft}
Hon. C. D. Onyeama, and Mr. E. N. Egbuna, all in \textit{Proceedings of the 1950 General Conference}.

\textsuperscript{150}See speeches by Mallam Sani Dingyadi, Mallam the Hon. Abubakar Tafawa Balewa, Alhaji Abdulmaliki Igbirra, and Shettima Kashim, all in \textit{Proceedings of the 1950 General Conference}.

\textsuperscript{151}By the arrangement, every 170,000 inhabitants were to have one representative with the North having no more than 50%. A second chamber legislature that would safeguard against abuses of power by a region with preponderant representation was considered but disagreements over its membership distribution led to its abandonment. This was changed in 1957. See “Minutes of the Eleventh Plenary Meeting,” “Minutes of the Nineteenth Plenary Meeting,” and “Report of the Nigeria Constitution Conference,” all in \textit{Record of Proceedings}, pp. 72, 149 and 246.
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inhabitants. This gave 174 (about 55% of the total) seats to the North thus paving way for the NPC to control the central government during Independence, although an Upper Chamber composed on the basis of regional equality was established to temper majority power.

**Revenue Allocation:** The importance of revenue need not be stated. Revenue is income, it is money, call it wealth. Governments need money to discharge their functions, and the viability of political units is very much determined by the wealth that they generate and control. Like political representation in the legislature, the sharing of national revenue was a big issue that was fiercely contested.

Recall that until 1946 the North was governed as a separate territory and had no representation in the Legislative Council, which had been operating in Lagos since 1913. Its representatives to the 1950 General Conference claimed that people in the region were not aware of revenue allocation to the regions until 1946 when they had representation in the Legislative Council instituted by Arthur Richards. That was when they became aware that government had been distributing national revenue on the basis of the overall interest of the country. They argued for the use of population principle in the distribution of wealth. Consequently, an expert body called the Sydney Phillipson Commission produced an allocation formula based on derivation - meaning, each region received revenue in proportion to its contribution to the central fund. The Commission produced figures which indicated their region as contributing 42% to the central revenue, the East 31% and the West 27%. Still, Northern leaders considered the derivation principle to be unsatisfactory because, mathematically, the share of each region when divided by its population gave the
East the highest revenue per capita, followed by the West, while the North had the least. Moreover, they argued that taxation per head was inversely related because the North had the highest, followed by the West while the East had the lowest. In effect, they argued that they had not been getting their due in revenue allocation. What should have gone to their region was being used to develop the southern regions. The principle for allocating revenue had to be population.152

Eastern and Western representatives collectively objected to the population principle. According to them, regional revenues in recent years had been derived from four different sources, namely: taxation, revenue generated exclusively by the regions, block grants and grants from a Ten-Year Development Fund. Northern representative had limited their argument to only the first two. In the other two the North had always received the highest, followed by the East, and the West receiving the least. The real problem of the North, they argued, was not lack of funds but the ardent desire of its rulers to close the region to Western civilisation. They spoke of money allocated to the region for purposes of building schools, training doctors and engineers, which were lodged in the bank by the regional leaders to yield interest for the region.

Representatives meeting to negotiate a social contract are expected to make mutual concessions in order to reach a common ground. This did not describe the regional representatives during the Conference. It was the Colonial Governor who appointed a

commission - the Hicks Commission - to produce a system for revenue allocation. He produced a system that based revenue sharing on the principles of derivation, need and national interest. The principle of need meant allocating money to a region in accordance with its needs and without regard to what it generates. The principle of national interest meant that the cost of certain services, e.g. education and police, should, in the interest of the nation, be borne by the Central Government.

The Hicks Commission's formula was abandoned in 1953 when a loose federation of three regions was adopted. Instead, another commission, the Louis Chick Commission, was appointed to produce a formula that would be compatible with the increased responsibilities of the regions. The Commission produced an allocation system by which 40% of total revenue went to the centre and the remaining to be shared among the regions on derivation principle, including mineral royalties then derived from the North. Commodity Marketing Boards established for the purchase and sale of the country's export crops were regionalised and their liquid assets shared on the basis of derivation. Although some aspects of the allocation system were criticised by the AG during the Resumed Lagos Conference of 1954 that met to examine the recommendations, its adoption dispensed

153 The Eastern Region was to receive grants in aid from the centre. The amount, totalling five hundred thousand pounds in the first year the constitution would be in operation, and two hundred and fifty thousand pounds in the second year, was to give it some breathing space total raise more revenue to make up for its deficit. The AG contested this recommendation. It argued that the use of need and national interest in the previous allocation system was biased against the West and that money which should have gone to the region had been used to subsidise the development of the Northern and Eastern Regions. The Eastern Region had lived too much on the resources of others, and "it is high time a halt was called to this parasitic habit." See
with the principles of need and national interest that figured in the 1951 Constitution. Thus, the derivation based formula completed the near liquidation of the centre and returned the country back to the colonial policy of separate development. Some have referred to the compromise agreement as the “principle of regional security,” meaning; “the full regionalisation of all political organisations capped by an agreement . . . to respect the political status quo and share the fruits thereof on an equitable basis.”

In this, the East was the loser because unitarianism lost out and the region had to make do with whatever revenue it could make from its apparently not well-endowed territory. All these occurred before the oil revenue of the East had been discovered and developed.

**Minorities’ Claims to Separation:** Minorities’ claims for recognition in new states were

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The NCNC replied to the above with a seven page document doubting the AG’s understanding of “federalism from its pure political sense.” In federalism, they argued, regions are not indifferent to the well being of one another. Excessive derivation claims would amount to sharing national assets, and liquidating the country. To refute the claim that the East owed its development to financial subsidy from the West, names of several secondary schools founded by communities, and of some leading politicians trained by their local communities, were presented. Finally, they tied up their refutation by showing that palm oil from the (former) Oil Rivers Protectorate was the country’s major source of revenue long before cocoa was established in the West. Revenue so derived was used to finance the Moors Plantation at Ibadan, which in turn accelerated cocoa cultivation in the entire Western Region. See *Proceedings of the Resumed Lagos Conference*, pp. 19-25.

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driven by what Richard Sklar has referred to as the “big tribe chauvinism within the major political parties” and by fear arising from the 1953/54 constitutional agreements which guaranteed regional power and security to each of the three big groups. It is worth noting that some minority groups were not relatively backward, both in terms of education and social provision. For example, non-Muslim minorities in the North were more exposed to Western education provided by Missionary schools, had more trained personnel in the region’s civil service, and were supreme in the army compared to the Hausa Fulani. The NPC’s adoption of an 8 Point Plan in 1953 which amounted to Northern secession drove some of them, especially the Tiv, to express their separate identity by demanding a separate state.¹⁵⁵ Similarly, in the Eastern Region the NCNC was assembled and led by elites of the minority Ibibio and Efik ethnic groups. The first NCNC government in the Region was led by Professor Eyo Ita, an urbane, polished, articulate and principled United States trained educationist of the minority Efik group. It was after he was expelled from his post to make way for an Ibo leader that minorities in the region followed him en mass to form an opposition party - the National Independence Party (NIP) to spearhead the demand for separation. These historical realities call for a modification of Tedd Gurr’s thesis regarding autonomy claims. The thesis states that ecological stress and cultural difference, not political or economic discrimination drive group demands for autonomy.¹⁵⁶


¹⁵⁶According to his thesis, political and economic discrimination gives rise to demands for political and economic rights, not separatist demands. See Ted Robert Gurr, Minorities at Risk: A Global View of Ethnopolitical Conflicts. Washington:
independence Nigerian reality rather shows that fear of permanent political domination and its economic consequences give rise to separation demands.

Minorities' fear of permanent political exclusion was heightened by the 1953/54 constitutional agreement that shared the country among the three big ethnic groups. This fear was first driven into them during the 1949-50 nation wide three-stage conference when the demands of some minority provinces of the Northern and Western Regions for political recognition in separate states were suppressed at their respective regional conferences.¹⁵⁷

The forceful removal of ethnic minority elites from leadership position of the Government of the Eastern Region heightened fears. By the 1953 London Conference minorities could no longer contain their fears. Having lost leadership positions because of ethnic identity, they had to attend the 1951/52 conference as delegates of the official minority opposition party in the region. They demanded a strong centre as safeguard against majority dominance in the regions. They were rebuffed and forced to withdraw.

¹⁵⁷Some minorities provinces of the North and two minorities provinces of the West had responded to the question regarding the form of political arrangement by recommending separation in 'Central Region' and 'Warri-Benin State' respectively. These recommendations were rejected at the regional conference level dominated by representatives of majority groups who then proceeded to retain the three regional structure at the highest level of the three stage conference. See Proceedings of the 1950 General Conference, p. 60.

One of the questions asked at the Provincial Conferences in the North was: “should there be a centralized or federal system of government?,” To this, people of the Benue Province answered: “There should be a fourth Region, comprising Adamawa, Benue, Ilorin, Niger, and Plateau Provinces. It should be known as the ‘Central Region.”' See Northern Nigeria: “Review of the Constitution,” NC/32A, National Archives, Ibadan 1949, p. 3.
from the conference. At the Resumed Lagos Conference of 1954 (for the discussion of Louis Chick's revenue allocation report) these fears could no longer be contained. Elites of some minority groups in the East and West submitted memoranda asking for recognition in Benin-Delta State and Calabar-Ogoja-Rivers (COR) State respectively. They were soon followed by demands from elites of some non-Muslim minority groups of the North for a Middle Belt State. The demands were based partly on fear of leaving "minority groups . . . entirely at the mercy of the majority groups."^{158}

The response of the dominant parties was dictated by their strategic interests. In the Eastern Region, the strategic interest of the NCNC was to break the political dominance of the Northern Region and reduce the size of the West by having several states. It therefore advocated the division of the country into seventeen smaller and weaker states linked through a strong centre (quasi federalism).^{159} This required that, in principle, the regional government agrees to separation demands. It actively backed demands in other regions but tried to open a schism among its own dissenting minorities by secretly sponsoring or encouraging rival state movements in the Ogoja and Rivers Provinces. Demands for Rivers and Cross Rivers States emerged to compete with the COR demand.

In the West, the AG arguments for ethnic states required that it support separation demands. It, however, initially opposed the Benin-Delta State (Midwest State) because

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the area was controlled by the NCNC, and also because it did not wish to narrow its territory to the advantage of its rivals. It queried: "Why should we gratuitously widen the area of our opponents' influence by offering them another state practically on a platter?"\footnote{160}

It was when it became a patron to the COR State Movement in the East and thus gained a foothold in that Region that it argued that the creation of COR State be a condition for the creation of Midwest State, or that the two be created simultaneously.

In the North, the demand for the Middle Belt State was supported by the AG who felt that the "time had come when the North should be broken into at least two separate states."\footnote{161} The NPC was deadly opposed to it, threatening "trouble" if the territorial boundaries of the region were tampered with.

By the start of the 1957 London Conference for evaluating difficulties that may have arisen from the practical workings of the 1953/54 constitutional agreements and for the granting of self government to regions, separation claims and the positions of each ruling party were already set. What emerged from the conference was the institution of a Commission to examine the fears of minorities and recommend ways of allaying them. In each region the Minorities Commission (as it was popularly known) received separation demands and they were all based on political exclusion, cultural domination, and discrimination in the provision of social services and infrastructure.\footnote{162}

\footnote{160}Awolowo, Awo, p. 183.

\footnote{161}Awolowo, Awo, p. 184.

\footnote{162}Nigeria, Report of the Commission Appointed to Enquire into the Fears of Minorities and the Means of Allaying Them, London: Her Majesty's Stationery Office,
In its report, the Commission noted that minorities’ allegations of domination and
discrimination were exaggerated, but that, when the latter was discounted, there still
"remained a body of genuine fears and . . . the future was regarded with apprehension."163
However, it did not regard state creation as a remedy for the fears and apprehensions. Its
reasons were:

a) In each region the area of the proposed state was made up of several groups some of who
preferred to be excluded. It was therefore difficult to draw a clean boundary that would not
create a fresh minority. For example, the Middle Belt State that was demanded from the
North had no definite boundary. Proponents of the state had suggested that it should
enclose predominantly Christian areas, but it was difficult to draw a neat line, and the
Commission was not provided with a definite map despite its insistence. It was believed
that the area would comprise four provinces and parts of other three provinces, but there
was uncertainty about the latter and it was left for the commission to draw an arbitrary
line.164 The same applied in the Eastern Region where the area of the proposed COR State
covered that of the Rivers and Cross Rivers States. It was on account of these difficulties
that the Commission ruled that the areas to be covered by the two states were not ethnically
homogenous, and that a slippery slope would be triggered if the demands were granted.165

163 Minorities Commission, p. 88

164 Minorities Commission, p. 71.

165 Minorities Commission, pp. 32-3 and 51. The above difficulties made the
b) The second reason given by the Commission was that, until the last few years, modernisation (especially the development of education) had been blurring ethnic differences in the country. It was when the prospects of independence became real that the tendency was reversed. This was not likely to continue, especially in a few years time when Nigeria would face the outside world and would find within herself forces working for unity. For this reason, "we do not accept in its entirety the principle of ethnic grouping, that is, the principle that a recognisable ethnic group should wherever possible form a political unit."\(^{166}\) The commission felt that it was more important to find means of allaying fears. Some constitutional safeguards were therefore recommended. They were: the incorporation of fundamental human rights into the constitution; a single Nigerian Police Force serving both federal and regional purposes but controlled by the Federal Government; the creation of a Special Area in the Niger Delta to be developed by the Federal Government and the Governments of the East and West, under the auspices of a Board; and, the constitution of parts of the Western and Eastern Regions into Minority Areas for purposes of fostering cultural advancement and social and economic

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\(^{166}\) Minorities Commission, p. 88.
Leaders of the state creation movements were not satisfied. They attended the Resumed Conference of 1958 (that met to put final touches on the transfer of power from the British) with the slogan of “no states, no independence.” The British decided that political independence for the country (which was two years away) would be postponed in order to conduct a referendum among the affected minority groups with the aim of testing the popularity of the demands. This would then be followed with other rounds of constitutional negotiations. The idea that the country’s freedom from colonial rule would be compromised prompted the leaders of the three major parties to opt for the Commission’s report. Clauses for boundary adjustment and states creation procedure in the future were inserted in the report and also incorporated in the Independence Constitution. Minorities entered independence with their demands unrealised but became more assertive and violent.

PART II
EVALUATING THE CLAIMS AND AGREEMENTS

If there is one large problem that emerged from the lengthy narrative presented above, it is the issue of the political system that would best accommodate multiple groups in the country. Federalism triumphed over unitarianism but the question remained as to whether it should be used to accommodate minority groups. This larger issue structured claims and counter claims regarding revenue allocation and political representation, and the

\[167\textit{Minorities Commission, chapter 14.}\]
agreements that were reached. I want to evaluate these issues and I begin with claims regarding the political system.

**THE POLITICAL SYSTEM AND DIFFERENCE.**

There are three positions to be considered: one is that which regarded ethnic federalism as the best; the second is that which regarded federalism based on the three regional structure as the most desirable; and the third position considered a unitary system as the ideal. Then there were some minorities who went for ethnic federalism that entailed their equal recognition in separate regions. Each of these positions could be interpreted as rationalisations by group elites who were out to maximise power for themselves and on behalf of those they were representing. However, it is not enough to look at them in strict ideological terms. They were used as rationalisations because there was something good about them. For example, a unitary system that secured the socio-economic needs of Ibos was defended in the name of qualities that would make it acceptable to the general public. Or, Hausa/Fulani elites used fear of southern dominance that was shared by non-Hausa/Fulani in the north to justify their hold on a region they regarded as an inheritance from their forefathers. To make a fair judgement about what arrangement was desirable and what was not, one has to examine the inherent qualities of these proposals and not simply dismiss them as ideologies.

To begin with the position of the Western Region, there was an assumption in the claim for ethnic federalism. The assumption was that, the creation of a common civic bond in the new Nigeria that was coming into being would need decentralised political structures
which allowed identity groups to organise their lives according to their cultural requirements and needs. Political autonomy for groups was presented as a prerequisite for political coherence and stability. The common wisdom was that ethnic loyalty would not be transcended with time, and without the granting of autonomy to identity groups, nation building would be futile.  

The above assumption had validity on two grounds. One was the strong attachment by a vast majority of the population to their ethnic communities. Studies conducted about three decades ago showed that the people enclosed within the Nigerian boundary have always felt stronger obligations to their communities than to the state. Commitments to the former overrode and displaced commitments to the latter. As we have seen, colonial rule defined ethnic communities as the relevant unit of political identification, and conferred powers on their chiefs. It was they, the chiefs, who collected taxes, mobilised labour, supervised the construction of roads, and dispensed justice in the courts. For the governed, the ethnic community was the state. This was dramatised during the decolonisation period when the local educated elites organised inter-ethnic football tournaments the way nations meet in international sporting events. The side that emerged victorious in the tournaments proclaimed their group as having a 'manifest destiny' to lead


the rest of the country. Whereas modernisation theorists were pontificating that the middle class, with their education, would be the historic agents in the project of eliminating particularism and effecting change from tradition to modernity, the opposite proved to be true as the middle class became the real harbingers of ethnic loyalty in politics.\textsuperscript{170}

The other ground for the validity of the assumption was the existence of ethnic communities as units of concrete rights and privileges. They guaranteed rights to factors of production (like land) and met the social welfare and material needs of members. They formed dense network of aid that provided for the emotional and security needs of members. They more or less pre-empted the state of its role, for which reason some have referred to them as the "primordial public" as opposed to the modern public of market society.\textsuperscript{171} It is here that people directed their energies, resources and loyalty for collective self-realisation.

The above views about loyalty and citizenship in the 'primordial public' would tally with contemporary theoretical explanation for the desirability of federalism. The explanation centres on identity and attachment and it presents community, defined by cultural characteristics like language and ethnicity, as a "sense of collective identity."\textsuperscript{172}

The community in which we live and play out our lives defines what and who we are. As


\textsuperscript{171}See Peter Ekeh, "Colonialism and the Two Publics . .". Also Claude Ake, \textit{The Feasibility of Democracy in Africa}, p. 180.

a consequence, we have powerful sense of attachment and loyalty to it. At the political level, federalism becomes desirable not because it is administratively convenient, but because its structures of participation and authority are organised to reflect underlying forms of belonging.\textsuperscript{173} Hence it is commonly seen as “a device designed to cope with the problem of how distinct communities can live a common life together without ceasing to be distinct communities.”\textsuperscript{174} This explanation echoes the sociological view of federalism mostly associated with William Livingstone. The view presents federalism as a device for coping with diversity, and understands a country as having federal qualities if it consists of heterogeneous groups. This would suggest that claims for ethnic federalism had merit, and should have been taken seriously.

What would a commitment to ethnic federalism have required? Implementing the Yoruba proposal was one way of meeting the commitment. But it was an unpersuasive proposal because it did not take the principle of respecting ethnicity very seriously by proposing only ten states in a country with over 250 ethnic groups and by proposing boundaries that clearly served Yoruba interests. The proposal by some minority communities for more states was another and perhaps a more persuasive and genuine way of meeting the commitment. This is what the Willink Commission ought to have considered. But this proposal, as the Commission rightly observed, was not free of


\textsuperscript{174}Cited from Norrie, Simeon and Krasnick, \textit{Federalism}, p. 25.
difficulties because there were too many groups, their sizes varied too much, some were mixed up together in some territories, membership was unclear, and some preferred the existing three regional structure to ethnic federalism.  

Given the difficulties, taking claims about ethnic federalism seriously would probably have entailed ignoring minorities' claims. In this case the salience of group membership would have been ignored and the problem of political unity and stability would remain un-addressed. This is what actually happened. The 1953/54 constitutional agreement compromised unity when it retained the three regions and shared power and assets among them.

Let us turn now to the claim for a unitary system advanced by leaders of the Eastern Region. The claim was put forward in the interest of Ibos who had migrated to all parts of the country on account of the thin soil and high population density of their homeland. However, one should stand back from this ideological position and assess the claim for what it was worth. The claim assumed a form of political community in which citizenship is a matter of treating individuals as having equal rights under standard universal laws. Unlike the claim for ethnic federalism that presupposed a background conception of citizenship that is differentiated, this one required treating people as equals in the assignment of rights and in the distribution of social goods. In principle, this would permit everyone to participate equally in the political community and its system of opportunities.

175I will return to the minorities proposal in a short-while.
From this perspective, ethnic federalism would be too divisive.\textsuperscript{176} The creation of ethnic regions would encourage citizens to look inward and focus on their ethnic difference, thereby compromising attempts at achieving political unity. Such state structure would foster sensitivity to, and preoccupation with, the ethnic origins of citizens in the competition for public offices and allocation of social goods. In this context, differentiated citizenship would cease to be integrative and would become a device for cultivating distrust and conflict.\textsuperscript{177} So, instead of unifying people by a system of common rights and privileges, citizenship would become a force for disunity. Moreover, the creation of ethnic regions would encourage excessive differentiation. Leaders of new groups would emerge with perceptions of, and claims to, difference. As claims are met one after the other, chaos would replace order and the hope of attaining stability would be lost.\textsuperscript{178}

Part of the case for unitarianism was that, in principle, the system would maintain a common standard of rule for judging the actions of both rulers and ruled. Rules are authoritative precisely because of their universality, and they operate in the mind of citizens because they are settled objects of knowledge. They define roles and expectations that make for stable and secure interaction. Without standard rules, what is known as the rule


of law would be severely threatened as there would be no universally known principles for judging the decisions of office bearers and the actions of citizens. Rulers could act arbitrarily and get away with it. Citizens could suffer rights violations without having an impartial judge to appeal to. This is where a unitary system offers a lot of comfort. Within it, every individual is regarded as a rights bearer (even if abstractly), for which reason its system of rules is in principle dissociated from particularist social interest and appears unpolicised. So, freedom and equality (even if they are abstract) are secured.

What principled objections could be posed to such a unitary system? One is that the formal equality of the system masks the ways in which the arrangements would advantage some groups and disadvantage others. Under such system, the educational advantages of the Ibos would have enabled them obtain key positions in the East and in the North. But given the salience of ethnic identity, they would have occupied these positions not as individuals but as representatives of their kinship and ethnic groups. This underlying socio-cultural reality meant that a unitary system based on individual rights would have functioned quite differently in Nigeria of the 1950s from the way it functioned in Europe and America in the same period. So, the objections from the Yorubas and others to the Ibo proposal had some foundation in justice.

It was T. H. Marshall, the Cambridge sociologist, who analysed the tension in universal citizenship by showing the disjuncture between its claims to political equality and the actual inability of the industrial working class to exercise political rights. Before him,

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179 See Melissa Williams, “Justice Towards Groups,” p. 82.
R. H. Tawney had, in the early 1920s, warned that British society would fall apart if the extension of political equality was unaccompanied by the grant of social and economic rights to the economically disadvantaged.\textsuperscript{180} Marshall, writing after the 1920s, rested the integration of British society on the extension of citizenship to the social sphere, that is, the grant of social and welfare rights to the weak.\textsuperscript{181}

The British case would confirm the real fears of the Yoruba that common citizenship rights, by themselves, do not promise equal inclusion in the political community - that sphere of the exercise of political rights. Whereas, in the British case, it was the economically weak that were excluded despite their possession of common rights of citizenship, in the Nigeria case, it was ethnic groups that feared exclusion. Whereas, in Britain, the response to exclusion was the empowerment of the weak, in Nigeria, the response took the form of calls for states to accommodate ethnic difference. So, despite its qualities, the unitary system was unjust. Moreover, it could not have fostered national unity.

Consider now the Northern claims for a loose federation of three regions (which latter changed to a demand for political break up). Horowitz has argued that the juxtaposition of groups in a common political environment creates anxiety about possible domination by those regarded as more advanced (in terms of being proportionately more


educated and more represented in the professions and in the modern sector of the economy). Horowitz’s argument falls within the domain of psychology because fear, apprehension or anxiety has to do with the response of the human mind to perceived external stimulus. Reactions may be exaggerated if they are disproportionately out of tune with the perceived danger, or irrational if the perception is false. Some would regard the fear and anxiety of Northern leaders as an exaggerated and irrational reaction to a false perception. However, this is not enough to brush aside their case because the apprehension not only existed but also provided the context for their inflexibility and what one could regard to be the extremity of their demands.

Understandably, the decision of the British to de-colonise raised the issue of who would exercise power and, among the Muslim leaders of the North, it caused anxiety about the future of their Islamic culture. The connection between power and the preservation of Muslim culture has to be grasped in order to make a fair judgement about Northern leaders' claims for a federation of three regions or a political break up. Recall that Muslim leaders of the North agreed to the political amalgamation of 1914 on condition that the region be shielded from Western influences and administered separately from the south. Cultural and religious survival were tied to the exercise of political power or, better still, to governance. This connection made Northern leaders perceive with trepidation a unified Nigeria in which southerners who were not Moslems would occupy policy making positions in government. The need to secure cultural and religious identities, more than anything else, explains the

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tenacity of demands for recognition of the North as a region that had to be, at most, in loose political partnership with other regions.

The point about cultural identity providing the basis for normative claims has already been discussed. Will Kymlicka persuasively argued that cultural identity is a prerequisite for the moral worth of individuals and their ability to make moral claims which liberalism cherishes and attempts to secure for all citizens. Taylor took similar position when he argued that our identity is shaped by the recognition we receive from others. This engenders demands for equal recognition that requires respecting different cultural identities. One influential theorist whose ideas were not discussed is Iris Marion Young. According to her, liberal democracy is committed to equality in the political community, and attempts at achieving it will require affirming difference. She gives two reasons but the important one for the purpose of the task at hand is that cultural groups (excluded from the political process) have distinctive needs which can only be met through differentiated policies.183 These arguments about normative value of cultural difference compel us to give weight to the sort of claims that were made by Northern leaders. Giving weight to their claims would entail recognising the region as being constituted primarily in large part by a single cultural group.

Although the North was made up of several ethnic groups, a greater part of it was unified by Islamic culture. It is true that some Islamic groups in the region either maintained their independence of, or were opposed to, emirate rule. But it is also true that

such groups (especially the Kanuri in the north-eastern end of the region and the Hausa of Kano-Kaduna axis) regarded Islam as defining their value system and identity. Despite internal opposition, the values and symbols of Islam provided a common bond, thus creating a corporate identity. In this respect, one could speak of a greater part of the region as having an Islamic Weltanschauung. It was no surprise that Northern leaders boasted of “Islamic brotherhood” being “stronger than blood.” Neither was it a surprise that there was coherence and united front among the leaders when they appeared in the several constitutional conferences to make their demands. At no time was there any dissension or disagreement within their ranks. Ted Gurr may have been justified when he argued that group cohesion is a key factor that makes people subordinate their personal preferences to those of their group.

Given the above arguments, a grant of autonomy to the region would have been one way of responding to claims of Northern leaders. The problem is that this option would have entailed treating non-Muslim ethnic minorities of the region as sharing the same aspiration with the numerically dominant Muslim groups. The former were as opposed to southern political dominance of the region as the latter, and both were united in calls for

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184 Dissenting Muslim groups of Kano-Kaduna and the independent ones of Bornu were more for the political reform of the Islamic Weltanschauung and not against its existence. See Simeon O. Ilesanmi, Religious Pluralism and the Nigerian State. Athens: Ohio University Centre for International Studies, 1997, p. 140-1.


the exclusion of southerners from political and administrative positions in the region. But this was where their common aspiration ended. It had no depth. The bonds were too thin and fragile to serve as a basis for common political life. This is not to suggest that different groups cannot unite in a political unit if a sense of shared future exists.\textsuperscript{187} The point is that if the basis for unity is some kind of shared values then what existed between the two sets of groups was not enough. Culturally they were very different. Most of the non-Muslim minorities repelled political conquest and cultural assimilation during the 19th century and, during the colonial era, they resisted the imposition of Islamic legal systems and cultural practices over their customary ways of life. Meeting claims for autonomy of the region would have threatened their political and cultural security. This, in turn, would have opened the door to separatist claims, as it latter emerged.

Another alternative would have been to do nothing. Leave intact the three regions within a quasi-federal system in which they have no autonomy. This alternative leaned more towards unitarianism which Northern leaders were opposed to, and adopting it would have deepened conflict. In this case, the 8 Point Declaration would have culminated in Northern secession.\textsuperscript{188} Non-Muslim minorities in the region would have been taken along, perhaps against their will, and domination and new secession claims would have emerged in the new state.

What alternative was desirable? In short, what did justice require? The preceding

\textsuperscript{187}See Rothchild, \textit{Managing Ethnic Conflict}, pp. 31-2.

\textsuperscript{188}See page 85 above.
arguments show that each claim by the three regional elites had its own merits and weaknesses. A desirable alternative should not be blind to them. The critical issue is what alternative arrangement was desirable and feasible, given the merit and weakness of each claim?

One alternative arrangement would have been an arrangement that derived from Rawlsian type of agreement.\textsuperscript{189} In this model the regional leaders had to leave behind them all particular social interests of their ‘people,’ single out primary goods and negotiate

\textsuperscript{189}In this scheme, representatives of free and equal citizens negotiate fair terms of social co-operation in an ‘original position’ in which none has bargaining advantage over the other. The original position is created by eliminating contingencies of the social world, e.g., historical circumstances, natural endowments, social position, ethnicity and moral doctrines of those represented.

Thus, symmetrically situated (behind a ‘veil of ignorance’), representatives of free citizens cannot foretell who would occupy the top or lower positions of society being formed, but they are rational. They would try as much as possible to advance the good of those they are representing, but the ‘veil of ignorance’ makes it impossible to determine what their good is. This problem is resolved by singling out five primary goods - things that are generally necessary as social conditions and means for the pursuit of good life - and adopting principles which guarantee them. The five, in order of priority, are: a) basic liberties (freedom of thought and liberty of conscience); b) freedom of movement and free choice of occupation against a background of diverse opportunities; c) powers and prerogatives of offices and position of responsibility; e) income and wealth as means to a wide range of ends, and; f) the social bases of self respect.

The principles adopted to guarantee and assign priority to these primary goods specifically regulate political, social and economic institutions, that is, the basic structure of society. Also, they are derived behind a veil of ignorance, without reference to any of the diverse moral doctrines in society. Therefore, they stand independently and command overlapping consensus in society for their fairness. (See John Rawls, \textit{Political Liberalism}, New York: Columbia University Press, 1993, Part One Lecture 1; Part Two Lecture IV, and ; Part Three Lecture VIII; also, John Rawls, \textit{A Theory of Justice}, Cambridge: Harvard University Press, 1971, Chapter III).
impartial principles that would assign and guarantee them. The agreement would, therefore, be in the interest of everyone in general and not any person or group in particular.

A blind agreement, if it were ever possible to make such, would have been contested by Northern leaders, and by leaders of the Western Region. This is because the veil of ignorance eliminates substantial differences among groups, thus establishing a universal standpoint that the Ibos desired. The list of primary goods derived from the universal condition guarantees the rights of abstract individuals which, in effect, amounts to universal citizenship rights that Northern leaders and leaders of the Western region were deadly opposed to. So, the blind contract delivers an arrangement in which members have universal rights, very much in consonance with Ibo demand for unitarianism, and very much against commitment of the Muslim North to regional autonomy or the commitment of the Yoruba to a federation of ethnic regions. As argued above, this was not fair in the Nigerian context and would have intensified ethnic conflict.

A possible alternative would have been one that combined elements of all forms of arrangement demanded by the three regional leaders; something akin to Aristotle’s mixed constitution. Confronted with competing claims for monarchical, democratic and aristocratic systems of government, and the prospect of each being perverse and unstable, Aristotle came up with a composite constitution as the most desirable. The idea involved mixing institutions in whole or in part, from competing constitutions. According to him, the more the mixture, the more equitable, and the more equitable, the more durable.  

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Taking a middle course that balanced the interest of the three parties would have entailed extracting and blending parts of the institutional features of ethnic federalism, of a unitary system, and of a confederal system as demanded by the NPC. Such a composite arrangement would have been inclusive of, and fair for, the three parties, but un-practicable. Extracting and fusing institutional features of the three constitutional systems is not something that can be done. It could, perhaps, be achieved if the parties making claims were represented and assigned specific roles in government, rather like the composite constitution of Cicero. But this would still have required a framework - either unitarian, federation of ethnic groups, or confederation of the three regions.

Apart from its practical difficulties, a mixed regime (assuming it was possible to have one) would have been in the exclusive interest of those whose claims it reflected. Ethnic minorities that had no place in the constitutional negotiation processes and whose voices were not heard on that account, stood to be excluded from such deal. In short, a composite regime would have been a regime of the dominant groups exclusive of ethnic minorities.

A third alternative might have been the softening of claims in order to reach a mutually acceptable compromise. Rothchild has argued that the potential for conflict resolution is greater when group leaders make negotiable demands, or are willing to

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moderate their extreme claims.\textsuperscript{192} True, for the leaders to reach a reasonable agreement, it was necessary that they soften their claims in order to bridge the gaps that separated them. Such trade-offs were a pragmatic way of reaching agreement on a mutually accommodative normative arrangement. Instead of advancing inflexible demands that would result in confrontation and intense conflict, the leaders dropped aspects of their demands that were mutually unacceptable. I call this the principle of mutual concession.\textsuperscript{193} The cost of not going by that principle is self-consuming conflict, the reward for following it is peace. The principle made for an arrangement that was neither unitarian, confederal nor ethnic federalism. The arrangement, therefore, had an element of neutrality and at the same time gave each of the three negotiating parties a self-governing right to its territory.

Pragmatic as it was, the arrangement was imperfect because it rested on the mutual advantages of the regional leaders and the majority ethnic groups they were representing. It did not accommodate the interests and claims of some minority ethnic groups as was made by their elites. Although the 1957/58 Commission argued this was not feasible, it would still be necessary to examine claims of minorities to determine if the agreement for a federation of three regions was the best possible.

\textsuperscript{192}See Rothchild, \textit{Managing Ethnic Conflict}, pp. 31-3.

\textsuperscript{193}This is in following Nordlinger who presented compromise and concession as two of six strategies for reducing conflict. See chapter 2 above.

Recall that Northern leaders dropped their claim for confederation and instead, agreed for a federal union. Eastern leaders also made concession by dropping their unitary demand for a federation of the existing three regions. In turn, leaders of the Western Region backed off from their demand for a regrouping of the country on ethnic lines to agree on a retention of the three regions.
SHOULD MINORITIES HAVE BEEN RECOGNISED IN SEPARATE STATES?

Some have argued, and very strongly too, that separatist demands were a strategy by elites to gain access to power and resources. For example, in his book on class formation and state creation in Nigeria, Eme Ekekwe argued that there was no correlation between minority membership and demands for new States. He argued that the demands were made by elites who belonged to parties in opposition and had no patronage from the ruling government. This set of politicians, according to him, withdrew their demands when allowed some access to power. To buttress his point, he cited the case of the Western Region where there were demands for Central Yoruba and Ondo States that were to comprise Yorubas, most of whom were of the NCNC in opposition to the ruling AG. He also referred to the Midwest, where

The Oba of Benin in 1953 clearly demonstrated this case. Upon being offered the position of ‘Minister without Portfolio’ in 1956 by the AG Government, he accepted it ostensibly in the best interest of his people.' Thereafter he ‘ceased to be connected with the Opposition and . . . to campaign for the [Midwest State Movement].'\(^{194}\)

He also made similar illustration with the demand for Middle Belt State from the North.\(^{195}\) In these arguments he forgot to note that separatist demands dated back to the provincial and regional conferences of 1949 well before the advent of competitive party politics. He

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\(^{194}\)Ekekwe extracts this from the Commission’s report. See *Class and State*, p. 133

\(^{195}\)See Ekekwe, *Class and State*, p. 135.
also failed to note that intense pre-colonial hostilities between Yoruba subgroups were opened as the British set to de-colonise and some factions tried to counter the others by seeking external alliance. I am not going to refute his argument in detail, however, the tenacity of the demands, despite defections by some of the leaders, is enough to warrant looking beyond the narrow self interest of elites. Separatist demands may have been used by some to advance their private agenda, but what has to be questioned is the normative value of the demands. The demands would not have been used as a mask if they had no normative importance.

Ted Gurr has shown that autonomy demands are associated with identity groups desiring security and protection, and that the reluctance of public officials to accommodate them intensifies conflict and sometimes leads to open warfare. Demands by elites and their groups (both majority and minority) were driven by the fear that they would suffer political subjection and would not feel at home when the British handed over power. Despite the conflicting nature of the demands, they were united by a common purpose, namely: to achieve a fair and acceptable arrangement that would make for peaceful coexistence. Hobbes’s thesis about tacit consent, formulated in a different context, could be modified and applied here. His thesis states that a group of persons tacitly consent to peace if, of their own free will, they decide to join others who are assembling to renounce lawlessness. In the context of ethnic relations, one could modify it by saying that groups


whose leaders are making claims for a normative political arrangement are implicitly asking for peace. Deny, repress or close outlets for the expression of demands and conflict will erupt.

Indeed, it was the exclusion of minorities from the constitutional negotiation process that intensified their demands for autonomy. The several and periodic constitutional conferences were convened with the express purpose of negotiating a framework for political life. This required that diverse voices be heard and considered. This turned out not to be so as majority group members dominated the constitutional process and excluded minority views. The agreement for a political federation of three regions was, therefore, not reflective of the interest of minorities. It was more reflective of the interest of dominant groups. For example, for the Muslim northerners, the agreement offered protection from the Christian and educationally advanced southerners. For the Yoruba, it was a shield against the ambitious Ibo, and even for the latter, it guaranteed political right to their region, at the least.\textsuperscript{198} It was not for anything that Richard Sklar referred to the compromise agreement that produced the arrangement as the “principle of regional security.”\textsuperscript{199} This argument merely shows that the compromise political

\textsuperscript{198} The agreement made it possible for each region to close its elective and civil service positions to citizens whose ethnic origin was not traceable to it, thus violating individual right.

\textsuperscript{199} See his “Nigerian Government in Perspective,” p. 46.
arrangement was for the chief benefit of majority groups. The issue of normative weight of minority demands still has to be established.

Political inclusion was the chief objective of minority demands and, to this extent, one could say they were demanding equal political treatment. Equality in the political community is one of the chief attributes of liberal democracy and one would expect that the process of transiting from colonial subjection to parliamentary democracy would offer hopes that the attribute will become a reality. However, the transition process proved early enough that classical liberal democracy could not reconcile itself with equality and freedom. Why?

The disappointment lay in the hidden assumption of liberal theory that people belonging to a homogenous culture constitute a political society. We saw this in the social contract theories of Locke and Rousseau in which atomised individuals sharing the same cultural life associate in a political society. It was more explicit in the utilitarian Mill. In contemporary times we see it in the liberalism of Rawls and Dworkin which constructs principles of justice by overlooking difference. Universal liberal theory grew out of a cultural milieu specific to some European societies and did not reflect heterogeneity that prevailed elsewhere. In Nigeria, its promises of a free and responsive government emerging from open political competition were contradicted by ethnic voting and the emergence of governments responsive to the groups that brought them into office. Impartial rules that were supposed to ensure fairness in the distribution of societal goods and privileges turned out to work unintentionally to the advantage of some groups. In some cases it was openly partial and worked in self-contradictory manner. For example, the
educated Ibo who moved to the North and other parts of the country as clerks argued for universal citizenship rights. Yet they retained very strong loyalty to their homeland and closed off positions in the public service by bringing in their kin groups to fill vacant spots. By the time groups in the North became conscious of what was going on Ibos had monopolised civil service positions in the region.\textsuperscript{200} The partiality and contradictory working of liberal principles meant that they were not quite appropriate for the country. The heterogeneous ethnic make up of the country required that liberal rules be adjusted to take account of cultural specifics on the ground.

The need to redefine liberal rules of justice to make them more responsive to cultural difference was recognised by elites of both majority and minority ethnic groups. In fact, the solution to the problem of liberal equality and difference was initiated by elites of the majority ethnic groups when they made arguments for a federation in which groups would be free from political and cultural domination. Their arguments proposed what Melissa Williams would refer to as the "political solution to the problem of difference."\textsuperscript{201} That is, they sought to make for the explicit recognition of groups by asking for a redefinition of the rules of justice not in an abstract philosophic plane but in the very process of politics. It was their political arguments and solutions that set off the several constitutional negotiations, beginning in 1949. They initiated it all and minorities followed. Both felt that it was good so they all pressed for it. In principle both sets of


\textsuperscript{201}Melissa Williams, "Justice Toward Groups," p. 69.
groups ought to have been treated equally in terms of political recognition. If the compromise federal arrangement was good for the numerically strong because it promised them freedom from oppression, then the numerically weak needed it most. This was voiced by a representative to the 1950 General Conference when he noted that: “If a Region as large as the North can have . . . fears it is understandable that minor tribes in Nigeria must be anxious that adequate and unmistakable provisions are made to safeguard their survival, and assurance of place for them in the new Nigeria.”

The Problem of Feasibility: I have argued in support of minorities’ demands for equal political recognition. The problem that immediately arises is balancing the ‘ought to’ with realities on the ground. A desirable prescription might not be practicable, and on the other hand what is realistic might not be desirable. Between these poles there could be a middle course.

There were social circumstances on the ground that seemed to have made separation unfeasible. Firstly, although the demands for separate states were identifiable with multiple minority groups contiguously located in each region, they did not originate from, and were not unanimously supported by, all. There were some who felt safer with the status quo because they thought it was more tolerable to be dominated by some distant groups than to be subjected to an immediate neighbour who would occupy majority position in the new

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For example, in the Western Region, some groups did not want to be part of a Midwest State in which they would be numerically inferior to, and dominated by, their next door neighbour. This was true of the Itsekiri whose aristocrats exercised power over their numerically superior Urhobo and Ijaw (before the declaration of colonial rule) but feared that in a Midwest State the use of majoritarian vote would reverse power. Their leaders reacted by claiming ethnic affiliation with the Yoruba, and by opting to be in the Western Region.

Similarly, in the Eastern Region, the Rivers State demand ran into difficulties because the Ikwerre and the Ogba regarded the Ijaw as likely to be the majority group if the Western Region Ijaw were included. Their leaders opposed the demand on this ground, but were ready to support it if they were granted majority status by an exclusion of the Western Ijaw from the State. Thus, in the proposed new states those who were to be in minority knew their fate in advance and were not prepared to deliver themselves up. So, each new state that was demanded contained potential new states if created. New minorities would emerge with accusations of being dominated and oppressed. The problem here was not simply one of drawing boundaries but threat to stability in terms of both the “camel’s nose theory” and the “domino theory.” The camel’s nose theory holds that if the nose is let inside the tent the whole beast will follow soon. Some Israelis use this to justify their

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203 A contemporary form of the aversion to subjection by an immediate neighbour is the demand by suspects of ethnic genocide (war crime suspects) that judges from foreign countries should try them and if convicted other countries should provide jails for them. The idea here is that they would rather endure punishment from a distant and unknown power than from an immediate rival.
rejection of autonomy demands by Gaza and West Bank Palestinians. The domino theory has to do with threatening prospect that the grant of recognition poses for larger groups containing sub-groups, and for the stability of the country.\textsuperscript{204} This could be illustrated with some inland Yoruba sub-groups (the Ekiti and Ibadans) who demanded recognition in two separate states on account of their rivalry with sister sub-groups. Minority demands were already influencing some sub-groups of the major groups engaged in rivalry and competition to claim difference and make claims for separation. At the international level it could be illustrated with the threatening prospect that the cascading defection of the Soviet Republics posed for other heterogeneous states. The lesson of those defections was used by Russia to deny Chechyna’s claims to autonomy.

Secondly, each of the three sets of regional elites perceived separation demands as threats to regional power and security and were out to resist it by all means including the use of force. For example, Northern leaders regarded the entire region as having been ruled by their “great-great-grandfather’s family through their Lieutenants or by the great Shehus of Bornu.” They wondered why “a long slice of country running along both sides of the Rivers Niger and Benue, with an extension to cover the Plateau and southern Zaria,” would be slashed off.\textsuperscript{205} They invoked war to defend the region’s territorial boundaries. Similarly, the NCNC leadership was strongly opposed to the division of the East, despite their argument for splitting the country into smaller regions to make for a stronger centre and a

\textsuperscript{204} See Gurr, \textit{Minorities at Risk}, p. 300.

\textsuperscript{205} Bello, \textit{My Life}, pp. 215 and 216.
united country. While they declared that the region “cannot stand dismemberment” after the 1954 separation of the UN trust territory of Southern Cameroon, the Ibo State Union, a cultural organisation of Ibos all over the country, threatened war if Port-Harcourt or any other Ibo land was separated. The position of the AG is already clear: it would not gratuitously maximise the interest of its opponents by agreeing to the dismemberment of the West. It agreed to states creation on condition that it be carried out simultaneously in all three regions.

With these positions, acceding to minorities’ demands could precipitate conflict at two levels: one between a region’s majority group and its break-away minorities, and the other between rival regional elites patronising the exit of the other’s aggrieved minorities. In other words, doing what was right would have opened the gate to war and confusion.

So, the ought to was contradicted by practical realities on the ground.

A Desirable and Practical Alternative. What option was desirable and feasible? I cannot provide a definite answer to this question, but I will try to spell out the dangers of prioritising the “is” over the “ought.”

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206 See Rothchild, Safeguarding Nigeria’s Minorities, p. 39.

207 The British used this to deny the demands. In the words of James Robertson, the then Colonial Governor: “I believed strongly that with Independence near it would cause a great deal of confusion and possibly trouble to create new states in 1958; I felt that this would be setting Nigeria off its new independent future in very uncertain and disturbed conditions. I told Sir Henry Willink that in my view any new state should be recommended only in the most imperative circumstances.” Sir James Robertson, Transition in Africa from Direct rule to Independence: A Memoir, London: C. Hurst and Company, 1974, p. 217.
One of the dangers is the transfer of minority problems into independence, together with the strategic power games of the regional elites. Political independence was expected to usher in liberal democracy whose defining attributes are its concern for (the Kantian) moral equality of persons and opposition to injustice that manifests as domination of some by others. Now, rejecting the claims of minority groups opened a gulf between democracy and justice, and aggrieved minorities entered independence demanding that justice be done. Also, electoral politics which premises the formation of government on majority vote would prompt the dominant regional elites to link up with and patronise aggrieved minorities of rival regions. In this context there was no way political confrontation was going to be avoided. The British, while they were around, played the role of third party mediators by responding to moments of crises and convening conferences to broker deals among the dominant regional actors. But, with their departure, the field was going to be open for a free fight and fall.

Another danger, and this is related to what has just been said, is that, down the road minority demands would have to be addressed and a showdown between the dominant regional actors would be inevitable. The 1957/58 Conference agreed on, and inserted in the new constitution, specific procedures for states creation after Independence. But, without the mediator role of the British, the three dominant parties were not going to come to a fair agreement on how many states should be created from each region. For example, during the 1957 conference, the NCNC insisted on the division of the Western Region into

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four states; namely, the Lagos and Colony State, the Midwest State, Central Yoruba State, and Kolanut and Cassava State.\textsuperscript{209} During the Willink Commission it initiated demands for two of these, beside the Midwest which it supported. On its part, the AG, other than being the senior ally of the movements for the separation of minority groups in the Eastern and Northern Regions, was also committed as ever to an adjustment of boundaries to bring the Yoruba of the North into the Western Region. On the other hand, the NPC had always been consistent with its attitude of not broaching any violation of the North’s territorial boundaries. To postpone political separation until after independence was to postpone the inevitable - a violent confrontation between the regional powers. The best way of avoiding conflict would have been for the British colonial administrators to use their power to separate aggrieved minorities. After all, political power (according to Hume) is instituted in societies to promote justice. The British should have used this power to force elites of the major groups to accept an arrangement that aimed at enthroning justice is not a move that should call for debate.

The practical difficulty that remains to be resolved was the refusal of some minorities to be included in the states that were demanded. The difficulty could be presented in this way: should just claims to separation be denied if they do not win the express consent of some groups (call them minorities within minorities) whose territory are within the separatist unit?

Reg Whitaker has examined a similar problem in Canada where French speaking

\textsuperscript{209}Awolowo, \textit{Awo}, p. 185.
Quebec has made repeated attempts at asserting sovereignty. Within the province are scattered Aboriginal bands that refuse to accept Quebec's claim to self-determination as binding on them. In dealing with the problem of whether Quebec's claim can be imposed on the Aboriginal people without their consent, Whitaker argues that there should be levels of negotiation: one, between the rest of Canada and Quebec for the right of the latter to separate; and, two, between French Quebeckers and Aboriginals for mutual recognition of rights in the new unit that would come into being. Without negotiations for the recognition of rights, one party may resort to means that may prepare the way for mutual self-destruction.210

Whitaker's argument is similar to the argument I made earlier on that Nigeria risked catastrophe if minorities asking for equal political recognition as majority groups were not separated in new states. The new thing that emerges from analysis of the Canadian case is that fractions of minority groups opposed to separation have moral claims that should be respected and that a clash of rights could be avoided by having negotiations. The fact that some minorities were opposed to other minorities was not an irresolvable problem. They were not as strongly opposed to separation as the dominant regional elites and those they were representing. Their opposition was more apparent than real, for they actively supported the demands when they were sure of commanding the most dominant and influential positions, but changed their mind when it was clear they would be

disadvantaged.

Take the example of the demand for the Midwest State from the Western Region. The sub-Ibo group within it preferred a merger with the main Ibo of the Eastern Region. But, they did not mind being in the Midwest, as they were sure of commanding a large share of influential political positions. This bred fear among the Edo who were to be the most numerically dominant.\(^{211}\) Also, take the example of the Rivers State demand. The Ikwerre and Ahoada people (who spoke varieties of Ibo dialect unintelligible to the hinterland Ibo) actively supported demand for the state, but changed their position on account of proposals for the inclusion of the Western Ijaw with the Rivers Ijaw. Without the Western Ijaw they would have enjoyed numerical superiority, but with the inclusion they would have played second fiddle to the enlarged Ijaw.\(^{212}\) These examples show that, despite the mutual distrust and fear, minority groups were not fundamentally apart on the desire for states. The issue was which group-members would rule and who would be ruled in the new States. Resolving this problem required rounds of constitutional conferences on power sharing and institutional checks to domination.

When the majority ethnic elites disagreed over membership of the political community, several constitutional conferences were held to negotiate an agreement. It was in the course of negotiations that minorities' claims to equal membership arose. Logically, and to be fair, new sets of conferences involving minorities ought to have been held.

\(^{211}\)The Minorities Commission, p. 32.

\(^{212}\)See The Minorities Commission, p. 51.
Minorities-focused conferences would have produced compromises on power sharing and institutional checks to domination in the new states that were demanded.

In sum, an alternative political arrangement in which minority groups would receive equal political treatment as majority groups was desirable and feasible. In fact, the British (reluctantly) suggested a plebiscite and further constitutional negotiations to put such arrangement in place, but the majority ethnic elites opted to short change it for speedy independence.

REVENUE SHARING AND POLITICAL REPRESENTATION.

I have argued that the political framework adopted during the pre independence period was an unjust one, and suggested what desirable and practicable alternative there was. Two other substantive issues that have to be addressed are claims regarding political representation and revenue allocation. Recall that the 1953/54 and 1957 constitutional agreements freed political representation at the centre from the regions by dividing the country into several equal federal constituencies. These agreements succeeded in separating representation in the central legislature from the three regional-framework which I criticised as unjust to minority groups. This separation did not happen in the case of revenue sharing. Here, the structural political framework determined the constitutional agreement on a derivation based revenue allocation system. That is, the 1953/54 agreement for a near liquidation of the centre and for grant of autonomy to the regions spurred the agreement for the sharing of assets and revenue on derivation basis. To object to the structural political framework is to object to the revenue sharing agreement, *ab initio*. It
would, therefore, be unnecessary to conduct detailed arguments about the desirability of
the latter. What I want to do in the pages that follow is: (a) make arguments for the
framework that ought to guide revenue allocation, given population, derivation and need
based claims; and (b) evaluate the desirability of the political representation agreement,
given competing claims that were made. I begin with the latter.

Desirability of the Agreement on Political Representation.

The agreement for political representation has to be evaluated in terms of the claims
that were made. There were two dominant claims; one was the Northern Region’s demand
for representation on population basis, and the other was the Eastern and Western Region’s
demand for representation on the basis of equality of states. These claims overshadowed
and silenced demands by some minorities for their fair representation in the centre. Recall
the three-level conference of 1949-50 was convened partly in response to protest by some
minorities over their inadequate representation in the Arthur Richards’ Legislative
Council.\[13\] Population and equality-of-states-based claims by the dominant regional elites
not only silenced demands by some minorities but were also dissociated from the issue of
adequate representation of groups in the regions. In spite of the dissociation, the two
dominant claims could still be assessed for their own merit.

In definitional terms democracy is sovereignty of numbers,\[14\] and in its original
Athenian form it was direct participation by the demos (people). The issue of indirect

\[13\] See chapter 3 above.

\[14\] See Aristotle, *The Politics*, Bk. III, chapter VII.

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representation arises when, for reasons of large population, direct participation becomes impossible.\textsuperscript{215} In this case the population is divided into a number of constituencies for purposes of electing deputies. Numbers (as the defining element of democracy) are the operative principle in dividing the population. The smaller a constituency is in terms of population, the more the deputy approximates to the member. The larger it is, the more the deputy is remote. For example, if there were ten people in a constituency, each member would have one tenth of the deputy's voice in the legislature. If there were a hundred people, each member would have one hundredth of his/her voice. A small constituency is the ideal because it comes closer to direct participation.

The above will mean that in a legislative assembly, representation has to be proportional to population. To abandon population principle will be a deliberate attempt at under representing areas with greater number of people. In such areas, the people/deputy ratio will be large and the people will have less influence in the making of laws as compared to districts where the ratio of population to representation is small. On the other hand, the people/deputy ratio will be high in areas with relatively low population and the people in such areas will have more influence in legislative procedure. It is in this respect that arguments by the dominant Northern elites had merit.

However, it is not enough to make arguments in defence of the population principle. If seats were to be allocated on the basis of regional population, questions have

to be raised on how each region would distribute its share to make for fair representation of its diverse groups. What is the guarantee that each region's share would not be distributed in favour of its majority group, or that the method of election will not produce deputies who are mostly members of the numerically dominant group? This problem of fair representation of groups was the substance of some minorities' claim that was silenced by the dominance of majority group elites in the constitutional process. The silencing of this claim, or the inattention paid to it by the dominant elites as they made their arguments, will uphold the view that, in the regions, representation was going to be biased.

This should not suggest that the equality of region argument had no weight. Certainly in a political federation the constituent units are equal partners. It is as equals that they co-operate to form a larger community that does not smother their local identity and power. Each maintains its internal autonomy, as such none is subordinate to the other. Being equals, they all have same voting rights. This means sitting as equals in the central legislature. So, the equality of region principle has to be recognised in the distribution of House membership.

But, like the population principle, it also has the problem of fair representation of groups. Recall that Northern and Western Regional representatives to the 1950 General Conference had pressed for an indirect system of election with the aim of using their regional legislatures as electoral colleges to select deputies to the centre. They succeeded, and the result was exclusionary politics in those regions. This, in turn, triggered the removal of minority elites from the head of the Eastern Region's Government. With precedents like this, there was no guarantee that House membership distributed on the basis
of equality of states would not be monopolised by majority group elites. It was even likely that they would regard their state's share as belonging to government, not the people per se, and would proceed to allocate the seats among themselves, just as the regional legislatures were used in 1951 to select representatives to the centre.

In fact, the use of the regional equality principle as the basis for distributing membership of federal legislature technically elevates the regions as the units to be represented. If what matters in the centre is the equal representation of political units, it becomes immaterial whether the various peoples in the regions are adequately represented or not. As would be expected, representatives sent to the centre would be comprised mostly of the majority group who dominate the political process in each region. So, the equality of region argument could not have made for fair representation.

Were the 1953/54 and 1957 constitutional agreements for dividing the country into equal constituencies desirable? One thing with the delimitation was the dissociation of representation from the regions. With the agreement, it was no longer the regions that were to be allocated federal seats. Rather, the country was regarded as being inhabited by people, who were now divided into several groups and were required to produce their own deputies. The boundaries may not have coincided with ethnicity, but they did not enclose a random collection of people. Rather, they followed the colonial divisional boundaries which, in most cases, enclosed sub ethnic groups (within larger groups) and small groups. In effect, the agreements made it possible for groups to have fair representation in the central legislature. The dominant but rival regional elites may not have set out to achieve this purpose at the negotiation table. They were mostly interested in ensuring that undue
concessions were not made to their rivals. In the process they all arrived at an agreement which at once freed representation from the ambit of the regions and focused it at the level of groups.

In countries like the United States, the drawing of constituency boundaries along ethnic lines to ensure adequate representation of African-Americans has been contested on grounds that it violates individual equality and that it promotes racial segregation and conflict. In the case of Nigeria, the drawing of federal constituencies to follow closely on sub-ethnic and ethnic lines made for equal representation and helped to minimise conflict. In fact, the 1953/54 and 1957 agreements resolved once and for all the problem of representation in the central legislature. Never again has the issue been seriously contested in national politics. Although some boundary adjustments have had to be made on some occasions, they were made within the framework of the agreement. The fairness of the representational arrangement led to its use in the mid-1970s as a model for delimiting the country into 318 uniform local government areas.

A Desirable Framework for Revenue Allocation.

The issue of sharing national revenue first requires a determination of the body that has jurisdiction over the territorially based society from which revenue is generated. In the modern world the state is generally assumed to be the body that has legitimate jurisdiction.

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216 A recent case was the creation of a 160 mile snake like constituency but less than 1 mile wide, in North Carolina. This was aimed at rectifying under representation of African Americans but was nullified by a recent ruling of the Supreme Court. See Kymlicka, *Multicultural Citizenship*, pp. 135-6.
When I speak of the state I mean the ‘commonwealth,’ the res publica. Kohn appropriately defines it as “the people legally united as an independent entity.” The union brings forth a national political community, having universal jurisdiction within its territorial boundaries, but creates an agent endowed with authority to exercise jurisdictional powers on its behalf. As an agent, government is accountable to the national community and the revenue it generates to carry out its business belongs to the people united.

However, the essence of federalism is local sovereignty within a national community. Jurisdictional right is shared between the national and local community. Thus, the federal and regional levels of government have their respective jurisdictional spheres. Each generates revenue in its own sphere to carry its administrative responsibilities. However, very often, revenues are centrally collected (by the federal government) and shared among the regions. This is for reasons of convenience to tax-payers and collectors, inability of some regions to generate revenue, effects of one region's economy on the other, and equal tax rates for identical professions across regions.218

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218 Let me explain each of these.

Convenience to Tax Payers and Collectors. It is more convenient for both the payers - individuals and companies - and the levels of government if certain revenues like taxes and import/export duties are collected by one bureaucracy. Several bureaucracies and different tax forms will be required if the constituent units (regions) and the centre are to collect their taxes separately. To avoid the problem of individuals and companies filling two or more tax forms each year, and of multiple bureaucracies competing for returns, one government collects all and makes returns to the regions.

Inability of Some Regions to Generate Revenue. Some regions might not be able to raise
enough funds to carry out their responsibilities while some might generate in excess of what they require. Unconditional transfer of surplus to those in deficit is possible if the centre is collecting revenues. What is generally known as federal grants are an offshoot of inability to generate revenue to match responsibilities.

Effects of One Region’s Economic Activities on the Other. There is concern for interregional spill-over. If the goods and services of a region do not coincide with its geographic boundaries, they might spill over to, and have positive or negative effects on, residents in other jurisdictions. Where goods and services trade across regions, as they always do, taxation and expenditure policy of one government will register in the economy of the other. For example, investments in higher education, medical health, highways and canalisation of rivers affect economic decisions (investments, trade, or labour migration) of people in other regions. In this case, the benefits of fiscal decisions are externally enjoyed but the government cannot claim political reward of the electorates who happen to be in the other jurisdiction. On the other hand, the fiscal policy could have an adverse external effect, in which case the cost is exported, and the government cannot be held accountable.

The solution to spill-overs is to expand jurisdictional boundaries of political authorities to coincide with the geographic span of public goods, which is impossible. Since the centre has national jurisdiction it automatically exercises political authority over the territorial area of public goods. It addresses the problem of spill-over by using grants to match actions of regions whose fiscal policies affect others. By assuming the major role in revenue collection, it can either compensate regions that receive the burden of others or subsidise those whose expenditure benefits others.

Harmonious Tax Rate. If the tax system is left completely with the regions, rates and expenditure would vary for identical people across jurisdictions. A teacher in one region will pay more income tax than a teacher in another but having the same income, and benefits for the unemployed will vary in like manner. The concept of a national community requires that there should be a horizontal equity. That is, citizens of like income residing in different regions should be treated equally. So, the centre defines the tax base and the applicable rates, collects them, and turns part of the revenue back to the regions. See Richard Simeon and Mark Krasnick, Federalism and Economic Union in Canada. Toronto: University of Toronto Press, 1986, chapter 9.

On balancing her equation, the worker will rationally migrate to a low wage area if she finds that there is a package of public sector benefits - free education, free Medicare, subsidised housing - to be gained in return for some sacrifice in income. At the macro economic, level this movement of labour from low results in is wrong because labour migrates from low productivity employment to one of high productivity. There is a loss in societal output which is not regained. To avoid a situation in which social interest
In real economics, revenues would be shared on the basis of generation. If governance is reduced to pure business then the generation and sharing of revenue would be considered in strict economic terms and each unit of government will receive from the central fund a proportional equivalent of what it contributes. The allocation system will, therefore, be based on the derivation principle. In this scenario, the centre will be playing the role of a contractor that collects and returns revenue, but keeping a part as payment for the services it has rendered. The various units will be acting like business outfits, and relations among them will be rooted in purely contractual terms. All this will presuppose the non-existence of a national community.

It should be noted that, in a political federation the sharing of jurisdictional authority does not dissolve the national community. On the contrary, the sharing helps to give a sense of belonging to people who are associated in one entity. The entity defines people that are united, have mutual interest, common political bond, and common political fate. Although the constituent federal units have local autonomy, they collectively constitute a national community in which the good of all matters. The fact of the existence of a national community requires attending to the general good. This is assumed in the leading role the central government plays in revenue collection. For example, the reasons given earlier on for central collection of revenue, implicitly present the national community as one in which there is concern for the general welfare. They show that the constituent will be sacrificed for narrow private interest, a harmonized tax system has to prevail across the board. The centre defines the tax base and the applicable rates, collects them, and turns part of the revenue back to the regions.
units are not like sovereign states in the international system that act on the basis of self-interest. Rather, they constitute a larger community in which there is an obligation to the common good. Perhaps, it is for this reason that states like Canada have developed economic programmes for operating the country as a sharing community.

What the preceding argument suggests is that national revenue ought not to be distributed strictly on the basis of what each region has contributed. While it is fair to recognise those that contribute the most, the common good requires that market economics be transcended. A balanced and desirable formula will be one that combines several principles - derivation, need, population etc. In this respect, the allocation formula produced by the Hicks Commission of 1951 was the best.

**SUMMARY.**

This chapter set out to evaluate competing claims for, and constitutional agreements regarding, a desirable structural political arrangement, a desirable political representation.

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219 Ibos and several minorities in the East were constrained by the derivation system that was put in place because agricultural exports were mostly from the North and East. Immediately this did not generate conflict because, the centre was practically liquidated as such there was no basis for complaining about neglect or uneven allocation of funds. It nevertheless showed indifference and lack of unity. This sort of indifference to the well being of the other could trigger exit. Some have argued that it was a change of fortune in the East following the discovery and emergence of crude petroleum that prompted Ibos to take the region out of the country. In other words, since people in the region were left alone to take care of themselves during their period of economic adversity, they might as well exit now that their fortune has changed for the good.

220 My objective, as I stated earlier on, is to argue for a framework for revenue allocation. I will, therefore, not go into practical details about what proportion the principles ought to be mixed.
system, and a desirable revenue allocation system, during the several constitutional conferences that preceded the formal grant of independence.

Regarding the structural political arrangement, the findings were that conflicting claims for a political federation of ethnic groups, for a unitary system blind to ethnic difference, and for a loose political partnership of the three regions, had their own merits and weaknesses. A desirable arrangement had to be one that took account of the strength and weaknesses of all claims. In this respect, a political framework produced by the Rawlsian type of agreement would have been inadequate because of its bias. An option could have been an arrangement that combined institutional elements of all three political systems that were demanded, but this was not feasible.

A more realistic alternative was a compromise arrangement that required claimants to soften their claims and make mutual adjustments and concessions. In this respect, the 1953/54-compromise agreement that nearly liquidated the centre and gave full autonomy to the three regions was a pragmatic one, but it was grounded on the interest of the three majority groups and their elites who dominated both the regions and the national arena. Its pragmatism was contradicted by the unjust refusal to extend equal political recognition to some minorities who demanded separation in new states. Although there were practical difficulties regarding political separation, they were not beyond resolution. Evidence suggests that the British colonial rulers were prepared to convene further constitutional conferences to resolve what difficulties there were, if independence would be postponed. But having secured constitutional agreements that grounded political arrangements on the advantages of themselves and their groups, members of the majority group elite refused to
compromise the immediate transfer of power by the British.

If the structural arrangement that was put in place was unjust, the arrangement for representation in the central legislature was not. There were claims for the use of the population principle and counter claims for the use of equality of regions principle in the distribution of seats among the three regions. But, the final agreement to divide the country into over 300 equal constituencies unintentionally made for proportional representation of groups both large and small. The drawing of constituency boundaries around colonial local administrative units, which, in most cases, enclosed sub ethnic groups and smaller groups, generated the unintentional outcome. The arrangement put paid to arguments about representation in the legislature, and served as a model for local government reforms in 1976.

The same cannot be said of the revenue allocation agreement that was negotiated. The 1953 adoption of a loose federation in which the three regions had full autonomy also spurned an agreement for the sharing of revenue on the basis of what each unit contributed. This agreement effectively treated the regions as if they did not constitute a national community and had nothing in common. Unlike the representation arrangement that was dissociated from the structural political framework (that, loose federation of three regions), the revenue allocation agreement was a consequence of the adoption of the latter and was not freed from it. In a federation a national community exists and there is commitment to the collective well being. This makes for the combination of several principles for revenue allocation. The one agreed upon in 1954 rested too much on derivation and amounted to no more than a sharing of assets. The indifference to the collective good was later realised.
and a Commission set up in 1958 led the introduction of a Distributive Pool Account for tempering derivation by allocating some revenues on the basis of both population and equality of regions.
CHAPTER FIVE
THE SECOND POLITICAL STRATEGY

Independence in 1960 marked the beginning of a second political strategy for coping with ethnic difference and reducing conflict. The strategy was characterised by the adoption of a quota system of appointment into strategic institutions like the military and by the re-division of the country into twelve states (under necessities of war) to take account of smaller groups that were previously denied political recognition. This chapter will assess the quota system and the recognition of minorities in separate states.

THE QUOTA SYSTEM

The quota system had its origin in the Nigerianization policy adopted in the 1950s as the country moved closer to political independence. By the policy, Nigeria’s political achievement in terms of participation in the legislative and executive spheres of government was to be matched in the administrative sphere where expatriates dominated the civil service. The policy required the withdrawal of Europeans from both the federal and regional civil service and the appointment of Nigerians to fill the positions vacated. Since the two regions in the south had skilled personnel, they easily filled available positions in their regional service and in the federal service. A large number of people from the two regions moved to the Northern Region to take up positions in its regional service and in federal institutions located there. It was in this context of labour influx from the Eastern and Western Regions that the Northern Regional Government developed the policy
of closing its public service to people who did not belong to the region. It did so by basing appointment into its public service on "nativity" which was measured by ethnicity of one's parents, and by placing people from the two southern regions on contract if they were appointed. At the federal level, the Northern Regional Government succeeded in negotiating a lower entry qualification for Northern applicants seeking to fill positions in the civil service.221

Restrictions regarding appointments into the regional service, and the lowering of federal civil service entry qualifications for natives of some regions, were not provided for by the Independence Constitution. In fact, Northern representatives to the Independence Constitutional Conference tried but failed to secure an agreement for the use of quotas in filling the federal public service. It was the 1963 Republican Constitution, which while forbidding discrimination "against a particular community, tribe, place of origin, religion or political opinion," permitted any region to implement policies that would protect the rights of its members to employment.222 So balanced and representative appointment into the bureaucracy was not formalised at the national level.

It was in the military institution that a balance was made among the three regions. From the mid-1950s to Independence, when British disengagement was on course, merit


was the criterion for recruiting Nigerians, and a greater number of applicants were from the Eastern Region. Between 1955 and 1961, about two-thirds of the officer ranks that were recruited came from the East while 80% of the other ranks came from the North (but two thirds of these were from the minority areas of the region). Fearing that one section of the country might use the army to dominate other sections, the NPC controlled federal government introduced balanced recruitment into the officer ranks in 1962. It adopted a recruitment formula by which 50% of military cadets were to originate from the North and the other 50% shared between the East and West. The 50:25:25 formula was taken as a reflection of the distribution of national population among the regions. The quota system was defended in the Senate by the then Minister for Army Affairs:

> We introduced the quota system in the Army . . . thus preventing the possible fear that the army would sometime become unreliable. If any part of the country is not represented in the army, we harbour some fear that a particular section will begin to feel it is being dominated. But now . . . the country’s safety is assured.223

One consequence of the quota recruitment was that the North’s share of officers commissioned in 1963/4 rose to 42% compared with 21% in 1960. By 1966 the upper crust of the military was still dominated by Easterners (mainly Ibo), but the use of quota in appointment and promotion blocked the acceleration of the middle ranking level officers - captains and major levels- of from the East and West.224 It was this grievance that partly


led to the January 1966 major's coup that violently terminated the First Republic.

Another consequence was the reproduction of societal cleavages and conflict in the military. The coherence and command structure of the military was weakened as ethno-regional identification and attachment displaced loyalty to superiors. Non-commissioned officers openly flouted military norms by refusing to take orders from superiors who were not of their ethnic region. A case in point was a Northern sergeant who told a brigadier of Western Region origin who was also the most senior officer in the army in July 1966 that, "I do not take orders from you until my captain comes." 225

The fear that "regional armies" will emerge within the military, 226 and at the eve of the 1967 civil war, the need to have a centralised and hierarchical, combat ready, espirit de corps army that would defeat secession, led to an abandonment of the quota. Instead, recruitment was based on individual merit and fitness irrespective of regional and ethnic origin. After the civil war in 1970, the quota was thought to have been abandoned forever as some high ranking military officers publicly declared that there were no plans to introduce ethnic balancing in the post-civil war political rehabilitation. 227 However, various segments of society made demands for the use of quota for admission into federal

225See Ademoyega, Why We Struck, p. 119.

226This response came too late. The army was already divided on ethno-regional lines, and by 1966 there were in-fighting that erupted in coups and counter coups all of which resulted in the declaration of secession by the Eastern faction led by Colonel Ojukwu.

institutions including universities and military schools. By 1975 the quota system was back, this time not only in the military but also in other civil institutions including the civil service. It was latter formalised by a "federal character" constitution that was designed in 1976.

THE SEPARATION OF MINORITIES.

The 1960s separation of ethnic minorities into new states was not consciously done, rather it was the unexpected outcome of power struggles among the dominant parties. The setting was provided by the 1959 federal elections that no party won an absolute majority of votes, although the NPC won the greatest number. To form a government NPC leadership invited its two major rivals, the AG and the NCNC, to join in a three-way coalition. It had the belief that Government and Opposition as inherited from the West was unsuitable for the country because of its multiethnic composition.\(^\text{228}\) Although it also needed either of the two parties in order to form a government that can pass its Bills in parliament. The NCNC leadership accepted the invitation, while the AG leadership turned it down and went to form the Opposition, very much to the consternation of a faction of its leaders who thought that joining the coalition would bring public service jobs and positions in government boards to Yorubas. The refusal split the AG into two factions in 1962, setting off a crisis within the party.

On the other hand, the NPC/NCNC coalition soon ran into difficulties. As already

\(^{228}\)See chapter six for an extensive discussion of this.
discussed above, the introduction of the quota system for recruitment into the army worked against Easterners, especially Ibos. The NCNC also regarded the coalition as yielding more benefits to the NPC in terms of government jobs, patronage, and the siting of projects.\(^{229}\) Yet it did not break off. Instead it sought to wrest power from the NPC, its senior ally, and to do so it had to shore up its strength in the federal legislature. The AG crisis provided it the opportunity for calling on the coalition government to divide the Western Region with the expectation that the new units that would emerge would fall under its control.

The NPC saw the crisis within the AG and consequent breakdown of law and order in the Western Region as an opportunity to eliminate the party (AG) which had been carrying out its opposition in the federal legislature in a confrontational and embarrassing manner. It also saw the occasion as an opportunity to prove to the NCNC what would be

\(^{229}\)By 1964, the NCNC had accumulated a list of grievances. An official document was released in that year detailing Northern gains:

- Take a look at what they [i.e., the NPC] have done with the little power we surrendered to them to preserve a unity which does not exist:
  - Kainji Dam Project - about 150 million pounds of our money when completed - all in the North;
  - Bomu Railway Extension - about 75 million pounds of our money when completed - all in the North.

- Spending over 50 million pounds on the Northern Nigerian Army in the name of the Federal Republic.
- Military training and all ammunition factories and installations are based in the North, thereby using your money to train Northerners to fight Southerners.
- Building of a road to link the dam site and the Sokoto cement works - 7 million pounds when completed - all in the North.

- Total on all these four projects about 262 million pounds.

- Now, they have refused to allow the building of an iron and steel industry in the East and [have] paid experts to produce a distorted report.

its lot if it was not pliable and submissive as a junior ally.\textsuperscript{230} It was in this context that the coalition government used constitutional means to carve the Midwest out of the Western Region in 1963. It immediately fell under the political control of the NCNC, thus increasing the party’s bargaining power.

Ethnic fighting within the military (the coup and counter coups of January - July 1966) gave rise to an Ad Hoc Constitutional Conference (in September 1966) whose aim was to debate and recommend the most suitable constitutional arrangements for the country. Debates shifted between claims to political confederation and arguments for the creation of new states from the existing regions. However, the killing of Ibos residing in the North abruptly terminated the conference. Instead, the Military Government of the Eastern Region convened a Consultative Assembly of Easterners to decide on secession. To pre-empt the declaration of Biafra, the Federal Military Government divided the country into a total of twelve states of which about six were controlled by minorities. Its goal was to separate minorities of the East into new states so that they would challenge Biafran secession, and to meet the pre-independence aspirations of Northern minorities as a way of countering Ibo charges of Northern dominance of the federation.\textsuperscript{231} As in the case of the Midwest, strategic consideration prompted the creation of twelve states that separated ethnic minority groups from the three major groups. In both cases (1963 and


\textsuperscript{231}It was not fortuitous that those appointed to govern the new states were indigenes.
1967), strategic needs intersected with the pre-independence claims of minorities for recognition in separate states.

PART II
THE PUBLIC GOOD AND FAIRNESS

This part of the chapter assesses the quota policy and the 1963 and 1967 political separation of minorities. It attempts to determine if the policy and the political exercise of creating the Midwest State from the Western Region and the subsequent creation of 12 States were morally right. It proceeds with the assumptions that political units (states) and employment positions in national institutions are goods that are generally desirable, and that the goods are in relative scarcity. These two assumptions make social justice an issue. If there were no moral norms regarding things that are desirable and reprehensible, and if things were in absolute scarcity or in abundant supply, issues of social justice would not arise in human interactions. It is because this is not true that we have morality and laws to regulate our interactions and resolve conflicts that may arise. This part of the chapter, therefore, regards morality and laws as means to an end, the end being a well-ordered and stable society.

THE QUOTA SYSTEM AND FAIRNESS

Generally, there are two conceptions of justice in the distribution of societal goods. One is meritocratic and it holds that people should be treated according to their ability.
Achievement is the chief criterion for determining the sharing of societal goods. Those who have achieved most receive the most while those who have achieved least receive the least. The emphasis here is formal equality and competition in the public domain. Unequals are regarded as formal equals and are subjected to seemingly impartial universal rules, very much like the rule of law. This conception of justice is blind to the historical background of members of society and is intolerant of preferential treatment or temporary reservation of goods for the weak. Such practices are regarded as a violation of state neutrality (discussed in the previous chapter) and deviating from fairness. By reserving positions for the weak, the state, which is supposedly public and neutral, is considered to be siding with or adopting the good of particular members of society as the public good. It is in this respect that the meritocratic conception of justice considers a quota system or affirmative action as violating the equal treatment of citizens. Also, the reservation of positions for the weak is believed to work against the goals of organisations. Public institutions and offices are established to discharge particular social functions the effective realisation of which requires that only those with relevant qualifications be appointed. To hire people who do not have the required skills would undermine the social ends.  

Meritocracy might be a good principle for distributing goods, but it has some difficulties. First, it has been argued that hiring on the basis of skills is just if competence in producing specified outcomes could be measured objectively, or if technical skills translate directly into excellent performance, or if performance could be judged...

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individually. These conditions can hardly be met because: (a) most jobs are too complex to allow for a value-free measurement of individual performance; (b) production is by team work and therefore it is not easy to identify the contribution of each worker; and (c) in the modern world where production process is automated, workers contribute little to actual production and, the at management level work entails the use of discretion. Second, the merit principle wrongly assumes that people have equal opportunities, thus judging them strictly by achievement. Implicitly, it upholds underlying social inequality and fails to account for the social circumstances that produce it. With respect to the case at hand, the principle is incapable of offering a satisfactory moral account of why people of the Northern Region should be responsible for their backwardness. It was not the people that closed the region to Western civilisation, it was their leaders. It is not clear why they should be responsible for what they did not do. Accepting the merit principle would be no more than holding the people accountable for the actions of their leaders.

The above argument could be illustrated with the authoritarianism in some African states. The current predatory actions of some leaders in Africa may or may not be acceptable to the people - the ruled. It is likely that they object to it because there is no society whose moral norms uphold oppression and looting. The people will be bewildered if they are to be held accountable for the unjust acts of their leaders. Obviously countries of the First World impose sanctions on political leaders of some states. At the same time

take appropriate measures to address the difficulties such sanctions might have on the people because they recognise that the latter as whole should not be punished for the deeds of their rulers.

It might be objected that leaders are legitimate representatives of the people and the latter are accountable for what is done on their behalf. For example, if state officials contract a foreign loan the citizens have an obligation to pay (with their tax money) and if the very leaders that contracted the loan cease to be in office on account of death or expiration of tenure the citizens are obliged to honour the debt.

With respect to the case at hand, one would respond by noting that the context was quite different. The closure of the Northern Region to Western influences was done in the context of resistance to foreign conquest and domination. In itself, political conquest was not a desirable thing because it brought both loss of freedom and lack of self-respect. The most denigrating and pernicious aspect of colonialism was the loss of self-worth, which arose from the replacement of indigenous culture with foreign culture. Within the Nigerian territorial boundary, resistance to both the political and cultural aspects of colonialism was universal. The difference was that the Moslem North was more effective at mounting cultural resistance than people of the South. There was resistance by both Moslems and non-Moslems but one was more successful than the other was. Backwardness of the North should be understood as the result of its successful resistance to the cultural aspects of colonialism, while progress of the South the result of its ineffective resistance. Therefore, one cannot be praised for putting up a weak resistance to the assault on self-respect, and the
other blamed for mounting a successful one. Indeed, it is the latter that deserved respect. Seen in this way, the educationally and economically backward North had every moral justification to demand preferential treatment if it suffered on account of its successful resistance. Moral explanations like these remain elusive to merit based conceptions of distributive justice.

The other conception of distributive justice is welfarist. Drawing from stoicism and natural law theory, it holds that people are equal by nature, and as natural equals each has the same right to basic needs satisfaction. It is, therefore, the responsibility of society to provide everyone with equal opportunity for the realisation of that right. This would entail the provision of compensatory treatment for those that are historically disadvantaged. With respect to the case at hand, the welfarist conception of justice would regard the quota put in place by the NPC government as not a violation of equality but as a way of offsetting historically rooted inequalities. Using ethnic balancing to temper merit would be seen as necessary for accommodating the historically disadvantaged people of the North and a requirement for long term substantive equality. The assumption here is that the state’s subscription to formal equality in constitutional texts would not really produce substantive equality of opportunity unless concrete measures are adopted to advance weaker members of society. In fact, some theorists of democratic equality argue that state institutions have social responsibilities in the environment in which they operate and that some of responsibilities include the representation of diverse social interest in order to avoid false
uniformity and to ensure that services get to diverse populace.²³⁴

There are two problems with the welfarist notion of justice. First, social justice does not arise among people who are perfectly equal (as in a pre-social state), but among those who interact and influence one another (in a civil state).²³⁵ Equality of opportunity derived from the idea of human equality is only practical in a non-human society (e.g. Rousseau’s savage state) where none is subject to the influence of the other. In so far as people interact and influence one another, inequality is bound to arise. It is precisely for this reason that we have justice. Still, a well-devised system of justice ought to reduce inequality and, in fact, the former is unfair if it fails in reducing the latter.²³⁶ More of this will be discussed in a moment.

Second, it suggests equal treatment of people irrespective of their historical circumstances, and by extension, has the danger of rewarding those who are responsible for their misfortune. On the other hand, as already discussed, the people of the Northern Region were not responsible for their educational backwardness so this criticism would not

²³⁴ See Gutman and Thompson, Democracy and Disagreement, chapters 4 and 9.


²³⁶ The relationship between inequality and justice was the subject of Rousseau’s “Discourse on the Origin of Inequality.” He tied justice to the emergence of inequality, just as Hume did when he presented human interaction and relative scarcity of goods as the origin of justice. See Hume, Moral and Political, pp. 60-4; Rousseau, “The Origin of Inequality” and “The Social Contract” in Jean Jacques Rousseau, The Social Contract And Discourses.
really stand.

What emerges from the above discussion is that equality is the substantive goal of social justice and that it could not have been met by the sole use of either the merit or welfare principles as the standard for recruitment into national institutions like the military. By itself, the merit principle was unjust because it did not promote the good of all sections of the country, although the interest of those sections that benefited by it should not be discounted. So, a system of justice that takes account of the interest of all sections ought to balance merit with welfare. Balancing both would depend on the goals of the community, the choices the people have made as to type of country they want to live in. Let me explain this.

The existence of morality or moral discourse within any given society presupposes some desired ends. If not what is right and what is wrong would hardly be issues. A society that agrees on justice as one of its goals, and one should think that every society would agree on this, would also agree that it is desirable to promote the general good instead of only the good of some. It would agree that it is desirable to adopt measures that improve the general quality of life rather than those that increase and generalise poverty. The Nigerian people could not have been against these ends, for the Independence Constitution of 1960 enshrined social justice as one of the fundamental objectives and directive principles of state policy. If these ends were desirable (and agreed upon tacitly or explicitly), and if justice required that people be treated equally, then there was enough

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moral ground to use principles other than merit for including Northerners in national institutions. Ethnic balancing was required to promote their interest just as merit promoted the interest of people in the two southern regions. So, the use of the quota system was not wrong. Although it worked to the disadvantage of the more qualified, its use was justified by an overriding moral consideration.

Some might argue that the Nigerian Independence and Republican Constitutions enshrined equal rights and opportunities before the law, and that the administration of justice should entail appealing to the laws of the land not to morality. A policy like the quota system is illegal and unjust if it is not in accordance with clearly written down laws. To deal with this objection one might note that laws are not independent of morality. They are derived from the latter and they seek to realise some moral principles. For example, the legal equality of citizens as enshrined in liberal constitutions has its foundation in Christian morality. It is a moral value specified, but this is not to mean that laws and morality always coincide. What is legal might not be morally right, just as the morally right might be illegal. An impartial judge who follows the judicial process and dispenses justice according to the law can be said to have acted within the bounds of legality. He/She is legally right if he/she nullifies a quota-based appointment on ground that it violates prescribed laws. However, the laws could be unjust if they violate or deviate considerably from moral principles. The judge who follows the law to its letters might be reluctant to nullify the appointment that is done on quota because the law is unjust. He might heed the voice of morality by either setting the legal precedent of upholding the appointment or resigning from office on account of injustice of the existing law. In other words, moral
considerations can override legal claims, as in the case of Socrates's madman and the borrower of his weapons, or Hegel's economically distressed debtor whose right to life had priority over his creditor's legal claims. A morally acceptable greater good of society could justify revision of the existing laws to make them less morally repugnant. Injustice rules if legality is not brought in tune with morality.

WERE THE 1963 AND 1967 STATE CREATION EXERCISES MORALLY REPREHENSIBLE?

I have just argued in defence of the quota system. I will now examine the creation of the Midwest and of the 12 States.

Political events between 1960 and 1963 indicate that the creation of the Midwest State was the result of power struggle between the NPC and its NCNC junior ally. Each wanted exclusive control of federal power and to achieve that objective each tried to increase its strength in the federal legislature by annexing part of the Western Region. It was in this circumstance that the opposition AG-controlled Western Region became a victim in 1963. The strategic need of both the NPC and NCNC to fragment the West intersected with the longstanding claims by minorities of the Region for separation in a Midwest State. Now, a puzzle arises: if claims to separation by Minorities of the West had normative weight (as argued in the previous chapter), were they met by the 1963 exercise that was driven by considerations for power? Before answering this it would be necessary to raise another related puzzle.

Debate in the 1966 Ad Hoc Conference shifted between the issues of confederation and creation of new states from the existing regions. As it was, the conference was
inconclusive; as a result there was no agreement. The Federal Military Government, led by a northern minority, tried to pre-empt the declaration of Biafra in 1967 by: a) separating minorities of the East into new states so that they would resist Biafran secession; and, b) meeting the pre-independence aspirations of some Northern minorities for political separation as a way of countering Ibo charges of Northern dominance of the federation. As in the case of the Midwest, the need to defeat Biafran secession through state creation converged with the decade old claims of minorities for separation. The puzzle here is: if claims by minorities to separate states were morally justified, were they met by the 1967 military strategy? In his memoir Udo Udoma notes that “to those who for years had crusaded, . . . their dreams had come true by the grace of Lieutenant Colonel Yakubu Gowon. There were rejoicings . . ..”238 If this is true, was the exercise not praiseworthy?

The two puzzles are the same, for they border on the morality of the 1963 and 1967 states-creation. To address them it would be necessary to recall John Stuart Mill’s distinction between intention and motive. According to him, intention is “what [an] agent wills to do”, while motive is “the feeling which makes him will so to do.”239 The former is what the agent aims to achieve in a particular act, while the latter is the mental qualities that produce the act. Thus, the morality of an action depends on the agent’s aim, that is, what she wills to do. The mental quality from which the act emanates makes no difference

238Udoma, History and the Law, p. 257.

to, and has nothing to do with its moral estimate. Ethically, an act is not judged to be blameable or praiseworthy because it is done by a humble person, a rude person, a honest person, or a dubious person. These considerations only count in estimation of the person’s moral worth. No one is judged in a court of law by the qualities of her character. What counts is the person’s intention. It is common for us think that motive matters, but Mill’s distincion shows that we should be speaking of intention and that it would be a misunderstanding the concept of motive if we use it in our judgements.

An application of the above distinction would lead one to understand the 1963 and 1967 state-creation exercises strictly in terms of their aims. One would regard the exercises as having been driven by strategic consideration for power and military success, not by considerations for local self-determination and equal recognition on which claims of minorities were rooted. The distinction would prompt the judgement that minority claims provided rationalisations for the exercises and helped to mask the real agenda. Following this line of thought, the 1967 creation of two minority states out of the Eastern Region would be regarded as an attempt to place the territorial areas covered by the two states under the control of their indigenous inhabitants who would then position themselves against Biafran secession. Irrespective of its outcome, the exercise would be regarded as a crime because it was used as pretence to meet normative claims while actually sending the claimants to war. Pretending to meet normative claims and using the pretence to send the claimants to war is a crime, even if the end is to save the state.240

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240 Mill makes moral judgement of a related but different issue while discussing the difference between intention and motive. According to him, anyone who saves
The above Mill's inspired moral interpretation is helpful, but it is narrow because it does not account for the overall outcome of the state creation exercises. Pre-independence claims of minorities were ostensibly used to mask some hidden agenda but the moral importance of the rationalisations remains unexplained. Mill's account of what constitutes a moral act does not provide an adequate tool for understanding the issue under discussion. Instead, a better alternative is provided by Hegel's account. Hegel discussed what make people morally responsible for their actions when he differentiated between intention and purpose. With Hegel, intention is knowledge of anticipated consequences of an action, as for example, applying a match to papers in order to burn them. Purpose is the relation between an action and its overall outcome both intended and unintended, as when the application of match not only burns the papers but also sets the house in flames. The relation between the physical act of applying a match and the house going up in flames makes one morally responsible for arson.24

Now, the act of breaking the country into twelve states produced a sequence of events. First, minority states came under the ruler-ship of their indigenous inhabitants. Then, to be masters of their new units it became imperative for indigenes of minority states

another fellow from drowning does a morally right act, whatever the motive might be. But anyone that betrays a friend who trusts him is guilty of a crime, even if the aim is to serve another friend in danger. See J. S. Mill "Utilitarianism," p. 19.

24T. M. Knox (Tr.), Hegel's Philosophy of Right. Oxford: Oxford University Press, 1952, paragraphs 115-120. Lunatics have defective mental capacity as such they are not morally responsible for their actions. Similarly, children have unformed and weak mental capacity for which reason they are not morally accountable for what they do.
in the east to expel Ibos and seize their real estate. In turn, there was a deadly battle in Rivers State. Secession was defeated, a peace agreement was signed, and the country was saved. Here, there was a relationship between the act of separating minorities and the sequence of events that followed. The act produced internal self-determination for minorities thereby meeting their pre independence demands for equal political recognition, and it saved the country from disintegration. It was morally praiseworthy. Separation was desired not for the evil intention of sending minorities to war but for the larger purpose of freeing them and saving the country from disaster. In other words, stability of the country was found in a normative arrangement in which states were created to adequately recognise groups.

The moral weight of the 1963 and 1967 exercises could be appreciated if it is considered that the dominant parties of the pre-Independence and Independence era were opposed to any arrangement that would dismember their regions. They were determined not to let their ethnic minorities go and only force could bring about that desired arrangement in which the latter would be well accommodated. For the Midwest State to be created in 1963, the Western Region had to be placed under a state of emergency and its key AG leaders imprisoned on charges of plotting to overthrow the federal government. In other words, those who had opposed it all along and were in the position of power to

242Recall Rousseau’s argument that the easiest way to subject a people is to occupy their land. Ibos had taken up resident in minority regions of the east, especially in the Rivers province where they owned significant landed property in the city of Port-Harcourt and had emerged as the rulers. To control their new unit the peoples of Rivers State had to first expel Ibos and confiscate their landed property.
continue with the opposition had to be disposed of, forcefully. This was done in the context of power struggle between the NPC and the NCNC. Similarly, force had to be used in the dismembering of the Eastern Region. It was done under contingencies of secession and war, the very contingencies that also made for the dismemberment of the North in order to free and win the support of its ethnic minorities. Conditions on the ground required the use of force if the three regions were to be divided, and the 1963 power tussle and 1967 secession provided the opportunities. The exercises were morally justified, regardless of the intentions behind them.

SUMMARY

It was the objective of this chapter to evaluate the quota policy for appointment into, and promotion within, the Nigerian military, and the 1963 and 1967 separation of ethnic minorities in new political units. The quota system greatly disadvantaged people in the Western and Eastern Regions, more especially the latter, as it reduced the positions they would have filled under the merit system slowed their upward ascendancy into the top hierarchy. Although grievances about this contributed to the first military coup by young Ibo officers in 1966, the evaluation of the policy showed that the historically rooted educational backwardness of the Moslem north required the use of a distributive principle other than merit for a just allocation of positions. Educational backwardness was the result of resistance to the cultural aspect of colonialism, and the people ought not be excluded from national institutions (through the merit principle) for resisting the most denigrating aspect of colonialism. To insist on merit is to insist on punishing people in the predominantly Muslim north for securing their culture against Western values, and to
reward people in the south for their failure to do it. This historical cause of educational backwardness of the north would justify the adoption of quota policy.

The justification is further strengthened by the constitutional subscription of the Nigerian-state to justice and equality. The adoption of these as the fundamental objectives of state presupposed a desire to promote the common good. It presupposed a desire for the general well being, not the well being of some. Meeting the desires required a set of distributive principles that take account of the circumstances and interest of each section of the country. Merit principle reflected the circumstances and interest of the southern regions, while reservation of spots through quota addressed the circumstances and interest of the north. A combination of both principles was reasonably fair.

Regarding the 1963 and 1967 political separations, they were done in a context of power struggle and imminent secession by the Eastern Region. The context could prompt one to argue that the separation exercises were purely strategic and that they were not actually meant to address minority claims for internal self-determination. This argument is narrow and unsatisfactory because it does not account for the normative and political importance of the arrangements that were to be produced by the separation of minorities. It is true that strategic considerations were behind the exercises, but it is truer there was clear knowledge that the exercises would meet the pre independence claims of minorities and make for an arrangement that adequately accommodated difference. There were some dubious intentions, no doubt, but the over all larger purpose was an arrangement that was fair to both majority and minority groups.
CHAPTER SIX
THE FEDERAL CHARACTER APPROACH

The inadequacies of the 1960s Nigerian political arrangements and their resultant 3-year civil war prompted the search for a new strategy that would accommodate diversity. An arrangement that would make for broad inclusion of ethnic elites and ensure stability was negotiated by constitution-makers drawn from various sections of the country. One element of the new arrangement was the restructuring of the federation into nineteen states to reflect ethnicity, and the divisions of the states into local government areas to further reflect sub ethnic differences. Another element was the adoption of a policy that required membership in federal institutions to reflect the constituent states, and in turn membership in institutions at the state level was required to reflect the constituent local governments. This chapter attempts a critical evaluation of the constitutional strategy with the aim of determining its desirability. It begins with a contextual description.

THE BACKGROUND.

Nigeria emerged from its 3-year civil war with a new approach to governance. Its military rulers tried to promote inter group equity by resorting to the use of what Rothchild has called the ‘informal proportionality principle’ for appointments into high offices of state and the civil service, and for the allocation of resources.243 A reconstruction programme designed to rebuild infrastructures destroyed during the war was executed by

243See Rothchild, Managing Ethnic Conflict, pp. 51 and 66.
proportionally allocating projects (ranging from highways and airports to housing projects and to university campuses) to various geo-ethnic sections of the country. The adoption of the ad hoc proportionality principle coincided with the emergence of petroleum exports as a major source of national revenue. To apply the principle, the rich natural resource was first brought under the control of the central government through various decrees, and its revenues claimed for the Distributive Pool Account established in 1959.\textsuperscript{244} The use of proportionality in the allocation of revenue reduced to 20% the share of mineral rent and royalties going back to states from which they were derived. According to Akin Olaloku, the near elimination of the derivation formula gave a considerable boost to the resources of the federal pool to the benefit of non oil-producing states.\textsuperscript{245}

The central government's pooling of resources for redistribution to states and its

\textsuperscript{244}Under the 1953 agreement, each region received its full share of contribution to federal revenues. This was known as the derivation principle, applied 100%. However, it was criticised on ground that it was divisive. It was in response to the criticism that the Independence Constitutional Conference of 1958 set up a commission to look into it. This resulted in the introduction of a Distributive Pool Account in 1959 to temper derivation by allocating some revenues among the regions on the basis of both equality and population. The growth in the importance of mining royalties during the late 1960s prompted the federal military government to reduce to 45% the proportion of revenue going back to the states from which they were sourced. This reduction increased the amount going to the Distributive Pool, 50% of which was shared among states on the basis of equality and the other 50% on the basis of population. Money dispensed in this way accounted for 80% of the incomes of the then 12 states. See William Graf, \textit{The Nigerian State. Political Economy, State, Class and Political System in the Post-Colonial Era}. London: James Currey, 1988, p. 139; Anthony Kirk-Greene and Douglas Rimmer, \textit{Nigeria Since 1960}. London: Hooder and Stoughton, 1981, pp. 123-7.

post war reconstruction projects triggered competition for patronage. States became clients of the central government while groups and individuals also competed for patronage of both levels of government. According to Richard Joseph government as the key decider of who gets what is being distributed and how, subjected it to real pressures for the conversion of what was being dispensed into “means of individual and group appropriation.” The pressures included memoranda “demanding separate states to bring government nearer to the people.” An avalanche of demands for new states hit the federal government from all parts of the country, the intensity of which was reported to have reached a crisis point by 1973. The new demands emerged mostly from states of the majority groups (East Central and Western States), not minority states as the 1957 Minorities’ Commission had earlier anticipated.

The 1975 Panel on States Creation. It was in response to the above mentioned demands that a panel was commissioned in August 1975 to examine the issue of creating new states. Requests for internal self-determination that were made before the Panel were all

246 Joseph, Democracy and Prebendal Politics, p. 73.

247 Ekekwe, Class and State, p.137. Joseph also notes that the pressure for the creation of more states was fuelled by unrelenting struggle for access to state offices with the aim of procuring material benefits for oneself and for one’s communal group. See his Democracy and Prebendal Politics, p. 84.


249 The circumstances, which led to the setting up of a panel, reach back to 1967 when the twelve states were created by military fiat. Government carried out the 1967 exercise without consulting those who were affected. The boundaries were, therefore,
based on the need to: (a) make government more democratic by bringing it nearer to the people; b) quicken the pace of development by bringing state capitals nearer; c) assuage fears of new minorities; and, c) guarantee a balanced federation.  

In its report, the Panel noted that the demands were economic, more of a “booty sharing exercise.” This made it think against state creation. It felt that more states would neither accelerate economic development nor solve the problem of new minorities. Instead, they would lead to state proliferation to the point that each town or village would be a state. Yet, it went on to recommend the creation of eight new states, seven of which were accepted by government and distributed among various groups in the country.  

During its public sittings, the panel had observed “the strength of ethnic loyalty, mutual suspicion and even hatred among the diverse peoples which make up Nigeria,” and was convinced that “political stability cannot be guaranteed” if states were not created.  

taken to be temporary pending the appointment of a Boundary Delimitation Commission that would look into their readjustment or confirmation. Delays in setting up the Commission invited petitions from various parts of the country. Post civil-war economic developments (discussed above) provided a fertile condition for conversion of the petitions for boundary adjustment into those for states creation. It was the intensity of the demands that forced government to make a statement of commitment in 1973 and to set up a panel in 1975. See Government Views, pp. 8-9.  

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250 Government Views, p. 10.  
251 Government Views, p. 10.  
253 Incidentally the eighth state rejected by government was the only one recommended for some minority groups in the oil generating areas.  
254 Government Views, pp. 9 and 10.
It held the view that more states would foster "greater participatory democracy" and "produce . . . a balanced and stable federation." It was on this basis that the panel turned round to make positive recommendations. Both the panel and government verbally rejected ethnic difference as a criterion in the drawing of boundaries, but still took account of it in practise. The redrawing of boundaries to take account of difference permitted several minority groups in the north to be clearly separated (in a number of states) from the majority Hausa/Fulani. In turn, the country was divided into 301 local government units of uniform population range. Their boundaries closely followed colonial local administrative units that enclosed subgroups of larger groups and smaller groups. Thus each of the 19 states came to consist of local governments whose boundaries were drawn to accommodate diversity at the lower level. Membership of both the states and local governments were determined by parental descent.

**Federal Character Policy.** The creation of states and of local governments turned out to be one of two elements in a constitutional design for avoiding political dominance by a few ethnic elites. The other element was the drafting of a constitution that would require the origins of members of governmental bodies to reflect the 19 states (which were assumed

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255 *Government Views*, pp. 9 and 10

256 Ten of the nineteen states were in the north, while the other nine were in the south. Of the ten states in the north, six were predominantly made up of minority groups while the remaining four were made up of Hausa-Fulani. Of the nine states that emerged in the south, the Ibo occupied two, the Yoruba were found in four (including Lagos State) while minority groups were grouped into three. An extensive forest at the centre of the country was mapped as the new federal territory and Lagos soon ceased to be operational as the capital.
to reflect ethnicity). The then head of state, General Murtala Mohammed enjoined a Constitution Drafting Committee (CDC) of 49 members inaugurated in September 1975, to “eliminate over centralisation of power in a few hands.” Instead, it was advised to devise a constitution that would both decentralise power and require the choice of members of higher offices of state to reflect the federal character of the country.257

The CDC took its task seriously. It recognised the country as made up of multiple ethnic and linguistic groups which, for the sake of convenience, were referred to as communities. With this recognition, the CDC tried to make a provision that would make for proportional representation of ethno-regional groups in the composition of government, but was divided on it.258 A faction disagreed altogether; arguing that ethnic identity is irrelevant in the determination of a person’s human qualities and should not be used a basis for appointments. Another faction insisted that an equitable treatment of groups had already been met by the creation of states, and it was unnecessary to make constitutional

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In respect of the constitutional debates of the 1950s, delegates usually submitted issues they wanted to discuss (prior to the commencement of each conference) and after a long argument terms of reference were agreed upon. In the post civil war era it was different. The military were in office, the regions had been drastically reduced in size and power by increasing their number, and finance was centralised. It was this supremacy which allowed the Brigadier Murtala Mohammed regime to avoid the pre-independence procedures. According to Keith Panter Brick, the committee “was not to carry out negotiations, nor even to discover what would be acceptable to entrenched interests: its task was more technical.” Keith Panter-Brick, “The Constitution Drafting Committee,” in Keith Panter-Brick, ed. Soldiers and Oil, London: Frank Cass, 1978, p. 292.

provision for the participation of all communities in government. A third faction argued that ethnic dominance had occurred at various levels in the past and to effectively guard against it, political inclusion should be deepened beyond the federal level to the state and local government levels as well as to government agencies.\textsuperscript{259}

Despite the differences, the CDC formalised the proportionality principle that had been in use since the end of the war. Adopted as the “federal character” principle, it stated that:

The composition of the Federal Government or any of its agencies and the conduct of its affairs shall be carried out in such manner as to reflect the federal character of Nigeria and the need to promote national unity, and also 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 groups or other sectional groups 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 recognise 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.\textsuperscript{260}

State membership was defined in biological terms. According to the CDC, to “Belong to . . . when used with reference to a person in a state refers to person who either of whose parents or any of whose grandparents was a member of a community indigenous to that state.”\textsuperscript{261} With this clarification, federal character was applied to the most sovereign

\textsuperscript{259}\textit{See Report of the Constitution Drafting Committee, Vol. II, p. 54.}

\textsuperscript{260}\textit{Report of the Constitution Drafting Committee, Vol. 1, p ix-x.}

office that was to be a single Chief Executive known as President. He/She was expected to derive his/her authority directly from the people, for which purpose the entire country was to be regarded as one single constituency. However, they tried to avoid the creation of an all-powerful Leviathan by recommending the office of a vice president not as a counterpoise, but as a co-pilot, to the president. 262

For purposes of election, the president and his vice president were required to secure widespread geographic support by obtaining the highest number of votes which must not be less than 25% of the vote in at least two thirds of the states. 263 The idea of dividing the country into four geographic zones for purposes of rotating the offices of the president and vice president was raised, debated and abandoned.

Federal character was also applied to political parties. It was required that party membership be open to every citizen irrespective of ethnicity, and the headquarters be situated in the federal capital. In addition, it was required that two thirds of members of the executive committee be drawn from at least two thirds of the states that made up the federation. The federal character principle was also applied to federal institutions, then to the states and local governments. Thus, political inclusion was attempted at all levels of government. The constitutional device was topped with a provision making it difficult to further multiply the number of units. 264


264 The innovations were put to work beginning of summer 1979 when five
PART II
EVALUATION.

What emerges from the historical narrative is the definite commitment by a post-civil war Nigeria to the adoption of a constitutional strategy for coping with difference and conflict. The creation of seven new states and the adoption of a federal character principle were two interrelated elements that defined the strategy. I attempt a critical assessment in what follows.

DEMANDS FOR MORE STATES: BASED ON JUSTICE OR ECONOMICS?

The 1975 government panel viewed the demands for more states as purely registered political parties, namely the Unity Party of Nigeria (UPN), the National Party of Nigeria (NPN), the National Peoples Party (NPP), the Great Nigerian Peoples Party (GNPP) and the Peoples Redemption Party (PRP) contested power at the federal and state levels.

All five parties reflected wide geographic membership in their executive bodies, but their leaders were the same First Republic party leaders. Like the First Republic, the parties drew a bulk of their political support from ethnic origins of their party leaders. Nevertheless, the NPN gained wide geographic support in the election of its presidential candidate by attaining 25% of votes in twelve states and a fraction less in the thirteenth. The electoral commission declared the party’s candidate as having met the required plurality of votes. Controversy over the interpretation of the requirement for electing the President and a subsequent Supreme Court decision which upheld the Commission’s ruling set the stage for competing and antagonistic alliances.

The making and unmaking of alliances and lawless competition, all with the aim of unseating the NPN from federal power or eliminating the other parties as actors, revealed some defects in the constitutional design. If there was any doubt in the inadequacies of the constitutional arrangement, it was cleared by the street fight for power during elections in 1983, and by the military coup that immediately followed, which, by definition, was an institutionalisation of warfare politics.
economic which, if met, would lead to state proliferation and the destruction of the principle of federation. These it considered highly undesirable. On the other hand, going by what it observed to be the strength of ethnic loyalty and suspicion during its national tour, the panel thought that meeting the demands would spread power and guarantee political stability. It considered this political factor as having greater weight than the economic factor. The critical issue here is the conflict between economic and political considerations and the one that should take precedence.

To start off with the economic, neo-Marxist-inspired views would regard the demands as class demands that do not merit attention. The class aspect might be true, but it is also necessary to go beyond narrow selfish motives to consider the intersection of interest between elites and the groups to which they belonged. Like all human beings, elites have their personal interest to satisfy but as members of groups that have common consciousness and purpose, they may promote the salient interests of the membership. They claim legitimacy of group leadership not through election but by advancing common interests in the state arena. They can authoritatively advance meaningful claims by first holding consultations and negotiating common position within the group. They can move back and forth between the state arena and the group, continually negotiating salient interests within the latter and continually making demands at the former. Hence, in the public, elites can enjoy considerable support of their ethnic members and are able to mobilize them for action when the need arises.

So, the demand for states was not necessarily done only to achieve the ambition of power seekers. Rather, there was unity of purpose between elites and their groups, which
the panel identified to be a share of national wealth. The unity of interest could be
discerned in the following findings of empirical research conducted in the mid 1970s:

After 1967 all the new State capitals began to enjoy the paraphernalia associated with government headquarters. Hospitals were expanded, water supply, urban roads and drainage were improved, and various governmental institutions were established. They became centres of intense economic and political activities. Other infrastructural facilities such as trunk roads, neglected by former regional governments were reconstructed. More scholarships were awarded for higher education, many rural areas obtained electricity and local entrepreneurs were helped to industrialise. The notion of bringing government closer to the people, which had wide currency in official circles, was seen to have a positive value for the lives of the people.

If . . . oil revenue had not proved so buoyant it would have been a different story. But the Federal Government was the greatest provider especially through the Distributive Pool Account . . . . It is this factor which no doubt explains the acquiescence of Kano State in the status quo and the large number of proposed States from East Central and Western States.265

The relevant issue that has to be addressed then is whether ethnic based demands driven by desire for public resources have merit. Drawing from Aristotle’s judgement

265 Ali D. Yahaya, “The Creation of States,” in Keith Panter-Brick, ed., Soldiers and Oil, p. 216. A British social scientist noted that the Federal Military Government’s assertion of “claims to most of the revenue from oil . . . immediately put premium on further devolution, especially in those parts of the country where the demand for services of one kind or another was most intense. A greater share of the federally distributed revenues could be obtained simply by multiplying the number of units of government, each of which could then claim its equal share of the national cake. For instance, the intense demands on the Western State government to provide more and more schools, dispensaries, roads, houses and employment could be satisfied more fully by splitting the state into three and increasing its share of federally distributed revenues from 1/2th of the total to 3/19ths. There is of course an increase in overheads but this is not seen as a loss, since...an increase of employment in administration is one of the objectives of the exercise.” (Emphasis not in original). Keith Panter-Brick, “Introduction,” in Panter-Brick, ed., Soldiers and Oil, p. 5.
regarding competing claims to justice, one could argue that competition for national wealth should not translate into claims for internal self-determination. Wealth is temporary, not something that lasts forever. Although a country that witnesses a good turn in its economic fortunes might be able to sustain it. If self-determination is granted on account of it, and while it lasts, political disaster would likely set in as endless demands would have to be met with endless internal partitioning of territories until there is nothing to partition. But, it is also probable that economic decline would set in at some point in time. In which case the partitioned units would either collapse or be merged. Wealth is too transient to justify claims to internal self-government.

An alternative but competing option is to regard the demands as driven by the need for justice. This option requires an understanding of the state structure that emerged from the 1967 state exercise as unbalanced and working to the disadvantage of groups who did not have their proportionate share of states. In this case the demands have to be regarded as political claims made to redress injustice. For example, the 1967 creation exercise grouped Ibos in 1 state while Yorubas and the Hausa/Fulani had 3 each. By being in only one state, Ibos and their elites were not treated equally as the Yorubas, but were almost equal to them in terms of population. The panel’s observation that there were “mutual ethnic suspicion,” and demands were “made in bitterness” should not be taken at face value.

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In dealing with competing claims to justice, Aristotle argues that a political society is not a business venture that exist solely for the economic benefit of members. If it was, members would have nothing in common except economic exchanges. See Aristotle, *The Politics of Aristotle*. Translated with an Introduction by Ernest Barker, Oxford: Clarendon Press, 1952, Bk iii, chapter ix, 1280b.
because underneath were perceived injustice in the state structure which served to
disadvantage some in the distributional sphere. So, while political claims were not justified
by competition for economic goods, the need for equity was also very compelling.

What did justice require given the two competing options? One possible response
would have been to uphold the economic argument. Instead of endorsing wealth based
claims that could result in endless fragmentation of units that would also not be self
sustaining, power bearers might as well have ensured stability by retaining the 12-state
structure already in place. This might have been a desirable option but it would have been
unrealistic, given conditions on the ground. Facts about some groups like Ibos being
grouped in one state and of others like the Yoruba being in three would have rendered such
decision highly biased and politically imprudent. More especially, attempts at building
legitimate governance and winning the confidence of groups through the use
proportionality principle would have been undermined. Equity would have been vitiated,
for government would have been perceived as dispensing social goods unequally among
groups and their elites. In this case, those vanquished during the civil war would have
considered themselves targets of political domination.

The other option was to uphold the justice-based argument and risk the proliferation
of unviable states. This option would have dispensed justice by accommodating groups
proportionately in accordance with their demography or geographic distribution. The state
would have freed itself from charges of domination by elites from a few groups, and a
framework for mutual trust and conciliatory politics would have been established. On this
score, the decision of the panel to meet the demands was justified, despite the potential risk.
FEDERAL CHARACTER AND JUSTICE.

I want to discuss the desirability or otherwise of "federal character" as a strategy for ensuring equity in the composition of government. Recall that the constitution makers were split between two broad strategies: one considered state creation to have adequately accommodated difference and that ethnic membership was irrelevant in appointment and recruitment; the other emphasised the use of ethnic identity for appointments at all levels of government in order to prevent domination by elites from a few ethnic groups. Was the CDC right to have adopted the latter? I will answer this question by weighing the merits of both strategies, beginning with the former that is generally referred to as the winner takes all system.

The winner-takes-all system required treating citizens as bearers of equal legal rights and as having equal opportunity to compete at the political market place. With this strategy, universal criteria like competition and qualification furnish the basis for recruiting public officials both high and low. Reward is tied to performance and the decision making process is free of ascriptive considerations. All these make for the exercise of fundamental rights and liberties without identity constraints. Thus justice is grounded on open competition in the political market. Desirable as it is, this strategy has its difficulties. It presupposes that free electoral competition would yield a majority party endowed with authority to govern the entire country. While elections may, and do, result in majoritarian rule, the government that emerges responds to the numerical majority who often turn out to be of one or a few ethnic segments that make up the country. Therefore, free political
competition without brakes produces a government that does not consider the political community as made up of parts, each of which has to be given weight in decision making. Calhoun regarded this form of government as absolute, for it considers the interest of one segment of the community - the majority.267

Was the alternative strategy adopted by the CDC better? The federal character strategy could be best assessed by looking at its presuppositions. First, it assumed that state creation had levelled both majority and minority groups by dividing them into a number of small separate units. Those that dominated politics and controlled power by virtue of number were assumed to have been reduced to the same level as those that were numerically weak. With this assumption, it was believed that group equity could be achieved in the composition of government if elites were drawn from each of the units.

Secondly, the electoral requirements of federal character assumed that victory at the polls would no longer be preordained by demography. Conditions for the registration of political parties and for the successful election of their candidates for the highest offices of state required reaching out to other geo-ethnic segments. It would, therefore, not be possible for any one or three large groups to grab power by uniting behind their favoured candidates. Instead, parties and their candidates were expected to reach out, co-operate with other ethnic segments, and work out a deal up-front on equitable distribution of offices and resources.

Thirdly, federal character assumed that electoral requirements would induce the

selfish calculation of elites to make for social co-operation. Selfish calculation was expected to drive a set of ethnic elites to reach out and accommodate elites of other ethnic regions. They would have to reach out and accommodate not because they wanted to, but because their personal interests would demand that they do so. In the course of time, group interests would intertwine in a complex manner to produce enduring accommodative institutions.²⁶⁸

It is evident from the above that federal character had a lot of virtues. It was derived from the ethnic make up of the country and informed by the bitter experiences regarding exclusive control of state power. It accepted group equity as a major rule in the political system and it also aimed at ensuring that. More especially, the assumed levelling of groups through their separation into several small states created the condition for their elites to be fairly recruited by electoral means into office. Federal character could, therefore, be regarded as democratic, just and making for stability. It was not for anything that Horowitz equated it to the Rawlsian social contract made by representatives in the “original position.” According to him:

The Nigerians had been through severe conflict and civil war, and they did not want a repetition. Since no one could be sure which group might be on the receiving end in any future round of ethnic conflict and civil strife, the Nigerians made, not a bargain but a real constitution, not a contract among groups that knew what their interests would be but a social contract among groups that were not sure what their interest might be the next time around. They made

²⁶⁸On this score, minority rights and constitutional safeguards were rendered unnecessary. An impressed Horowitz thought that the Nigerian design was a model for other deeply divided African societies in search of democracy. See Horowitz, A Democratic South Africa?, p. 136.
a blind, Rawlsian contract. That is, one based on original position reasoning, not present position reasoning.269

Federal character had some problems, despite the above virtues. First, by targeting the selfish interest of politicians, it could only succeed in inducing and emphasising the most efficient means of acquiring power, in so far as the conditions were not violated. That is, selfish calculation would dictate that the most efficient means for reaching out be adopted. So, elites from a particular geo-ethnic segment of the country could form a party and appear to reach out by recruiting clients in other geo-ethnic areas, very much like the colonial system of establishing legitimacy through the appointment of local chiefs into some visible roles of government.270 In an empirical research on Nigerian politics, Richard Joseph has found that parties usually adopted a clientelist strategy for mobilising political support of different ethnic sections of the population.271 According to him, individuals did not belong to parties in a random fashion; rather they were linked in a clientele network. Party bosses, usually the real founders, linked individuals who belong to other ethnic


270For a lengthy but intriguing discussion of this see Claude Ake, “Theoretical Notes on the National Question in Nigeria” University of Port-Harcourt, Mimeograph, Undated, pp. 8-9.

271Clientilism is a “patron client relationship . . . in which an individual of higher status (patron) . . . uses his influence or resources to provide protection or benefit or both, for a person of lower status (client) who, for his part, reciprocates by offering general support and assistance, including personal services to the patron.” Joseph, Democracy and Prebendal Politics, p. 57.
groups and were acknowledged influential figures of their particular communities, as brokers. In turn, the latter acted as patrons by setting up subordinate brokers among notable persons who, on their part, mobilised and delivered political support of their communities. So equal participation in political parties was somewhat unequal, and the regime that emerged from the electoral process remained under the effective control of powerful elites from a few ethnic segments of the country.272

A second important difficulty with federal character is the ethnic criterion in the determination of the political rights of citizens. The requirement that government at the federal, state and local levels be composed in a manner that reflected the ethnic make up of each of the three political units required sensitivity to parental origins of individuals when-ever appointments were being made. At the federal level this required potential appointees to declare their ethnic origin. Although this did not matter much, it carried an enormous consequence at the state level. Here ethnic origins of those seeking elective and non elective-offices had to be ascertained. Those who were born in or had lived all their lives in a state not of their parental origin had to be denied the right to be appointed or elected into public office of those very states in which they were resident. Such affected persons could not exercise political and social rights unless they returned to their places of origin. What applied at the state level equally applies at the local government level.273 The operation of federal character, therefore, involved violating fundamental rights of the some

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272 The NPN was the most successful in using the patron-client strategy to create political outposts.

273 See the next chapter for an extensive discussion of this.
individuals. In fact, some students of Nigerian politics have regarded it as an attack upon standards. Do these difficulties rule out federal character? Would the winner-takes-all system of politics be a better option?

The multiethnic composition of Nigeria and the violent experiences the country had with procedural democracy made federal character a more desirable option. It may have violated the rights of some individuals but it had the greater advantage of doing justice among groups and avoiding self-destructive conflict. More importantly, it did not renounce democracy; rather it sought to temper the elements that permitted some ethnic elites to exercise power to the exclusion of others. However, its electoral inducement did not produce the anticipated inclusive political parties. The problem of unequal inclusion and regimes being effectively controlled by a few ethnic elites was damaging. It had to be addressed if federal character were to ensure equity. I will attempt to show in a preliminary way that solutions were possible.

WHAT ALTERNATIVE STRATEGIES WERE DESIRABLE AND FEASIBLE?

It has just been argued above that federal character was timid. Its main assumption was that political parties would gain cross-ethnic support if their executive members were drawn from diverse ethnic regions, and that victory at the polls will produce an inclusive

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275 For example, the Second Republic regime was firmly controlled by Hausa/Fulani elites who also shared among themselves strategic cabinet posts like Defence, Internal Affairs, External Affairs, and Mines and Power (including Petroleum).
government. These assumptions turned out to be faulty because the 1979 elections confined parties that emerged to their various ethnic regions, excepting one (the National Party of Nigeria - NPN) whose effective use of clientilist strategy gave it some support outside its base. The narrow confines of parties demonstrated both the influence and resilience of group solidarity in political competition and the difficulty of reaching across to obtain trans-ethnic support. Thus, party focused inducements could not produce the expected results in government.\(^\text{276}\)

Perhaps, one alternative to the problems of federal character would have been the abandonment of the strategy and the adoption of what Charles Taylor has referred to as procedural liberal democracy. Citing Ronald Dworkin and Immanuel Kant, Taylor shows that liberal proceduralism is committed to treating people with equal respect and dignity. This requires that the substantive good of groups or their views about life should not be the goal of public legislation by the state. Given the diversity of modern societies, the substantive good might not be everyone's good and it is likely to be that of the majority. In which case the life goals of some people would be officially raised over those of others. To avoid this discriminatory treatment, the state remains neutral on the good life and merely restricts itself to treating individuals as bearers of equal legal rights. Thus the political arena is viewed as a market place where individuals have equal opportunity to

\(^{276}\)This should prompt one to accept the reality that, no matter the inducement to reach-out, parties in deeply divided societies like Nigeria would remain ethnic in essence, and an effective strategy for equal political inclusion has to go beyond to target government itself. In other words, inclusive strategies have to be equally directed at the latter.
compete. Competition is governed by universal and impartial rules inscribed formally in constitutional texts. Thus, in procedural democracy the business of politics is conducted with reference to formal constitutional rules that do not accommodate publicly espoused notions of the good life. 277

This model of democracy was practised in Nigeria during the 1950s and 1960s but it proved to be incompatible with the multiethnic composition of the country. Theoretically the model promises a free and responsive government emerging from open political competition but in practise it was contradicted by ethnic voting and the emergence of governments responsive to the groups that brought them into office. Its failures accounted for the pre independence debates about the sharing of seats in the central legislature and about the dominance of the federation by the then Northern Region. It also accounted for minority fears of domination and demands for separation. The political convulsion of the mid and late 1960s taught Nigerians to seek an alternative to proceduralism for which federal character emerged in the 1970s as the most desirable. Although federal character has proved to be inadequate, it would be regressive and counter productive to abandon it for its predecessor.

Another alternative would have been a proportional representation of parties in cabinet as South Africa was later to do in the 1990s. In the South African case, proportional representation in Cabinet was a formula for sharing power between the African majority and the White minority, and at another level between the African National

277See Taylor, Multiculturalism, pp. 56-8.
Congress and several other parties both racial and non-racial. Agreeing on this strategy for Nigeria would have been a bold response to some of the inadequacies of federal character.

The strategy could be defended on grounds of the importance attached to the executive arm of government and the passion with which elites and their groups fight for its control. During the 1950s and 1960s, it was worthwhile to fight intensely for the latter because, under the then parliamentary system, legislative majority was the condition for controlling the Executive. With the abandonment of the Westminster model, groups and their elites aim directly at the Executive considered the real centre of power. The Legislature, which ought to be the repository of the *vox populi*, is seen to be nominal in power and less importance is attached to its offices. This could be seen in the fact that elections into its seats pass with minimal conflict and are sometimes unnoticed. Although the Executive ought to be the repository of administration, it has come to be regarded as the seat of power, a sort of governing council, not just in Nigeria but in most of Africa.

To some extent, Western democracies, as K. C. Wheare has shown, have witnessed an increase in the importance and power of their executive branch of government and a concurrent decline in that of the legislature. I will not pursue this here. What has to be

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280 Kenneth C. Wheare notes that: “If a general survey is made of the position and working of legislature in the present century, it is apparent that, with a few
noted is that, if that arm of government where power is believed to be concentrated is to be truly democratised, that is, if members of various ethnic segments are to participate equally in that arm of government, an inclusive strategy has to zero on it. This may entail opening the cabinet to competing parties (which are assumed to reflect the interest of various ethnic segments). Although such a strategy entails bringing members of different political parties into the Cabinet, this should not mean doing away with the idea of Opposition.

Government and Opposition are a necessary part of liberal democracy, which require the winning party to form the cabinet while the losing ones stay outside the corridors of power to act as checks for four years at the end of which roles change. They are an inheritance from Western political thought and practise but have been carried out in a violent and politically damaging ways in deeply divided countries like Nigeria. To illustrate, at the beginning of the Second Republic the triumphant National Party of Nigeria (NPN - dominant among the Hausa-Fulani) formed a coalition with one of its vanquished rivals, the Nigeria People’s Party (NPP - essentially an Ibo party). The other defeated parties, namely the Unity Party of Nigeria (UPN - Yoruba based), the Great Nigeria People Party (GNPP - an ascendant Kanuri party) and the People’s Redemption Party (PRP -

supported by the Hausa underclass), formed an opposition alliance with the aim of blocking the passage of bills in the Legislature and making the government unworkable. The pact signed between the NPN and NPP soon broke down on account of other issues and the latter joined the opposition to form the Progressive Paties’s Alliance (PPA) whose express purpose was to unseat the NPN from power. The conflict that ensued brought the Second Republic to an untimely end.

A similar event occurred during the First Republic when key Action Group (AG) leadership turned down the Northern People’s Congress (NPC) invitation to the three major political parties to join in the formation of government. The NPC eventually formed a coalition government with the National Council of Nigerian Citizens (NCNC). The refusal of the AG to join the coalition government tore the party into two factions because some of its leaders felt that being in the opposition was of no benefit to Youbas. The coalition broke down anyway, and the NCNC joined a faction of the AG in opposition. This brought the southern parties into full collision with the northern party resulting in all out war. All these were in spite of repeated warnings by Abubakar Tafawa Balewa, the Prime Minister and also leader of the NPC, that “we are not ripe for a system in which there is a full fledged opposition.”281 Political tragedies in Nigeria have largely been scripted by the conventional understanding that power has to be in the exclusive control of the winning party. The understanding has to be revised if governments are to be truly inclusive. Arthur Lewis made the argument in an extreme form when he said, “Government and Opposition

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is . . . in fact unsuitable to West African conditions."282

An inclusive cabinet could be engineered in a variety of ways: one is the use of coalition technique prescribed in the consociational strategy of Lijphart and in the six conflict reduction techniques of Nordlinger.283 The problem with this consociational technique is that ethnic groups are often divided within into rival sub groups and they rarely unite under one set of leaders or one political party. This limits the feasibility of coalition, and when it is attempted it does not last. For example, during the First Republic Prime Minister Abubakar Tafawa Balewa’s insistence that there be a coalition of three major parties was futile. I have already mentioned dissension within the AG and how a faction tried to and actually sold out. The coalition that was eventually formed between NPC/NCNC proved too fragile to last. The same happened during the Second Republic as already mentioned above.

Another alternative is to use electoral requirements to induce parties into the executive cabinet. Since the electoral inducement to reach out and obtain plurality of votes is in place, a possible way of ensuring inclusive government is to follow the South African model by requiring parties that obtain a minimum of votes to participate in the constitution of the executive cabinet. During the Second Republic, political parties tried to reach across other geo-ethnic areas in order to be victorious at the polls but were unable to go beyond their home base. It was only the NPN that was marginally successful, for which reason it


283 See chapter 2 above.
had the cabinet to itself while the other parties were punished by being excluded from the corridors of power. The electoral inducements of federal character could be refined by doing away with its punitive aspects. Instead of wholesale appropriation of power by marginally successful party, the cabinet might as well be opened to every party that obtains a threshold of votes. The fear of not being able to reach across to secure wide cross-ethnic support, that fear which makes parties to adopt efficiency means instead of legitimate means for mobilising electoral support, has to be allayed by putting in place a reward system for parties that have some minimum electoral vote.

One difficulty with this inducement strategy is that the different parties that would compose the cabinet might have policy issues and goals (manifestos) that conflict, the non-resolution of which will make it difficult for government to proceed. Technically there will be opposition within the cabinet as its members take conflicting party positions on policy issues. This might not be a major problem if account is taken of John Calhoun's compromise principle that Nordlinger also presented as one of his six conflict regulation practices. The compromise principle calls for mutual adjustment of positions on conflicting issues in order to arrive at common ground. The problem with compromises is that they hardly endure. They are no more than pacts in which preferences are traded. Unequal preferences might be traded with the hope that its returns would be great. But the return might turn out to be less than expected, or the other party might be perceived as gaining more from the compromise. For example, during the Second Republic the NPP walked out

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284 Calhoun, A Disquisition, p. 29; Nordlinger, Conflict Regulation, pp. 27-8.
on its NPN coalition partner when its share of contracts and other forms of patronage were not coming as expected. Also, the First Republic NPC/NCNC coalition government disintegrated because the NCNC felt its partner was benefiting more from it. Historically, compromises have proved to be unreliable technique for engineering an inclusive government.

Another difficulty with the electoral inducement strategy is that it ends up producing a coalition cabinet not different from the consociational coalition of Lijphart or the coalition prescribed by Nordlinger. The latter presented mutual veto or what Calhoun called the concurrent majority principle as necessary for the successful operation of such coalition government. The presupposition is that the party with the greatest numerical strength in cabinet could impose itself on others and if this is to be avoided then the mutual agreement of all the parties has to be a condition for the adoption of policy decisions. As earlier argued, Lijphart’s and Nordlinger’s coalition strategy grants too much autonomy to elites and does not consider the structural constraints imposed by the dynamics within their groups. Intra-ethnic rivalry and factional leadership constrains the ability of party elites to act on behalf of groups.

Do these difficulties undermine the argument for inclusive government? No, they do not. It should be recognised that an electoral induced inclusive government has more depth than the coalition government prescribed by Lijphart and Nordlinger. In the case of


\[286\] See chapter 2 above.
the latter, a party may not adequately or legitimately represent an ethno-regional group if it is fractured into rival groups and its leaders equally divided. But in the case of the former, parties representing factional groups could find themselves in government if they meet the minimum vote requirement. With electoral inducement, each of the split-up parts of a group may be induced to support and vote in a party representing their interest, and as a consequence, be legitimately represented in government if the minimum vote requirement is met. This is not so with Lijphart and Nordlinger’s coalition that presents party leaders as representing coherent groups and who may deliberately and spontaneously resort to political co-operation without inducement.287

Also, a cabinet inclusive of various parties does not necessarily translate into one with conflicting policy goals that are irresolvable. The determination with which the federal character constitution was designed demonstrates the willingness of elites to adopt unifying policy options rather than contentious and damaging options. In fact, since the 1970s when the federal character policy was adopted, conflict between ethno-regional elites and their parties have been on issues other than policy, very much unlike the early 1960s when conflict had to do with disagreement over policy issues (like affirmative quota appointment). There has been that tendency to discuss and settle contentious and conflicting issues in the political arena. The problem is more of equal sharing of executive power and not one of policy differences.

287As Horowitz has noted, ethnic conflict is pursued more intensely and frequently than policies to abate it. See Ethnic Groups, p. 577.
SUMMARY

The objectives of this chapter were to assess the early 1970s demand for more states for their merit, and to determine the desirability of federal character policy as a strategy for ensuring equity in the composition of government. The findings were that:

a) demands for more states were driven by elite and group competition for public wealth, and by the need for equal political accommodation of groups. Wealth was found to be a weak basis for political claims and that if internal self-determination were granted on account of it, there would be endless demand for, and creation of, new units. On the other hand, demands for equal accommodation were found to have emanated from unequal distribution of states during the 1967 states creation exercise, and could be properly be regarded as claims to redress injustice. Denying the claims on account of their economism had the advantage of avoiding the emergence of new and endless claims. But groups that felt cheated during the 1967 exercise would have been treated unfairly. The other option was to meet the claims on ground of equity and risk proliferation of new units. This was better because groups would have been accommodated equally, the state would have emerged as a neutral body, and a framework for mutual trust would have been laid. On this ground, the chapter endorsed the decision of the 1975 government panel to create new states.

b) federal character policy was a reflection of the multi-ethnic make-up of the country and was informed by real historical experiences regarding the monopoly of power by elites of a few ethnic regions. It was aimed at ensuring balanced representation in public institutions.
through the combination of free competition and geo ethnic appointments. One of the key assumptions behind the policy was that its electoral requirements would induce ethno-regional elites to reach across ethnic lines and build inclusive political parties which would, in turn, be induced by the same electoral to requirements to reach across groups in order to win their support. The expectation was that the Government that would finally emerge will be highly inclusive. This turned out not be very correct. The electoral requirements of federal character succeeded in inducing the most efficient means of acquiring power. Political parties remained under the firm control of a few ethnic elites who recruited clients from other geo ethnic areas in order to give their parties a veneer of legitimacy. Governments that emerged equally remained under their firm control and were less inclusive.

The weakness of federal character may prompt one to think of the winner-takes-all system, which characterised the politics of the 1960s, and pre-independence era as an alternative. The violent and tragic experiences the country had with the system does not make it a better alternative. The chapter found federal character to be a better option, and it suggested that its problem of unequal inclusion in government could be addressed by thinking of a governing cabinet inclusive of all relevant competing parties, similar to the type that Arthur Lewis argued for in 1967.
CHAPTER SEVEN

THE REVISED FEDERAL CHARACTER STRATEGY

The mid-1980s marked the beginning of another phase in Nigeria's approach to its problem of ethnic difference. The new phase entailed the revision of its federal character policy to make it more inclusive. The revision involved the division of the country into a greater number of states to adequately reflect ethnicity, and the convening of a constitutional conference to resolve group based claims and counter claims to alternative political structure, power sharing, and ownership of rich petroleum resources. This chapter will make a critical evaluation of the main strands of the revision with a view to ascertaining the desirability or otherwise of what was put in place.

THE POLITICAL BUREAU AND FEDERAL CHARACTER

In the preceding chapter, I examined the two interrelated elements of the federal character strategy for accommodating ethnic difference in politics. The elements were the separation of groups into several States, and the policy requirements that political parties reach out to wide geo-ethnic areas and governmental appointments reflect the multi-state structure, (which were assumed to reflect ethnicity). I defended the creation of States on grounds of equity and the need to build group trust and confidence in governance, but noted that it had the potential risk of triggering new demands for, and endless creation of, new States. I also argued that the policy requirements were well intentioned but not sufficient to make for ethnic inclusion in government. It was some of these issues that a Political
Bureau, tried to address when it was instituted in 1986 to identify the causes of past political failures and make recommendations for a new constitution that would guide a Third Republic.

The above first mentioned element of federal character, namely, the creation of states to accommodate groups, was an issue for the Political Bureau because it triggered new and overwhelming demands by elites claiming to represent new groups. The 1976 exercise brought it home to people that state creation had material windfall. It became clear that the creation of states came along with the duplication of executive, legislative and judicial offices. It also came with the duplication of the civil service, the development of a capital city, contracts for construction projects, and guaranteed representation in federal institutions because of the federal character policy requirement. Above all of this were the federal government’s appropriation of petroleum resources and the proportional allocation of its revenue among the States.\textsuperscript{288} It was these material benefits of the States that activated an overwhelming 53 new demands between 1979 and 1982, and 17 formal requests from the Political Bureau in 1986.

Despite some expressed views by sections of the public that most of the existing states were not viable and should be either abolished, merged, or left as they were without further fragmentation, the Political Bureau found it necessary to recommend the creation of a few more States. The number was placed at two at the minimum, but not more than six at the maximum. The Bureau felt that it was necessary to separate some groups that were

\textsuperscript{288} The derivation share fell from 20% in 1975 to 10% in 1980, and when the oil market crashed in 1983 it was further slashed to 1.4%.
in conflict in the north, and do justice to a minority group in the south east whom
Government refused to group separately during the 1976 exercise, despite earlier
recommendation by the 1975 Government Panel. It tried to respond to the problem of
slippery slope by suggesting that a constitutional provision be made to prohibit further
creation of States for at least twenty five years starting from the date its proposed States
would come into being.289

Back in 1957, the Minorities Commission had judged that the multiplication of
internal political units to recognise smaller groups would be the beginning of an endless
process. However, post civil war Nigerian governments regarded continued multiplication
as necessary for justice. For example, the 1986 Political Bureau’s suggestion that a 25-year
moratorium be placed on further political fragmentation was not taken. Its proposal for 2
States at the minimum was implemented and then followed by the creation of another nine
in 1991. Some have argued that it was a strategy by the then General Ibrahim Babangida
regime to win group support for his planned prolonged stay in office. The regime
explained its decision to further recognise groups in new States as having been based on
three interconnected principles, namely: the “principle of social justice, the principle of
development, and the principle of balanced federation.”290

289 A minority report emerged from the Bureau dissenting from the above
position. It opted for retention of the 19 state system on grounds that the existing
federal structure was decentralised enough to cope with the challenges of federalism.

290 Ibrahim Babangida, “Agitation for New States is Healthy,” cited from
Ilesanmi, Religious Pluralism, p. 142.
Further-more, the constitutional conference convened in 1994/5 by the regime of General Sani Abacha to work out a framework for good governance received 35 requests for creation of new states and 1002 requests for the creation of new local government units. (The local governments had already increased from 301 in 1978 to 593 at the time of the conference). Some delegates thought that such demands were “motivated by the selfish ambition of those who aspire to rule them [the units] and should be ignored.” But the Conference endorsed the calls, saying that it thought new units were necessary to “redress inequity,” “to guarantee justice and fair play,” to “give minorities a voice local and national affairs,” and to “reduce the marginalisation of disadvantaged areas or communities in national politics.”

A commission that was subsequently set up to examine the demands recommended a new set of states. At first the Abacha regime asserted that most of the existing ones were not capable of performing the functions of government, that they were completely dependent on the centre and that their proliferation had destroyed the principle of federalism. The regime made a decision to merge them into a few large regions. But this plan was quickly abandoned when it was realised that such an arrangement would unify Yorubas (who felt humiliated by the 1993 election result annulment) and encourage them to secede. Instead of a merger, the Abacha regime created 6 new ones to further separate groups and ensure the continued existence of the country.

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indeed become an endless process, but the need to achieve justice and ensure the continued existence of the country cannot be divorced from its internal logic.

The second element of federal character, being the policy requirement that origins of members of national institutions reflect the constituent states and the latter should also do same by reflecting their local government units in political appointments, was also revisited. Section 277 of the 1979 Constitution had given legal effect to the 1976 CDC recommendation that the criterion for membership of sub-political units be parental descent. With the operation of the policy, Nigerians resident in another state not of their biological and ethnic descent were denied indigenous status and considered to be non-members. So were their children even if they were born and had lived all their lives there. To claim indigenous status they had to go back to their states of biological descent, and more so because there were no provisions for change over time. Discriminatory practises emerged as state governments excluded non-indigenes from political appointments. Even educational programmes, housing schemes, access to health and market stalls were not immune as those whose parental descent were not traceable to groups within the state were excluded.293 In most cases, positions in some federal agencies became exclusive preserves of those who were indigenous to the state where the agencies were located. This was particularly true of federal universities where appointments into Vice Chancellorship, Registrarship, Deanship, and Departmental Chair positions became very sensitive to

To attest the indigeneity of candidates being recruited into positions, or being considered for university admissions or scholarships, it became a policy that identification letters be produced from either a recognised chief in the village or a chairperson of the local government of one's ethnic origin.

The 1986 Political Bureau, composed mostly of academics that have had first hand experience of rights violation in their universities, critically examined the problem. In a section of its report entitled "Citizenship and Nationality," the Bureau noted, "[the] employment of Nigerians in certain states of the federation under alien conditions; and denial of employment opportunities to Nigerians on the basis of "non indigeneity," "alien" or "outsider." It tried to do away with what it considered to be the impediments of indigeneity to the development of Nigerian citizenship by recommending full residency rights for all citizens who have lived in a state for ten years, at the least. The then Babangida regime took note of the recommendation and promised a national policy on it but nothing was done and the Constitution that emerged in 1989 had little to say about it.

THE 1994/5 CONSTITUTIONAL CONFERENCE AND NEW CLAIMS TO POWER SHARING AND TO RESOURCE OWNERSHIP

In the preceding chapter, I argued that the electoral inducement of federal character

294A particular case was the University in Port-Harcourt in Rivers State where there was an attempt to murder the non indigenous Registrar in 1980. The incident led to formal protest by the Legislative Assembly of Bendel State (where the Registrar was indigenous to) and an apology from the then Rivers State Legislature.

295Political Bureau, p. 196.

296Report of the Political Bureau, pp. 197 and 198.
was not enough to produce a truly inclusive regime, and that achieving the latter would require proportional representation of political parties (assumed to be reflective of group interests) in the executive branch of government. The 1986 Political Bureau did not really address the problem of balanced representation in government, despite its formal endorsement of federal character. The General Muhammadu Buhari regime that terminated the Second Republic had deviated from the policy requirement by making key appointments and allocating resources in favour of Muslims, despite federal character policy.\textsuperscript{297} The Babangida successor regime tried to balance sectional and regional interests in political appointments but the commitment soon fizzled and southern and middle belt elites lost out at the centre.\textsuperscript{298} It was biased distribution of power in favour of the Muslim north, together with Babangida’s personal determination to be in office forever, that generated competing claims regarding the political structure of the country, power sharing, and ownership of revenue yielding resources.\textsuperscript{299} The claims were fuelled by the annulment of the 1993 election results that would have transferred power to the south western part of the country and were further amplified when a constitutional conference was convened to douse tension.


\textsuperscript{298}The palace coup that brought this regime to power in 1985 was believed to have been motivated by the need to address grievances about power imbalance.

\textsuperscript{299}The discontent caused a failed military coup in 1990 by some southern and middle belt military officers who gave a radio address about monopoly of power by people of the Muslim north and announced the temporary excision of five Muslim northern states from the country. See Ibrahim, “Religion and Political Turbulence,” p. 135.
At the conference there were claims by the ‘Councils of Obas (Chiefs) of Lagos, Ogun, Oyo, Osun and Ondo States’ (Yoruba States) for a loose federation and the adoption of a rotational presidency. There were also claims by interest groups and elites in Ibo states of the east for regrouping the country into six regions within a federal framework and rotating the presidency among the regions. They also demanded the adoption of a revenue allocation formula that emphasised derivation. There were contradictory claims by ‘Emirs and Chiefs of the Northern States of Nigeria’ and ‘The Middle Belt Council’ for a “retention of the existing state structure” and a reduction in the “incessant demand for more states through a revenue allocation formula that de-emphasised equality of states.”

There were radical claims by various interest groups and elites representing different oil producing ethnic minorities of the Niger Delta for political autonomy “outside the present Nigerian state and nation”; for right to control and use their natural resources;


301 See “The National Constitutional Conference 1994: A Memorandum on Behalf of the Igbo speaking Peoples of Nigeria,” February 8, 1994, p. 77. This document was not signed by five of the eleven representatives listed on it, especially those who were claimed to be representing Imo State, and the Ibos of Rivers and Delta States.

and to protect their ecology from further degradation. Grievances that informed these radical claims were the distribution of greater number of states among majority groups thus permitting them to have greater representation in national institutions, and the federal government's appropriation and distribution of oil wealth on proportionality principle that allowed majority groups (spread in several states) to have a greater share.

The response of the Constitutional Conference to the above claims was to revise the federal character strategy designed between 1975 and 1978 and simultaneously retain its

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Similar but less radical claims were made in a memorandum submitted on behalf of the Ogoni, an ethnic minority group living in the oil rich Niger Delta. The memorandum demanded political autonomy for the Ogoni within the Nigerian entity. I went on to propose that each ethnic group that can exist on its own should constitute a political unit within a loose federation while those without economic resources to support the paraphernalia of statehood should negotiate to live with their neighbours. See “Movement for the Survival of the Ogoni People: A Memorandum to the National Constitutional Conference,” January 30, 1994, p. 2.

304 According to the Saro Wiwa, the executed minority rights activist, “[The] constitution gives so many states to Yoruba people, so many to Hausa Fulani people, so many states to Ibo people . . . . Population, is that the only determining factor in a place? People are only using the fact of their numerical superiority to undo those who are inferior in terms of numbers . . . .” Ken Saro Wiwa, “1989 Constitution is Against Minority Rights,” Constitutional Rights Journal, Lagos: October - November 1993, p. 15.

In a document released by some communities, it was noted that, “the three big brothers, the Hausa/Fulani oligarchy, the Yoruba, and the Ibo, sought the use of the minorities and the resources of the minorities to enhance their way of life and to force them to serve willy nilly. . . . The area considers itself as alienated territory and worse still, the people are evidently regarded as second-class citizens whose talents and natural wealth must go to service the well being of the three big brothers.” See “The Nigerian Petroleum Industry and Urhobo Oil Mineral Producing Communities,” A paper presented by the Urhobo Oil Mineral Communities on the Occasion of the Ministerial Committee Visit, The Petroleum Training Institute, Warri, 1994, p. 3.
structural features. First, it recommended that the country continue with federal arrangement, after considering alternatives like confederation to be “unsuitable for Nigeria,” and a political break up as undesirable and without popular support.\footnote{To quote the report of the Conference: “At the time the Constitutional Conference was inaugurated, the tension in the country was so high that many people thought the Conference would not last. There were in fact some who believed that blows would be exchanged inside the Conference hall. To the pessimists the end for Nigeria was in sight. Contrary to these fears, however, the conference began so well and through out the general debates no member called for the disintegration of Nigeria. When Committee No. 1 began its sittings, it commenced on a position where it was not necessary to consider the disintegration of Nigeria. It proceeded from a position of one united Nigeria and then progressed with its deliberations. . . . . .

As has been stated above, there was not a single call for the disintegration of the country; most of the complaints were centred around the manner the country was governed. There were cries of neglect by certain areas and of inequity in sharing power and resources. More than anything else it was this unfairness, inequity and injustice in the governance of Nigeria that worried a number of people who nonetheless did not opt for a break-up of the country.” See \textit{Report of the 1995 Constitutional Conference}, Vol. II, Abuja: National Assembly, 1995, p. 59.}

Federalism was considered to be suitable because: “it would fit a heterogeneous society and sustain unity,” “provide opportunity for the people to participate in . . governance,” “minimise . . fears of domination”, and “inspire development.”\footnote{\textit{Report of the 1995 Constitutional Conference}, Vol. II, pp. 60-1.}

Second, the Federal Executive Cabinet was made more inclusive with provisions which required political parties with no less than 10% of seats in the National Assembly to be represented in proportion to their number of seats, very much in the manner prescribed by Arthur Lewis thirty years ago.\footnote{See Lewis, \textit{Politics}, pp. 74-84.} The arrangement was made more inclusive
by having the office of the Chief Executive rotated between the north and south every five years. The likelihood of ethnic minorities of both regions not having a fair chance at the office, and the possibility of violent competition between Ibos and Yorubas in the south, prompted the Abacha regime to make a modification. Instead of two regions (the north and south) power was to rotate for every 5 years among each of six zones - the north-east, the north-west, east-central, south-west, middle-belt, and southern-minority - into which the country was divided. The sharing mechanism was also to apply to each of the constituent states and local government units.

308 The north was defined as “the States, including the Federal Capital Territory, Abuja, carved out from the former Northern Region of Nigeria as at 1 October, 1960.” The south was also defined as “the States carved out from the former Eastern and Western Regions of Nigeria including the Territory of Lagos as at 1st October 1960.” See Federal Republic of Nigeria, Report of the Constitutional Conference Containing the Draft Constitution, Vol. I, Abuja: National Assembly, 1995, Section 229 Sub-section 4.


310 Recall that the Constitutional Crafting Committee (CDC) of 1975 rejected proposals by its sub-Committee on the Executive and Legislature Committee for a rotation of the office of the president among four geographic zones. The Constitutional Conference of 1994 not only adopted what was rejected in 1975 but went on to borrow the South African system of power sharing. Known to some as the “Slovo formula” (a brainchild of Joe Slovo, the late leader of the South African Communist Party), the South African power sharing agreement requires proportional representation in both regional and central legislatures. It also entitles a party that holds at least 5% of seats in the National Assembly to have cabinet portfolios in proportion to the number of seats it has in the Assembly. Negotiated between 1991 and 1993, the formula made for power sharing between the African majority and the White minority, and at another level between the African National Congress and several other parties both racial and non-racial. It is this formula that the Constitutional Conference copied and combined with
Unlike claims for power sharing that were fully addressed, claims to rich natural resources were not given adequate attention. The conference stopped short of addressing them by making provisions that required the President, on the advice of a National Revenue Mobilisation Allocation and Fiscal Commission, to make proposals to the National Assembly for revenue allocation. The Assembly was expected to use the principles of population, equality of states, and derivation in determining an allocation system, but with the proviso that at least 13% derivation be constantly reflected.311

PART II
EVALUATION

The relevant issues that emerge from the above narratives are: a) the tension between the political necessity to separate groups in different states and the slippery slope it engenders; b) the federal character policy requirement and its impediments to national citizenship; c) claims and agreements regarding political structure of the country, power sharing, and natural resource ownership. This part of the chapter will conduct an analysis of these and consider if alternative policy choices were desirable and feasible.

1. RECOGNITION IN SEPARATE UNITS AND THE PROBLEM OF SLIPPERY SLOPE.

rotational presidency. See Brutus de Villiers, ed., Birth of a New Constitution.

It is manifestly evident from the historical account given above that attempt at accommodating groups in different sub units has given rise to endless demands for, and multiplication of such, units. The historical account shows that continuous multiplication is being done with some concern for equity and unity of the country, but should it go on forever? Should internal multiplication of units be carried out endlessly in the name of justice or should the brakes be applied at some point?

Nigeria is no doubt highly heterogeneous, and constitutional instruments have deliberately been used since the 1970s to reflect it in political arrangements. Its degree of heterogeneity can be best appreciated when it is considered that most groups have sub-groups differentiated by dialect and customs. Sub group rivalry and conflict tend to be as intense as, and some times more violent than, those between groups. They are however overshadowed by, and subordinated to, the latter because of the narrow geographic scale and political level at which they occur. For example, conflict between Yoruba sub-groups is as violent as conflict between Ibos and Hausa-Fulanis, just as rivalry between Ibo sub-groups is as intense as conflict between Yoruba and Ibos. Separate a group and the difference and conflict within it become more pronounced and visible.

The multiplicity of sub groups within a group does not help matters. For example, the Ijaw who do not rank among the three major groups in the country consist of over 40 sub groups some of whom have little in common except similarity in language. To use federal territorial units to accommodate ethnic difference is to be confronted by groups who are differentiated into multiple parts within. While the need to accommodate diversity requires that territorial units be created for those that are different, as successive Nigerian
regimes have done since the late 1960s, prudence will also dictate that not all sub groups of larger groups or every small group can be separately accommodated. The line has to be drawn at some point.

Perhaps, one way of dealing with the problem is to adopt a policy that prohibits further fragmentation of units. This might be considered a reactive and vexatious policy and new regimes might set it aside, as was the case during the Second Republic Nigeria. Recall that the 1975/76 Constitution Drafting Committee reacted to pressure for new states by drafting constitutional provisions, which required that certain procedures are followed. The Committee technically prohibited further multiplication of units by making the procedures difficult and complex, yet the civilian regime that was installed in 1979 tried to undermine the committee’s goal by slowly navigating its way through. Similarly, the 1986 Political Bureau prescribed a 25-year moratorium after it recommended that some states be created but, it was the same Babangida regime to which it owed existence that set aside the prescription. A prohibiting policy may not endure because different regimes will regard it as not reflecting the social circumstances that confront them.

A second option is to listen to separation claims and evaluate them to determine those that do not merit attention. This is what successive government commissions in Nigeria have been doing since the mid-1970s. The advantage of this option is that it steers the state away from an authoritarian policy approach to ethnic demands by providing institutional mechanism for the expression and peaceful resolution of grievances.312 This

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312In the sixties and seventies authoritarian African regimes developed an avoidance policy for dealing with ethnic claims. The policy entailed insulating the state
gives a feeling of security to groups and confers legitimacy on the system. However, this
does not resolve the problem at stake because the readiness of regimes to listen and
evaluate claims for their merit stimulates new demands by new groups. It was precisely
the willingness of successive Nigerian regimes to receive and consider new claims that
produced an endless state creation exercise.

A third alternative is to emphasise the viability requirement. While it is fair to
listen to claims and resolve them in light of the requirements of justice, it is also fair that
an economic viability requirement be not sacrificed. If the various government
commissions had given weight to the requirement, it is likely that the demand for states
would not have continued endlessly. To pay little or no attention to the requirement is to
be blind to the need for self-sustenance and financial autonomy of the units groups demand.
For example, the 1976 government panel recognised that; "all the existing states except
possibly Lagos were heavily dependent on the Federal Government." The marginal
attention paid by successive Nigerian regimes (since the 1970s) to the notion of economic
self sustenance in their treatment of group claims may have been responsible for the
dramatic increases in the number of units. In fact, the government panel that examined
claims in 1976 did emphasise that economic viability was not relevant because:

    each state was not, and should not be required to function as self
    contained or self sufficient unit. In other words, the country as a

from groups, and in most cases this took the form of outright repression or the
imposition of one party or no party system as was the case in Sudan, Chad, Ethiopia,
Ghana, and Sierra Leone.

313 Cited from Bach, "Indigeneity, Ethnicity," p. 335.
whole constitutes a single economic system and so long as this system is viable, the viability of the component units can be assured through the normal process of exchanges and distributive actions of the Federal Government.\textsuperscript{314}

Subsequent government commissions have adopted the same attitude, an exception being the 1994/95 Constitutional Conference which gave critical weight to economic viability but went on to undercut it by recommending the creation of eleven states all of which were to be dependent on central revenue for survival.\textsuperscript{315}

The option seems reasonable but it would be fruitless because, in the Niger Delta, every village that has rich oil resources under its soil could easily meet the requirement. In which case every village in that part of the country would make claim to statehood and meeting such claim would not only trivialise state creation but also be unjust to millions of people living in the rest of the country.

On the other hand, the normative argument for political recognition of groups collapses if the economic requirement is not one that can be easily met. If much emphasis had been placed on self-sustenance in the past, it is likely that the nineteen-state structure would not have emerged as it did in 1976 and the adoption of federal character would have been severely compromised. Emphasising it would seriously question the multi-state structure that has been used to separate groups and has served as the basis for nurturing difference in politics.

\textsuperscript{314}Government Views, p. 13.

\textsuperscript{315}All except two of the nineteen states of the Second Republic were dependent on federal grants for their survival.
Perhaps a better alternative is to adopt a policy that would allow the existing state-structure to stabilise. In the first twenty years after independence political sub-units were created on the average of every 7 years and in the last fifteen years the average has been 5 years. After each round of division the units were barely operated before being subjected to another round of division. One good thing that emerged from the rapid and successive fragmentation is that groups have been significantly separated and accommodated within the 36 states and over 800 local governments units that have emerged, at least when considered against the fact of 3 regions that existed in the 1950s. The multiplication has gone a far way in accomplishing the objective for which it was conceived and what is required is a consolidation not a trivialisation of the accomplishment. Consolidation could be achieved if the units are given time to operate. A policy that requires the existing units to remain in tact for some decades would lead to an adjustment process whereby ethnic elites and their followers get accustomed to operating within the framework of the states in which they are grouped. Over time they will adjust to accommodate themselves and build up networks of political, social and economic exchanges. To the extent that they get used to living in, and develop a sense of attachment to, the units in which they are grouped, the present demand syndrome will fizzle and the state system will stabilise.

For example, the Midwest State created in 1963 was not fragmented until 1990. It was the only state that remained intact for about 30 years even though demands for a new state out of it began in the early 1970s. At some point its name was changed to Bendel State, but while it lasted its inhabitants got used living together. A dense network of exchanges and interactions were forged, and when the state finally fell to fragmentation in
1990 there was public lamentation. Headlines in the local press read, "Good Old Bendel," "The Demise of Sweet Old Bendel." It is this type of adjustment, continued interaction, and emotional connection that can make for stability in the state system.

2. FEDERAL CHARACTER AND THE PROBLEM OF NATIONAL CITIZENSHIP.

As was seen in part I of this chapter, the problem of citizenship rights derives from the commitment to ensuring even access to political and economic resources through the creation of political units around groups and the policy requirement regarding appointment at each of the three levels of government. The policy called for differentiated group rights even though there were constitutional commitments to liberal individualist rights. The conflict between the policy and individual right has been presented above, and they can be best appreciated when it is considered that the progressive reduction in the territorial span of political sub-units through the creation of new units also increases the number of citizens living outside their units of biological origin. Thus, a greater number of citizens are subjected to second class treatment. This is beside the problem of naturalised citizens and their offspring who do not trace parental descent to any community of any sub-unit within the country and, as a consequence, are not in a position to enjoy same rights as other citizens.

Perhaps one way of dealing with the problem is to abandon the indigeneity requirement for appointment and recruitment and to adopt competition and achievement as the basis for treating citizens equally. This will mean the abandonment of federal character and a reversion to the winner-takes-all political competition that was practised
and proved to be fatal in the 1960s. This option is not helpful. It is retrogressive because it means going back to the past. Its inequity and associated violent conflict led to its abandonment in the early 1970s, so it won’t be of much use bringing it back. In fact, to bring it back is to court disaster.

Another alternative is to regard what is, as the possible best and accept the infractions as unavoidable inconveniences. After all, the indigeneity requirement does not deny citizens of their rights. It only requires that certain rights be enjoyed by citizens through their states of biological origin. It is a requirement that applies generally, and its inconveniences could be regarded as an unavoidable cost of equitable access to public institutions. We could accept the inconveniences with regrets, but they affect the real life chances of some individuals and accepting them with regrets is not the best way of dealing with the problem.

Another alternative, perhaps a better one, is to reform federal character by substituting residency for indigeneity. Instead of basing appointment and recruitment on membership of a particular ethnic community within sub-unit, residence in a relevant unit should serve as the criterion. This is what the 1986 Political Bureau opted for when it recommended that citizens should have full residency rights in any state in which they have lived for 10 years. Some might argue that group members living outside their state of parental origin could find themselves in the most important positions within their resident state and, as a consequence, undercut the very objective of federal character. For example, some members of the 1978 Constituent Assembly argued that, at the national level, the President might end up appointing people who belonged to a few ethnic groups if
indigeneity was diluted. In fact, the Political Bureau’s recommendation was not implemented because of the fear that non-indigenes that have residency rights might displace members of the indigenous community from key public positions. The fear is taken too far because the likelihood of non-indigenes occupying the most important positions is thin. Even if it were true, such presence in public offices would not be in the extreme. At any rate, the fear could be addressed by placing some percentage limits on non-indigenous appointments.

3. THE 1995 CONSTITUTIONAL AGREEMENTS REGARDING POLITICAL STRUCTURE AND ROTATIONAL PRESIDENCY

I will begin this sub-section by acknowledging the dubious origin of the Constitutional Conference; dubious in the sense that it was a ploy by General Abacha to divert attention from the illegitimacy of his regime and get Nigerians occupied with a Babangida cloned endless transition program. Despite its questionable origin and status, the conference provided an outlet for aggrieved groups (cultural groups, interest groups, elite groups, and traditional chiefs) to express their concerns about ethno-regional power imbalance. It also provided an institutional basis for addressing competing claims to alternative political structure and power sharing arrangements. The conference may have been strategic in the sense that it was used to serve a hidden political agenda, nonetheless,

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the important normative claims were made and constitutional arrangements that were negotiated equally had normative importance. It would be worthwhile to evaluate the claims for their normative relevance, and to analyse the negotiated arrangements to determine if they were the possible best, and if not what feasible alternatives could have been, given the claims and conditions on the ground.

What would justify claims for the abandonment of federalism in Nigeria for alternatives like confederation or political break up? What conditions would justify the parting of ways by the various ethnic regions in Nigeria?

One may argue that the strong hold on power by one ethnic section of the country and its treatment as a birthright could justify claims for dissolution of the polity. To hold power permanently like a feudal inheritance is to deny citizenship status to others. Citizenship, in its unqualified sense, means legal membership of a state. The most important criterion for determining citizenship is legal possession of political right, or what Aristotle referred to as the right to rule. People without formal right to rule are subjects not citizens, perhaps best exemplified by people in colonial territories who have no right to participate in government. It amounts to internal colonialism if one cultural section of the country monopolises power and refuses to allow it shift to other sections even when won in democratic elections. The historical grasp on power by the emirate north and the recent annulment of election results that would have shifted it to the south western part of

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318See Aristotle, *The Politics*, Bk. 3 ch. 1, 1275b.
the country amount to a denial of citizenship status. Long term political subjection is enough to justify confederation and political break up calls.

Also, insecurity of life may provide reasonable ground. The classical social contract theorists all identified generalised insecurity as the condition that make people to form a commonwealth. They also identified the point at which people, in their right senses, would meaningfully quit the commonwealth. This is when security of life can no longer be guaranteed, as when the commonwealth comes under the subjection of a foreign power, or the regime becomes tyrannical and people can no longer tolerate it. The chief reason for constituting political society is defeated if the vulnerability of citizens to arbitrary power cannot be reduced, and more so if agents of the state are the very ones unleashing terror on the people. Military campaigns against defenceless citizens, unlawful detention, kidnapping, torture, whether carried out by agents of the state or not, are manifestations of absence of security of life and they would establish valid claims to a new political order that is free of fear. The periodic deployment military units against some oil producing ethnic minorities making compensatory claims and the subsequent carnage in Ogoni land during the early 1990s definitely provided a valid ground for claims.

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319 Moshood Abiola expressed the belief that General Babangida stopped him because he was “not from his own part of the country.” Cited from Bola Akinterinwa “The 1993 Presidential Election Imbroglio,” in Diamond, Kirk-Greene, and Oyediran, Transition, p. 276. This claim was later to be confirmed by Colonel Abukakar Umar, a high ranking official and inner member of the Babangida regime. See “Vagabond in Power,” Tell, Lagos, August 10, 1998. There are times that some elites from the Muslim north openly make the birthright claim. See Ango Abdullahi, “Agriculture and Nigeria’s Political Crisis,” in Abdullahi Mahadi, ed., State of the Nation, p. 140-2; also, Akinterinwa, “Presidential Elections,” p. 275.
The Constitutional Conference summed up the two conditions I have just discussed when it noted that public fears about possible political break up rested on "unfairness, inequity and injustice in the governing of Nigeria."320

Given the reasonableness of the claims, would it have been best to have a structural arrangement different from what the conference decided on? Confederation and/or a structure in which groups enjoyed complete autonomy were the alternatives that were demanded. These were undesirable and unpractical for a number of reasons.

Firstly, they entailed the weakening of the centre and the conferment of sovereign status on ethno-regional units. This would have amounted to a political break up which the Ijaw actually demanded, and most Nigerians were not prepared for the incoherence and chaos that would ensue. The memories of Biafra were not yet lost and most people did not want a repeat experience. In fact, it is generally believed that Nigeria's existence after the annulment of the June 12, 1993 election results was saved by the Biafran experience.321

Secondly, the interdependence of various parts of the country made confederation or political break up unpractical. Over the years, networks of social and economic interactions had developed between different geo ethnic regions to make the country a


321In Port-Harcourt, where I stayed for my field research during the 1995/96 academic year, people solidarized with the Ogoni activists and, in fact, regarded military occupation of Ogoni land as an open declaration of war by government. However, the demand for political autonomy was regarded as extremist and out of the way. The demand split the Ogoni ethnic group and helped to fuel the crisis that ended with the execution of Saro Wiwa and seven others. See The Ogoni Struggle, Newswatch, Lagos, November 13, 1995, pp. 14-16; also This is Genocide, Tell, Lagos, January 31, 1994, pp. 10-17.
complete system with interdependent parts. The functioning and progress of one part is tied to exchanges and interactions between all the parts and a break up will spell disaster. For example, the landlocked northern part of the country is as dependent on the coastal ports for sea haulage as it is dependent on oil revenue derived from the Niger Delta and offshore. Also, the south has become increasingly dependent on the north and the middle belt for food and beef requirements, but this is blunted by the reliance of the country on oil revenue derived from the Niger Delta. There are also people from various ethnic regions who reside and conduct their business in places other than theirs and, as a consequence, their economic survival is tied to the continued existence of the country. The 1930s remark by Governor Donald Cameron that, for geographic and economic reasons, no part of the country would “likely be a separate, self contained political and economic unit” in the future is as valid today as it was when he made it.

Thirdly, it would have been most difficult to draw determinate boundaries to arrive at acceptable political units for a confederal arrangement or for political break up. The northern part of the country housed and continues to house multiple mutually non-agreeable groups of different religious persuasion. Religious and communal conflict has been endemic and there is also the perceived political oppression of some minorities by the

\[322\text{Dependence on the coastal seaports had led to disputes over the status of Lagos during the pre independence period and to northern threats of running over the south if the seaports were to be closed.}

\[323\text{See chapter 3 above, the section on “The Place of Ethnicity in Colonial Constitutional Policy.”}

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Muslim power elites.\textsuperscript{324} The frequencies of such conflict and the related loss in human lives have always featured in global statistics on violent communal and ethnic conflict.\textsuperscript{325} Mutual suspicion would, therefore, have made it difficult to find groups willing to live together in the same polity.

The problem of drawing determinate boundaries would have been as difficult in the south where Ibos and Yorubas are internally differentiated and hardly act as unitary actors. For example, Abiola's claim to the presidency was betrayed by some of his own kinsmen who volunteered to head the puppet Interim National Government set up by General Babangida to douse tension that arose from the annulment of the June 12, 1993 election results. Yorubas have always been fragmented, disunited, and mutually locked in conflict. Put them in one polity and they will fall apart in no time. With the Ibo, I have already made reference to the memorandum submitted on their behalf but was unsigned by some representatives who were claimed to be representing both Imo and Ibos of Rivers and Delta States.\textsuperscript{326} Minorities were not free of the problem of disunity either. For example, on the eve of the Constitutional Conference of 1994, the Southern Minorities Group, an interest group embracing elites of several minority groups in the south, held series of meetings to take a common position on political arrangement in which those they claimed to be

\textsuperscript{324}The most violent and recent were the Tiv-Jukun and Zango Kataf conflicts.

\textsuperscript{325}See Gurr, Minorities at Risk, Table A 17, p. 361; and, Rothchild, Ethnic Conflict, p. 10.

\textsuperscript{326}Ibos are fractured into competing Anambra and Owerri (Imo) Ibos, a division that is reproduced wherever they are found outside Ibo land.
representing would be grouped into one large territorial unit. A splinter body developed
to express fears that "if minorities are granted independence, as is being canvassed by
Akobo and Ken Saro Wiwa, president of the Movement for the Survival of the Ogoni
People, the rate of ethnic domination may be worse." These are examples of the
difficulties of drawing boundaries if the country was to be broken into confederal units.
Walzer may have been justified when he noted that his arguments for the right of cultural
groups to self-determination do not provide a single best answer to all situations.

On the whole, there were reasonable grounds for making claims to confederation
and political break up of the country, but these arrangements were not better alternatives
to federal system. They were recipes for disaster. It was Anthony Birch who argued that
temporary grievances, no matter how strongly felt, should not be used as plausible grounds
for breaking up a state unless they have history and the state does not provide mechanisms
for peaceful adjustment of policies. Nigeria meets the first requirement because
grievances regarding monopoly of power and domination by a few groups date back to the
1950s. One cannot say so about the second requirement because, since the 1970s, the
country has adopted constitutional strategies for avoiding political domination by a few
powerful groups except that they have not been quite effective. Indeed, Nigeria's problem
is not the federal arrangement but power imbalance among ethno-cultural regions of the

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country. In this respect, the constitutional agreement for proportional representation in the executive cabinet and for circulation of the office of the president might be a better solution.

Was the negotiated strategy for power sharing a desirable means of ensuring equity among various groups? I will answer this question by noting, for the second time, two main requirements of the strategy, namely: proportional representation in the executive cabinet and rotation of the office of the president among six geo-ethnic regions every five years. The first requirement was what I argued for in chapter 6 when I noted that federal character was timid and should be deepened in the executive arm of government to make the latter inclusive of parties representing various geo-ethnic segments. The arguments will not be repeated here, instead I will evaluate the strategy that required that the most sovereign office of state be rotated.

The strategy has received some criticisms. Some have argued that it has the danger of denying most citizens of their right to contest for the highest offices of state. In liberal democracy official recruitment into public offices is open to all citizens and it is done under free and equal conditions. In this case it is not so. For every five years offices of the president, vice president and state governors have to be portioned to members of particular geo-ethnic zones, thus violating freedom and right of citizens to compete for them. It is this undemocratic nature of the requirement for power sharing that made the 1975

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329 See chapter 6 above the section on "Federal Character and Regime Inclusion."

330 See Akinola, Rotational Presidency.

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Constitutional Drafting Committee (CDC) to drop rotational presidency from its federal character formulation.

A decade before it was negotiated by the 1994/5 conference, the strategy had been discussed by the Nigerian public during the great debate organised by the Political Bureau. A section of the public felt that the strategy would elevate ethnic loyalty over national loyalty and create a fertile environment for buccaneer politics. That is, it would risk the subordination of national loyalty to ethnic loyalty and prompt political incumbents to preoccupy themselves with the annexation of public wealth for themselves and their ethnic communities. Incumbents and their geo-ethnic units would fear that power would not rotate to them again until after several decades, a fear that would make them to use power for the exclusive interests of their members while it lasts. In fact, the Political Bureau of 1986 rejected arguments for the entrenchment of rotational presidency in the 1989 constitution on ground that it "... amounts to an acceptance of our inability to grow beyond ethnic or state loyalty." 331

What alternatives were available to the constitutional negotiators if these shortcomings were to be taken seriously? A possible alternative was to go the way of the 1975 CDC and 1986 Political Bureau by requiring that the offices in question be filled using Anglo American liberal universalist criteria. In which case the problem of monopoly of the presidency by one ethnic section of the country would have remained unsolved.

Another alternative was to simply do nothing and let power coagulate in one section

of the country the way it has been. This option had the prospect of fuelling political and social unrest. If anything, the wave of violence and political uncertainty that arose from General Abacha’s determination to transform himself into a civilian ruler was an indication of the conflict that would ensue if power were allowed to freeze in one section of the country.

In the absence of better alternatives, the negotiated requirement that power be circulated emerges as the best possible means of doing away with remnants of old patterns political domination. It has the advantage of taking cognisance of the diverse ethnic composition of the country and the need for equity among them. In fact, the need for this form of power sharing mechanism had long been recognised and ethnic elites had been working it out informally over the years.

For example, the 1975 CDC rejected rotational presidency but, at the commencement of the Second Republic the National Party of Nigeria (NPN), the party identified with Hausa/Fulani elite during the Second Republic, informally divided the country into a number of zones for purposes of circulating its presidential, vice presidential and chairmanship candidates. Although there was an element of deception, the prospects of other group elite becoming president, vice president or party chairman gave the party a large national following and ensured its electoral victory during the 1979 election.

332 There was some element of public deception in the party’s behind the scene rotation scheme. Alhaji Shehu Shagari, a Fulani and the party’s presidential candidate, had won the 1979 elections mainly on the basis of the rotation policy. However, in 1981 when Moshood Abiola, a Yoruba, attempted to compete for the party’s presidential ticket in order to stand for the 1983 elections, the party retracted on the rotation of its presidential candidate.
Also, the Political Bureau of 1986 rejected arguments for its entrenchment in the 1989 Constitution. But each of the two parties that were instituted during the endless transition under General Babangida tried to reflect the reality of Nigerian cultural pluralism. They tried to do so by informally dividing the country into geo-ethnic zones and agreeing to circulate their presidential candidate, vice presidential candidate, candidates for senate and deputy senate presidents, and party chairmanship candidate among them.

Although government proscribed the zoning of offices by the two parties, they were, nevertheless, compelled by their diverse ethnic composition to draw up informal agreements for the rotation of important elective offices. The 1994/95 constitutional agreement to rotate offices was therefore a formalisation of what had been tacitly accepted as a desirable and equitable mode of sharing power. With it, the question of who controls power or owns the state will not arise. Neither would it be necessary to look at the ethnic origins of political incumbents in order to draw inference about who controls power, for there is the guarantee that power would circulate among other ethnic regions.

Earlier observation that the rotation of the highest offices of state violates the freedom of citizens to contest for them is certainly valid, but the infringement, I argue, is necessary for equity and fairness. To begin with, the division of the country into six geo-ethnic regions for purposes of rotating power reduce both majority and minority groups to equals. Minorities are grouped into three ethnic regions, two in the north one in the south,

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and, as a consequence, stand to produce the leadership three times in 30 years. Similarly, the three major groups are in three geo-ethnic regions, one in the north two in the south, and have the same chance as minorities.

Rotation, therefore, makes for equal opportunity to exercise right to rule. The five-year restriction of leadership to members of a particular ethnic region does not abolish rights of members of other regions. It only places them on hold until the offices in question rotate to their region. What applies to one equally applies to the other. The temporary suspension of right applies universally but is alternated. It is a regulation that is necessary for fairness and order. It creates condition for equality rather than negating it. It eliminates political subjection and permits everyone to have equal expectation about right to governance.

The other observation that power rotation enthrones ethnic loyalty and buccaneer politics might be valid in the short term, not in the long run. One of the advantages of the arrangement is its prospect of liberating sections of the country whose elites would not have had the chance of being in the highest office of state under conventional democratic practice. Leadership choice, instead of being confined to a few geo-ethnic regions, is broadened but alternated. This extension of right to political leadership gives a sense of belonging to those that would other wise be excluded and facilitates their identification with the state. Over time people will develop mutual trust and confidence in the system, and as this works itself into the social fabric ethical principles will take roots. As Arthur Lewis rightly argued, mutual security created by the absence of adversarial politics allows
democratic norms to habituate.\textsuperscript{334}

4. CLAIMS AND AGREEMENTS REGARDING REVENUE ALLOCATION

I have just evaluated claims regarding political structure and power sharing, I will now turn attention to claims and agreements regarding natural resource ownership, the last of the three contentious constitutional conference issues. I will make normative judgement of the claims and then assess the constitutional agreement for its fairness.

Claims to right to revenue yielding resources have been made by cultural groups, interest groups and social activists all acting or claiming to act on behalf of their ethnic communities.\textsuperscript{335} Instead of state governments confronting the centre for declaring ownership rights over resources in their sphere of jurisdiction, it is ethnic communities in the oil producing areas that have assumed the role.

It is understandable why minority activists and interest groups would assume the role of confronting the centre. In a proper federal system, the appropriation and centralisation of revenue by the federal government would not have gone unchallenged by the states from which they are generated. But Nigeria has mostly been under military rule for its forty years of existence and its federal system has been transformed into a \textit{de facto} unitary system. Under military rule, political governance has been synonymous with any

\textsuperscript{334}Lewis, \textit{Politics}, pp. 75-6 and 83.

\textsuperscript{335}In a federal arrangement, issues about revenue yielding resources fall within the jurisdictional sphere of the central and state governments. It is the role of the latter to negotiate with the former for right to revenue derived from their area of jurisdiction, and agreements or disagreements are usually between the two.
other military operation. The characteristics of the army, namely hierarchy, one way flow of order, obedience and abhorrence to initiative and autonomy, all of which enable it to function like a fighting machine, have pervaded governance. Thus, states have lost all semblance of autonomy as their military governors are appointed by, and receive orders from, superior officers at the centre. Under this dispensation the issue of states challenging the centre over right to generated revenue has not arisen. Cultural and interest groups have sought to fill the void by making claims on behalf of oil producing communities. Some might argue that these groups are self motivated, but if the case of MOSOP in Ogoni land is anything to go by, one would conclude that some enjoy the support of their communities and are legitimate representatives.

Who Should Own Resources? Cultural and interest groups have invoked the derivation method of revenue sharing operative in the 1950s and 1960s to support claims of oil producing ethnic to revenue generated from their land. It is argued that, in pre civil war years when agricultural exports were the principal source of revenue, federal allocation to the then regions was on the basis of their relative contribution to the central purse. This arrangement, it is argued, benefited the three majority ethnic groups who were the major producers of export crops. The emergence of oil as the principal source of revenue also required an application of the same method. Instead, the federal government elected to

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336 During the short life of the Second Republic, 12 state Governors successfully launched a court suit over a fiscal bill that favoured the centre. Despite the victory, the derivation share of revenue was not reclaimed.

337 It should be noted that internal conflict among the Ogoni was less about claim to resources and more about strategies for advancing it.
abandon it because oil was not derived from areas inhabited by majority groups. The right of oil producing ethnic communities to revenue generated from their land is, therefore, grounded on a tradition of allocating federal funds.

The above argument is not as logical as it may appear. It is logically coherent to say that a principle should be consistently adhered to, and should not be abandoned when it is the turn of the weak to gain by it. However, inconsistency emerges when oil producing ethnic communities are substituted for political units and the derivation principle applied to them. In the 1950s and 1960s, the principle was used to allocate funds among the then political regions, not groups. The method did not follow naturally from group ownership of resources and as such it would not be an adequate ground for resting community claims. Although tiny states have emerged in place of the regions and some are ethnically homogenous, still, this does not alter the character of the claims. Fundamentally they are claims by, or made on behalf of, ethnic communities, not states.  

Land ownership has also served as a premise for claims. It is argued that the land from which oil is derived is the ancestral home of the oil producing ethnic communities, as such they have right to whatever comes from it. The basis for this claim bears semblance to Hume’s accession principle. The principle asserts that individuals have right to objects that are intimately connected to their property (Hume 1948: 76). For example,

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338 Let us assume (for the sake of argument) that in each of the three regions leaders used derivation funds for the benefit of the majority group. This would not, in any way, justify contemporary claims. Using public funds for the exclusive benefits of a sectional group is injustice. Leaders qua leaders ought to be just, that they were unjust should not be taken as a precedent. To do so would amount to perpetuating the injustice that may have existed in the regions.
the orange tree on my land and the offspring of my cattle are mine because they are derivatives of what I possess. Hume's principle was with regard to individuals, but here it becomes the basis for group claims. Its shift from individuals to groups could be justified by the system of land ownership - family, village, clan, - obtainable in the Niger Delta, as in most parts of Sub-Saharan Africa.

However, ambiguities arise if rights to natural resources are assigned to ethnic groups usually composed of several communities each having its own territory. An oil location might be in the territory of one and not in the territory of the other, yet both communities are of the same ethnic group and share common local boundaries. Thus, the problem of ownership rights rears its head at a lower level. The absurdity is more palpable in the case of the lower Niger Delta where some ethnic communities live either by the coastline and on tiny pieces of land surrounded by sea, and oil fields are located not on land but on sea (offshore and deep shore). It gets really absurd if coastal and island communities are assigned ownership of what is in the sea. And if it is assigned (this is just assuming the absurd), arguments would arise over territorial sea boundaries thus reproducing ownership problem anew. However, this is a problem of feasibility, and one still has to establish if it is desirable to invest rights on ethnic groups.

Theorists like Kymlicka and Taylor argue that minorities suffering injustice should be granted right to internal self government which does not exclude the right to determine

\[339\] In a conference in Wilberforce, Ohio where I presented an earlier version of this chapter, someone commented that Ken Saro Wiwa's right to speak for the Ogoni was challenged because his village had no oilfield.

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the use of resources in their land. Theoretically this would entail giving autonomy to every minority group, which is a practical impossibility in a highly heterogeneous country. Minorities of the Niger Delta may have suffered political neglect and injustice but investing them with right to resources would set a precedent for every other ethnic community in any part of the country to exercise similar right with regard to what is in its land. In which case states of the federation would cease to be relevant units of political authority and chaos would set in. It is just not desirable.

Do the above arguments make the state (I use the state to mean political community which has government as its agent) the rightful owner of natural resources? Here, I want to evaluate the position that rich oil resources are national wealth. Conventionally, it is the constitution of a country that assigns right to natural resources, and this assignment has two presuppositions. First, it assumes that resources are not the product of any citizen labour, or have not been developed by anyone, or both. For example, when Section 40 of the 1979 Nigerian constitution assigned ownership of minerals to the federal government, the presupposition may have been that they were not the creation of any citizen’s labour. That is to say, a national community assembling to decide who should control resources presupposes that it has ownership of what it is assigning. But a constitution reflects the way a society is structured and the latter should not be the basis for moral right. That the erstwhile constitution of apartheid South Africa assigned rights would not presuppose that moral right ought have been derived from the few. Moral right does not flow naturally

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340 On the assumption behind the assigning of rights by the constitution see Richard Simeon and Ian Robinson, State, Society, pp. 236-49.
from the sovereign.

Second, it assumes state jurisdictional right of its national territory and its pre-
eminence within. Indeed, international law recognises the jurisdictional right of states to
their territory and to resources within. However, the basis for this right is contentious. In
the social contract doctrines of Locke and Rousseau the act by which individuals unite in
a political society also submits their possessions to the community brought into being by
the union. The submission is not an alienation rather it is the basis for legitimate exercise
of ownership right. As the guarantor of right, the state (political community) regulates
everyone and no one is exempt from its jurisdiction. It is in this sense that it has
jurisdiction of the territory it presides over. Also, as a guarantor of right, the state ought
not invade what it guarantees. Doing so would amount to tyranny. As a body that has
legitimate monopoly of force, it guarantees right not only by ensuring compliance to its
laws but by warding off external invasion. So, the state has jurisdiction of its territory
relative to other states.

However, the act of constituting a society gives birth to a territorial unit known as
country, large enough for all its members to live in and enjoy in common. Jurisdictional
right belongs to the sovereign who also establishes rules by which the territory can be

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enjoyed in common, or by which land acquisition can be made by members.\textsuperscript{342} The right of members to their acquisitions is subordinate to the right of the sovereign to the entire country.\textsuperscript{343} For this reason, property right of members could be subordinated when it is expedient to do so. For example, if a planned river dam would submerge a number of villages (e.g. the Three Gorges Dam in China), or some private buildings will stand in the middle of a proposed highway, it may be expedient to subordinate private right to the interest of the community. In which case those who suffer loss of right will receive compensation to the value of what they lose. This is what is called the Right of Eminent Domain in countries like Canada and the United Kingdom.

In fact, the right of the sovereign to its national territory partly explains why foreigners carrying out economic transactions first seek its permission. Thus, a foreign firm coming to explore oil first negotiates with the agent (government) of the sovereign for permission and also pays taxes to it. However, communities immediately connected to resource endowed land should not be ignored. They suffer, in a double sense, when their right is subordinated to that of the sovereign. Firstly, they forego the economic and cultural uses of their land. Secondly, they suffer effects of environmental degradation during the production and distribution of oil. The former entitles them to monetary compensation while the latter requires special attention with a view to restoring the environment and providing alternatives to what may have been destroyed.

\textsuperscript{342}See Hume, \textit{Treatise}, Part II section iii.

\textsuperscript{343}See Rousseau, \textit{Social Contract}, Bk 1 Chap. IX, second to last paragraph.
For example, it is obligatory that communities sitting on oil be provided with alternative source of domestic water and protein if the rivers and lakes of their fragile ecosystem are destroyed. However, this obligation should not be expanded to include improvement projects that do not derive from the subordination of right or destruction of the environment. Provision of infrastructures like highways, telephones or universities is a social responsibility of the state regardless of what is derived from a particular community. It is a duty the state owes its citizens, not one that springs from the fact of resource generation. It becomes an issue if the state fails both in its social responsibility and its particular obligation that arises from subordinating right and from environmental destruction. Most of the protest in the Niger Delta arise from the failure of the state to provide the area with social infrastructures, which is not directly related to oil production, and to compensate communities whose source of livelihood has been destroyed.

Federal or State Governments Right? Conventionally, in a political federation the sub units have the same right to revenue derived from resources within their territories. A federal constitution often vests constituent states with powers to control natural resources within their units. This conventional understanding is sometimes not respected when such resources, usually located in a few states, are of great significance to the national economy, as the Canadian experience regarding oil during the 1970s has shown.\footnote{The problem of who ought to control natural resources is not one that is peculiar to Nigeria. In Canada it was second to Quebec separation in terms of political challenge. The constitution of the country assigned to the provinces the right to control the development and direct taxation of natural resources. When the price of oil quadrupled in 1973, and doubled in 1979, the producing provinces raked in high incomes to the detriment of the industrial progress of consuming provinces that had to}
Deviations from conventional understandings of economic entitlements, also evidenced by the Nigerian case, are not simply matters of power flexing by the centre. As already argued above, the sovereign body has normative right to resources within its territory. However, in a federal system, jurisdictional rights to the territory are shared between the central and state governments. The right to share derives from one of the major conditions that give rise to federalism: when communities (defined as people with a sense of belonging) are ready to live together in one political community but are determined to retain local authority. This condition does not require wholesale control pay for the high local price of gas. The federal government moved in to promote Canadian ownership of oil resulting in a dispute not different from the Nigerian case. The principal issue in the dispute was who owned the oil. While the producing provinces argued that they were entitled to the full benefits of revenue from their resources, the consuming provinces (on whose side the federal government responded) argued that the oil belonged to the Canadian people. Canadians had not been able to arrive at normative principles to regulate competing claims when the price of oil crashed in 1983 and the conflict lost its relevance. See Simeon and Robinson, *State, Society*, pp. 236-40.

I appreciate the existence of several theoretical explanations for the desirability of federalism, namely the functionalist, instrumentalist, and 'attachment to community' explanations which have already been presented in chapter four. The perspectives (perhaps with the exception of the third) account for the desirability of, not conditions for, federalism. Although the desire for a federal system is sufficient for a country to adopt it, as the German case would illustrate, I concede that there is no inherent connection between the system and underlying conditions such as diversity or geographically patterned cleavages. Some have referred to this underlying condition as "federal qualities of a society." However, in the case of Nigeria, as with other countries, ethnic diversity was the major condition that made for the adoption of federalism. See Kenneth Norrie, Richard Simeon and Mark Krasnick, (1986:3-4, and 23-5); also, Shridath Ramphal, "Keynote Address," and L. Adele Jinadu, "A Note on the Theory of Federalism," all in A. B Akinyemi, Patrick Cole and Walter Ofonagoro, (eds)., *Readings on Federalism*, p. xiv, and 13-25.
of natural resources by one level of government; instead, the sharing of jurisdictional rights also entails the sharing of rights to resources. Neither of the two levels ought to exercise absolute right that would eliminate that of the other. In fact, Nigeria is de facto unitary precisely because the federal government’s exercise of absolute powers has abolished rights of the states.

Did the 1994/95 Constitutional Conference make a fair decision when it agreed on 13% as the minimum figure for derivation share of revenue accruing to the Federation Account from natural resources? In some respects the agreement on a broad revenue allocation framework that combined derivation principle with those of population, states equality etc., was recognition that states have some right to economic resources. Fair as the conference was in recognising the states as having some right to revenues generated from their domains, it is questionable how the 13% derivation base limit was arrived at.

The subcommittee on Revenue Allocation that worked out the allocation criteria agreed upon by the conference did not explain if the figure was derived from some principles or if it was arbitrary. The baseline is actually lower than it appears, for the draft Constitution states that “the figure of the allocation for derivation shall be deemed to include any amount that may be set aside for funding any special authority or agency for the development of the State or States of derivation.” 346 This provision draws a whole range of entitlements into the figure. For example, particular obligation to oil producing communities derived from subordinating their immediate right to that of the sovereign is

included. General social responsibilities to people of the Niger Delta are also built into it. Let me explain this briefly.

Both Minorities Commission of 1957/58 and the 1975 Government Panel on Creation of States reported the Niger Delta as having suffered government neglect mainly because of the high cost of providing infrastructures in the swampy terrain. Both made far-reaching recommendations for special development (by the Federal Government) in order to raise the area to the same level of infrastructural development as other parts of the country. Government’s responsibility of paying special development attention was not derived from, and in fact, does not in any way relate to oil production. It is a social responsibility owed to citizens. But the conference factored it into the 13% baseline.

Subtract all the range of entitlements that ought to go to the communities and the derivation share for the states falls drastically from the 13% baseline while the share for population and equality of states increases. Thus, with the dependence of the economy on petroleum revenue, the conference affirmed the right of Nigerians to oil within the national territory and at the same time make a weak concession to the conventional practice of federalism by which constituent states share in wealth derived from their units. The decision was not fair enough, although it marked an improvement on pre-existing allocation system.

SUMMARY

To conclude, Nigeria’s fourth approach to its problem of ethnic difference was informed by the inadequacies of the federal character strategy adopted in the mid-1970s and
consequent group based claims for a more equitable arrangement. What emerged was not really an abandonment but a revision of federal character.

One aspect of the revision was the successive creation of more states and local government units to further accommodate groups. This was necessary for group equity but the problem was that the multiplication of units turned into an endless process that risked trivialising what it was meant to accomplish. There might be no specific limit on the desirable number of units for accommodating groups but the current structure of 36 states and over 800 local government units should be given some period to function. There is really no point in creating new units if they would not be allowed to stabilise or if those for whom they are meant would not learn to accommodate themselves in them. It is in this respect that I argue for a policy that requires that existing units to function for some decades with the hope that elites and groups will used to living within what is currently in place and overtime the demand syndrome would fade.

Another aspect of the revision was the failed attempt at doing away with the indigeneity requirement for political appointment and recruitment. The requirement amounted to discriminating against citizens resident in states not of their biological descent and, in this respect, violated their right to equal treatment as citizens. But there were no better alternatives to the requirement. Reverting to unrestrained universalist criteria for appointment and recruitment would have meant going back to the winner-takes-all system of political competition that resulted in civil war. Substituting residency for indigeneity requirement was not a better alternative either, for it would have made room for some groups to be dominated in their own states. The indigeneity requirement may have violated
equal citizenship rights but there was no better alternative for ensuring group equity in appointment and recruitment.

Federal character revision also involved constitutional agreements on competing claims to alternative political structure, power sharing arrangements, and revenue generating natural resource ownership. Claims to confederation and political break-up as alternative forms of structural arrangement were defensible on ground of denial of right to exercise political leadership to members of some geo ethnic sections of the country even when legitimately won in a free and fair election. They were also defensible on ground of military campaigns against some ethnic minorities of the south demanding equitable share of wealth derived from their land. However, confederation or political break up posed frightful political and social costs. They were not alternatives that offered hope for peace and stability. If they were not desirable options, then the problem of monopoly and unjust use of power by one geo ethnic section of the country has to be addressed within the framework of federal arrangement. This is where the agreement to divide the country into six geo ethnic regions for purposes of rotate executive power state has some merit. Although it has the danger of constraining the freedom of citizens to compete for the office in question, it nevertheless makes for groups equity in recruitment into the highest office in the land.
The discussions of constitutional negotiations in Nigeria reveal that the country has adopted five institutional strategies for coping with ethnic difference and reducing conflict. The strategies discussed in the preceding chapters were: (1) a federal system, wherein differences among the three major groups were given political expression while those between majority and minority groups were suppressed; (2) legislative districts whose boundaries closely followed group boundaries (3) a federal system in which the sub-units were restructured and an affirmative action programme was instituted to make for greater political expression of difference among both majority and minority groups; (4) more state status for groups within a federal system, wherein central government offices and material resources were distributed evenly across the states and while state governments distributed their offices and resources across groups within; (5) more state status for more groups in a federal system in which the executive cabinet was rotated from one ethnic region to another and in which the central government affirmed right to distribute resources evenly among the states but with some attention to source of derivation; Some of these institutional strategies were morally defensible in the very circumstances in which they were negotiated, but were either not deep enough to make for adequate political inclusion or were not combined with different counter strategies to minimise problems of group proliferation and institutional instability. This is true of the last two strategies listed above. There were some that were morally defensible even though they generated tension among
groups or were driven by strategic considerations for power. This was the case with the above listed second strategy that involved the affirmative action programme and the political separation of minorities in the 1960s. Others were pragmatic at the very time they were negotiated and in the circumstances of the period, but not morally defensible. This is true of the first strategy negotiated in the 1950s.

Overall, the concrete case by case analysis of these strategies showed that constitutional settlements for group recognition in Nigeria have offered greater promise for stability than would otherwise have been if differences were suppressed or recognition limited to only the three major ethnic groups. Indeed, it would not be an over-statement to say that the little unity that exists today is the result of the group expressive strategies that have been adopted since the 1970s. However, the case by case analysis also showed that the institutional expression of difference has generated some difficulties that were anticipated at the outset but counter measures were not taken to deal with them. The difficulties include, among others, institutional instability arising from group proliferation, ethnicity as the basis for citizenship rights, and conflict arising from the ownership of natural resources. In what follows, I use the difficulties that have arisen in Nigeria to evaluate some of the prescriptions of the normative theorists.

A central theme in the theories is that, in a multicultural country, individuals stand as equals in the political public if institutions reflect their diverse cultures. This main theme is argued in a variety of ways. For example, Walzer locates justice in the distributional meaning of social goods and argues that, in a democratic order, difference should be tolerated. Charles Taylor argues that our identity is shaped by the recognition we receive.
from others, and that the demand for equal recognition requires a model of liberal society in which culturally diverse groups are treated as equal partners. On his part, Kymlicka argues that in liberal democracies minority groups require special rights to enable their members exercise autonomy and freedom taken for granted by majority group members. In all this, the unit of analysis is the group. The latter is recognised and presented as a relevant moral unit in constitutional design.

However, the Nigerian experience shows that the design of political arrangements around groups triggers group proliferation that renders the arrangements unstable. This problem was recognised way back in 1958 when the Minorities Commission in Nigeria used it to justify its refusal to meet demands by some minority groups for recognition in separate political units. But recognition had to be granted in the 1960s to avert imminent disintegration of the country. The 1960s redrawing of internal political boundaries around groups activated the emergence of new groups with new political demands. The design of a federal character strategy in the mid-1970s further stimulated the proliferation of groups with new demands. A slippery slope was inevitable because the use of the ethnic principle led to the duplication state offices, created access to power and wealth for elites, and gave symbolic value to groups in need of esteem and honour. These have fuelled endless demands for recognition, stimulated countless multiplication of units, and rendered national institutions unstable as they were duplicated all over.

Theorists like Kymlicka and Taylor anticipated this sort of difficulties in their arguments and did provide ways of dealing with them by placing a limit on the groups that would qualify for recognition. They required that constitutional recognition be given to
groups who are tied to a homeland and can support a culture. In the North American context, this requirement limits recognition to a small number of non-immigrant groups. But the Nigerian context is different. Both majority and minority groups are non-immigrant. The minority groups are countless in number while the majority groups are made up of sub-groups, all of which make the normative theorists’ requirement less useful to the country. Thus, the prescription is valid if applied to North American societies but not to those with different ethnic relations. In this respect, one would consider the prescription as having been developed with less regard for West African societies that are non-immigrant.

This is not to suggest that the theoretical arguments of Kymlicka et al. have no normative relevance to Nigeria. The country’s response to the problem of institutional instability indicates that arrangements in which groups have no recognition are not a better alternative. The country has publicly debated and revised its strategies for coping with ethnic pluralism over and over again but on each occasion the key elements of federal character survived because they were found to be the best way for ensuring equity. The problem that nags is how to end the proliferation of sub-units.347

A second issue the Nigerian case raises is the question of citizenship rights. One common thread that runs through the arguments of normative theorists is that a liberal commitment to political equality requires a constitutional order in which citizenship is differentiated. For example, Iris Marion Young, the democratic equality theorists, argues

347 I made some suggestions in chapter 7.
that the common standard which pervades the original position from which the Rawlsian model of justice is derived is actually the standard of the strong who share a common way of life.348 The weak share different ways of life and cannot make their voices heard.349 As a remedy, she proposes "a democratic public" that provides "mechanisms for the effective representation and recognition of distinct voices."350 Joseph Carens takes similar position when he argues for a genuinely shared citizenship in Canada. According to him, the best way of doing justice to Aboriginals of Canada who do not have a sense of common political bond with non-Aboriginal Canadians is to "recognise the inevitable injustice of a deliberative process that effectively excludes or overrides Aboriginal cultural perspectives on what justice requires."351 He proposes dialogue as a means of arriving at arrangements that combine mutual compromises and mutual understanding about justice. Also, Taylor argues for a model of liberal society in which the collective rights and goals of disadvantaged and threatened cultural communities are recognised.

Recognising the interest of the weak in constitutional instruments and political

348 From an "original position" device which models individuals as equals and excludes characteristics like social class, ethnicity, race and religion, Rawls derived principles of justice that are free of the caprices of social difference. Derived from an original position protected from the calculus of social interests, the principles of justice authoritatively command an "overlapping consensus" that ensures stability.

349 See Young, Justice, p. 104.


351 Carens, "Dimensions of Citizenship . . .," p. 120.
processes was a major issue that defined Nigerian politics of the late 1950s and early 1960s. The bitter civil war that was fought over it in the late 1960s finally led to the statutory adoption of ethnicity as a principle for ensuring equitable access to power and resources. For two decades now the principle has been used to create states, make cabinet appointments, constitute political parties and make selections into the army, the universities, the civil service and government parastatals. It has also been used as the basis for legislative representation during periods of civil rule, and has been revised to ensure that the office of the president and governors are rotated among groups at the national and state levels respectively.

The boomerang effect on citizenship rights has now emerged clearly. Although citizenship is defined in legal terms, familial descent has become the primary the basis for the determinant of membership of the states and of the local government units.352 This has led to sensitivity in the ethnic/state origin of people contesting for political offices and of those appointed or selected into national institutions. In fact, sections 154-160 of the draft Constitution produced by the 1994 Constitutional Conference has provisions for a Federal Character Commission to monitor geo-ethnic origin of public employees.353 Ethnicity has become the basis for citizenship identification, as individuals relating with national institutions have to first submit letters of identification from the Chairperson of their local

352 See chapter 7 above, pp. 172-4.

government areas attesting to their ethnic origin. Indeed, the Political Bureau of 1986 noted that the constitutional definition of membership of the sub-units of the federation in terms of indigeneity was constituting an impediment to the development of Nigerian citizenship and encouraging attachments to “home communities.”

The problem shows that theoretical arguments for the recognition of difference in constitutional and political processes run the danger of elevating ascriptive group membership as the major determinant of citizenship. Critics of multiculturalism in North America have made similar criticism. Here I refer to Nathan Glazer, Alvin Schmidt, and Arthur Schlesinger jr. For example, Alvin Schmidt equates multiculturalists to soldiers seeking to conquer and destroy America. He regards bilingual education and a curriculum of that reflects multiculturalism as evils that bring ethnic separateness, disunity and conflict. He and his fellow critics emphasise what Steven Rockefeller has referred to as the danger of elevating ethnic identity over universal human potential.

In fairness, theorists like Kymlicka and Taylor are particularly interested in opening up a space in liberalism for minority group rights. They separately argue that departures from liberal individualist rights are justified only to the extent that is needed to rectify inequality. In a chapter on apartheid Kymlicka shows that “the notion of cultural membership and the principle of equalising cultural circumstances” would not justify “petty

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354Report of the Political Bureau, p. 197.


356See his “Comment” in Taylor, Multiculturalism, p. 89.
apartheid. But as the Nigerian experience shows, and as the country’s Political Bureau of 1986 reported, a deep sense of ascriptive inclusion and exclusion (that is petty apartheid, to us Kymlicka’s words) are inevitable outcomes of the principle of equalising cultures. These are the very fears that the critics of multiculturalism in North America harbour. But the Nigerian experience, especially the fears and reluctance of the country’s successive governments to abandon the use of indigeneity in the definition of membership of political sub-units, would suggest that there is no better alternative to the ethnic principle. What all this means is that it is moot to criticise normative theorists that they elevate group rights over individual rights.

A third issue the Nigerian case raises is tension and confusion associated with the conferment of right to resources on groups. Writers like Kymlicka and Taylor argue that cultural minorities suffering injustice should be granted right to internal self government which will include the right to determine the use of resources in their land. In this case the unit of government is expected to be coextensive with the cultural group, so resources are to belong to the unit. In the Nigerian case where internal boundaries have been drawn over and over to take account of ethnic difference, rights to natural resources have been vested under the sovereign body with the central government acting as its agents. This has to do with the disaster that resulted from winner takes all system of politics that was practised in the 1950s and 1960s. The system made for political domination by elites from a few ethnic regions of the country and also made for unequal distribution of public goods. The

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357 See his *Liberalism*, p. 247.
determination to do away with unequal allocation of goods after the civil war made the federal government to declare state ownership of natural resources with the aim of sharing their monetary benefits proportionally among various ethnic sections of the country. Proportional distribution of wealth derived from natural resources was held as the key to public perception of state objectivity and neutrality and to long term political stability. The federal character strategy designed in the 1970s was all about proportional distribution of public offices and national wealth. Theoretical arguments for rights of groups to use resources in their land may sound reasonable but the Nigerian case shows that such rights work against equity and generate grievances among ethno-regional groups not so endowed.

Besides, recent claims to oil wealth by groups like the Ogoni, the Ijaw, and the others in the Niger Delta do show that investing ethno-cultural groups with right to resources would set a precedent for every other ethnic community in any part of the country to exercise similar rights with regard to what is in its land. The theoretical prescription is not one that is fully reflective of the Nigerian reality.

The fourth issue is the universal application of the theories, given the socioeconomic base of the Nigerian elite. As already discussed in some of the preceding chapters, members of the dominant social class in Nigeria, as in most parts of Africa, are not rooted in industry. They are not capitalist, in the technical sense of the word. Instead, they have their roots in politics. If elsewhere, economic productive activity is the principal means of accumulating wealth, in Nigeria it is the state. Politics is a career, a full time

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358 See pages 45-6 and 70 above.
economic activity, and the chief medium for material self improvement, rather like the absolutist state which was the principal means of surplus extraction, and war a full time occupation of the nobility. Thus, as Eme Ekekwe has rightly shown, those who control power have no intention of losing it, while those out of power are obliged to seek alternative centres of power. The combination of a federal revenue allocation system disconnected from generation give impetus to the demands for alternative centres of power.\textsuperscript{359}

Theoretical arguments for group recognition do not take account of the socio-economic base of elites in non-western societies. They assume the culture of liberal democracy, a culture in which the social base of the dominant class is rooted in economic productive activity, and the custodians of power are constrained from using power for private purposes. In liberal democratic societies of the West, officials of the state use power to secure freedom, equality and autonomy of individuals, values necessary for capital augmentation (both long term and short term) and implicit in the political culture since the beginning of the 18th century. These liberal democratic values are desirable, and a society may experience a high degree of social and political injustice if it does not make claim to them. In fact, it is precisely because of the weakness of these values in non-western societies that the state is used as a private power by its custodians.\textsuperscript{360}


\textsuperscript{360}This is not an attempt at endorsing the arguments of modernisation theory. Just to recognise capitalism in Africa as peripheral, the elite as dissociated from
No matter how they are or might be desired, the fact remains that liberal values are not rooted in the cultural practices of most non-Western societies, including those in Africa. The form of capitalism and the specificity of the state in these societies have to be recognised for theories of group recognition to be universally valid. Without this recognition the theories would be making prescriptions that create access to power for a weak set of mutually antagonistic elites in need of the state for personal economic survival.

In sum, the commitment of Nigerians to work out political arrangements that accommodate ethnicity and the determination to revisit the arrangements to redress what inequities there are, validate the main theme of theories of group recognition. The theme being that, in a heterogeneous society justice prevails if mechanisms are created for constitutional expression of difference. On the other hand, problems that have emerged from the arrangement would serve to highlight the main weaknesses of the theories. Most of the problems have endured partly because what theories there are less reflective of ethnic relations in West African societies and do not specifically their circumstances. Despite this, the normative choice, as Nigeria has demonstrated, is not that of abandoning the strategy that accommodates ethnic pluralism in politics. Rather it is one of periodic revision and refinement of the strategy until in its side effects are relatively reduced. Thus the recognition of difference does not generate fundamental tension between justice and stability, recognition has carefully to worked out to ensure a unity between justice and industrial production and the political practices as those not consistent with those of liberal democracy. See Claude Ake, "The State in Africa," in his edited work Political Economy of Nigeria, chapter 1.
stability.
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