



The Allocation of Powers and Responsibilities in Federal Systems: Critical Issues in Constitutional and Political Theories

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Abstract. How are powers divided in federal systems? What are the indices and or parameters involved? To what extent do the indices and parameters constitute epistemological problems? What really are the fundamental problems of federalism, in both *theory* and *practice*? Furthermore, to what extent does the understanding of the problems constitute in themselves critical issues in constitutional and political theories of federalism? Answers to these questions remain the preoccupation of the paper. Drawing experiences largely from Nigeria and the United States of America, contrasting experiences of “high-tech” and low-tech” federal systems, the paper focuses on issues of theoretical construction that are significant to the dominant problem of allocation of powers, and seeks to provide penetrating insights into the understanding of what in literature is being referred to as “*the theory of federalism*”, Oyovbaire (1985), among others. The method of data collection is secondary and scattered in sources that are directly and indirectly related to the dominant questions and issues raised. The technique of data analysis is descriptive, philosophical and critical, all reinforcing the framework of thought in which the whole study is placed. The paper concludes that the issues and fundamentals of federalism in both constitutional and political theories should be approached from the *developmental perspective* and through this, it is hoped, federalism will restore its vitality where it has been battered and its direction where the focus appears uncertain, unclear and muddled-up.

Keywords: Federalism, Powers and Responsibilities, Power matrix, Constitutional and Political Theories.

“The problem which all federal states have to solve is how to secure an efficient central government, while allowing scope for the diversities, and free play to the authorities, of the units. It is, to adopt Bryce’s metaphor, to keep the centrifugal and centripetal

forces in equilibrium, so that neither the planet states shall fly off into space, nor the sun of the central government draw them into its consuming fires”
A.A. Appadorai, 1968.

1. Introduction

Federalism, it is here being argued, requires peculiarities of understanding for greater and in-depth theoretical amplifications. The peculiarities in which it is being studied have implications for its critical knowledge and theoretical analyses. Issues and problems in relation to the epistemology on federalism are the pivots that do help in the organization of research around its subject matter. These issues and problems, it must be further emphasized, require careful conceptual and analytical formulations in such a way and manner that the formulations in turn would help in the organization of research on the subject matter of federalism. The issues and problems, again, require that they be integrated with the knowledge of the situational peculiarities and circumstances for the emerging conceptualization and theorization to remain valid and dependable. These issues and problems therefore require an approach to knowledge that is objectively constructed and crafted to both reveal and capture the political fundamentals in which the practice of federalism is being defined especially in the federalizing societies of the Third World. Consequently, what are the critical and enduring issues of federalism and from which its theory have been formulated and developed? Further amplified, what are the fundamentals of federalism and to what extent have they formed the bedrocks of the design and crafting of its theory? To what extent can distinction (on the basis of logic of research and governmental practice) be made between ‘federal government’, ‘federal principle and or law’? What exactly are the essential characteristics of the federal system of government? To what extent do these

essential characteristics constitute problems in law and normative political theorizing? These, indeed, are fundamental questions in the study of federalism from the *perspective of law* and *politics*. Questions can be asked further, and more specifically, who exercises what power in a federal system and for what purpose? How are powers divided in federal systems and by what parameters? How is the division constitutionally protected? To what extent does the practice of politics tend to rubbish the constitutional arrangement? How are the excesses of the units regulated, and what specifically are the roles of courts in the regulation and settlement of disputes?

To be able to understand the substance and thrust of the paper better, it is as well important to ask the following critical questions. What is the reinforcing relationship between legal and political theories in the study of federalism and federal systems? What are the critical epistemological issues that they both share in the understanding of the subject matter of federalism? Which derives from which, and what is the implication for the construction of a broad theory of federalism? Are the issues of importance to emergent federal states and societies given the need to reject the received paradigm of the study of federalism? What does Africa, in particular Nigeria, Sudan and South Africa stand to gain from the study and analysis of these issues? The relationship between legal and political theories is considered relevant for the amplification of the knowledge of the subject matter of federalism. The relevance of the relationship to the knowledge and understanding of the subject matter reveals itself essentially from the perspective of the already existing relationship between law and politics. Law unarguably sets the requirements with which to define federalism, while politics helps in the appreciations of the extent to which the requirements are in themselves contradictory and time-tested. The argument can be further made that the understanding and knowledge of the issues and problems of federalism exist as issues and problems of law and politics shaping and influencing the context of federalism and its practice.

Beyond the relationship between law and politics especially as the knowledge framework for the understanding of federalism, what federalism further is, is in addition dependent on the level of development of society of practice. The sociological perspective consequently reveals not only the impacts of the society's attainment on the practice of federalism, it exposes as well the consequences and impacts of the competing centripetal and centrifugal forces and factors on both the practice and expectations of federalism. The intersection between the sociological and legal/political perspectives to the

understanding and knowledge of federalism creates and nurtures the idea in relation to its justification especially from the angle of the end and means analysis. End and means as framework of knowledge seeks the philosophical and moral bases of government as a human invention that is deliberately created to enable the realization and achievement of the objectives necessitating its formation and establishment. Federalism is therefore a means and an end as well. It is a means of attaining and sustaining political development in every society that has decided on its choice. This is an established fact all over the world. As no nation of the world has ever attained ultimate development, federalism, one can therefore argue, is both a process and outcome of development. How it develops, by what mechanisms, etc., are dependent on historical factors and local peculiarities. Federalism is useful in satisfying complex, competitive and variegated interests, it is here further noted and observed. It is interesting to emphasize that the specific form and or variety of federalism has impacted greatly on it without necessarily changing its accepted properties. The differences in constitutional operation, presidential or parliamentary, have not significantly affected the operations of federalism in the USA and Canada for example, to the extent of modifying the general idea of it. Accepted to the interpenetration between it and the environment, federalism still remains unique as the forces of the environment that exert pressure on it will consider it absolutely important to tinker it alongside its defining characteristics.

The established knowledge in the existing theory of federalism indicating the allocation and division of powers in federal systems into three between and among the composite units making the federation (exclusive, concurrent and residual) does not deserve any celebration at all. This is because (especially in federalizing societies) the idea has since remained contentious. This means in effect that the division of powers into three and the related authorities on the subject matters/functions/duties are far from being settled and should therefore be referred to as a standard of practice only with a sense of caution. Using same as basis for revenue allocation between and among the composite units should as well be referred to as a standard of practice with the same sense of caution. The contentions emanate from the problems that are associated with the division. These problems, one should note, are capable of threatening the efficient running of federal systems of government. It should be further noted and observed that the gravity and severity of these problems largely depend on the age (level of development) of the federal political system. These are problems relating

to taxation, foreign affairs and acquisition of property, trade and commerce, and understanding and interpretation of the fundamental provisions of the constitution. They therefore constitute unresolved issues in the political and legal theories of federalism. Relevant to the purpose of the paper, how can the federal process in Nigeria benefit from the ongoing analysis? One needs to present first, the inherent assumptions, propositions, and premises of federalism. This is section one of the paper. Section two addresses and examines the theoretical bases that informed the division of political powers in a federal set-up into three. A focus on this has become important for the purpose of appreciating the critical issues of taxation, foreign affairs, etc., that tend to tear federalism apart in federal systems and societies of the Third World. These critical issues and the extent to which they constitute a problem for a theory of federalism occupy section three of the paper. Finally, section four provides the conclusion to the paper.

2. Core Values in the Federal Discourse: A Focus on the Assumptions, Propositions and Premises of Federalism

How should the appreciation of the issues and problems in the allocation of powers and responsibilities in federal arrangements and systems be situated? What framework of knowledge that should guide the option/approach that is chosen? How can the framework help in the illumination of the knowledge and understanding of the issues and problems? How can the experiences of federations help in the understanding and knowledge of the issues and problems? What thematic arrangements that should guide the appreciation of the issues and problems? How can the themes be adequately explored, examined and analyzed in such a way that the expected knowledge and understanding will be both detailed and comprehensive? The questions, individually and collectively, are of relevance to the paper. The section consequently provides answers to the questions by attempting to engage itself with the core values in the federal discourse. What therefore are the core values in which the discourse on federalism is being presented? Core values as an idea represent the collective identities in which federalism and in particular, its theory enjoys acceptable standards of discussion, examination and analysis. They broadly represent the standards of assessment that are useful for the organization of societies and systems of government along the path/framework of federalism. They individually and collectively present the prescriptions with which to gauge and measure federal parameters and indices that are in

turn relevant for reviews of the extent to which the parameters and indices in turn capture stark realities. Core values finally represent the assumptions, propositions and premises of federalism.

What therefore are the assumptions, propositions and premises of federalism, and to what extent do they give federalism its defining characteristics? The assumptions of federalism exist in some expectations with respect to its inherent advantages especially as a system of political organization that is essential for the accommodation of the fundamental differences that are both unique and special to heterogeneous settings. The assumptions are in addition based on the understanding that federalism provides the important framework for the discussion and exchange of ideas around the differences within the engendered conversations on the accommodation of diverse and conflicting interests politically speaking, and the advancement of the living conditions of citizens within an economic system of operations that allow for individual/private ownership and management of enterprises. The latter tend to suggest that the viability of federalism is pre-conditional and dependent on democracy and capitalism, and the existence of a constitution that is both written and rigid. For a profound appreciation of the premises and propositions of federalism, it has become imperative that we engage in some conceptual analyses and exploits. So, what is federalism? And to what extent does the definition capture its contained propositions and premises? The questions are not only vital to the appreciation of what federalism is, they are particularly important in building a systematic process of comprehending the critical issues that are contained in the allocation of powers in federally organized societies. What federalism is is no doubt influenced by the perspective in which one makes use of in defining it. Two perspectives exist in literature. They are the *legal* and the *sociological*. It is significant to note that none appears superior to the other. As an abstract phenomenon, the legal perspective seems to describe its nitty-gritty. However, when we consider the fact that federalism is better understood from the *context* of its operation, one cannot but recognize the place of sociological perspective. It is significant to again note that the two perspectives reinforce each other in the understanding of both the theory and practice of federalism.

From the legal or classical perspective, federalism is seen in terms of the division of powers among the composite units making a federation or the federal system. There is what we can call the Wheare's school of thought in the theory of federalism.

According to K.C. Wheare, federalism is "... the method of dividing powers so that general and regional governments are each, within a sphere, coordinate and independent" (cf. Jinadu, 1979: 15). This definition of federalism by K.C. Wheare is suggestive of so many things. Among others, it wants us to know that federalism is a method or system of political socialization, and being a method or system of political organization, it is primarily concerned with ensuring that the composite units are coordinate, yet independent and also, that every unit must work towards the elements as agreed upon. Not only that Wheare succeeded in defining federalism, he went further to put up its essential criteria. According to him: "I have put forward uncompromisingly a criterion of federal government and the delimited and coordinate division of governmental functions and I have implied that to the extent to which any system of government does not conform to this criterion, it has no claim to call itself federal" (cf. L.O. Dare, 1979: 27). The idea of 'federal principle' which K.C. Wheare used in defining federalism, according to L.O. Dare, (1979: 27), can be elaborated to include: (a) the division of powers among levels of government; (b) written constitution showing this division, and (c) coordinate supremacy of the two levels of government with regards to their respective functions. It is interesting to note that Wheare's formulation has been heavily criticized. The definition is, for instance, accused of being unnecessarily legalistic and formal. The greatest knock comes from scholars who employ the sociological perspective, the famous being Carl J. Friedrich (1968), William S. Livingston (1956), among others. However, L. Adele Jinadu (1979) has stoutly defended K.C. Wheare. According to him: Even granted that Wheare places too much emphasis on the legal dimension of federalism, there can be little doubt that federalism involves a legal constitutional arrangement which delimits, albeit vaguely or ambiguously, the legal and political competence of the levels of government" (Ibid: 16).

The sociological perspective looks at federalism differently. According to its leading light, Carl J. Friedrich (1964, 1968), "... federalism is a process other than a design" (cf. Jinadu, 1979: 17). He continues: "Any particular design or pattern of competencies or jurisdictions is merely a phase, a short-run view of a continually evolving political reality" (Ibid: 17). What is worthy of note about Friedrich's reformulation is that it asserts that federalism is a general principle of social organization and that the degree of federalism in a political system is a function of sociological and not legal criteria. He continues further: "The merit of

Friedrich's reformulation is that it is less restrictive than Wheare's. Federal instrumentalities, to borrow Livingstone's elegant terminology, can be found in several forms of political systems, ranging from centralized to decentralized, and also to a loose structure of supranational cooperation". (Ibid: 17). Again, to what extent do the varied definitions of federalism either contain or provide clue to its propositions, premises and assumptions? This is a solid question indeed. To be able to answer the question, we must immediately and urgently seek answer to this overwhelming question as well: What is the role of propositions, premises and assumptions in theoretical and analytical disquisitions in broad terms, and specifically in the discourse on federalism? We cannot answer the question without first and foremost knowing what premises and propositions are from the perspective of epistemology? From the viewpoint of the theory of knowledge (epistemology), premises, and propositions are the fundamentals or essential ingredients of the *hypothetico-deductive method*. Going by the element and process of social science research, the *hypothetico-deductive method* is that method of determining the acceptability or otherwise of hypothesis by ensuring that their logical consequences are consistent with the observed data. How, one asks, is this related to the ongoing study and analysis? To remind ourselves once again, what we are interested in is to be able to determine the extent to which the definitions of federalism tent to present or capture its premises and propositions. To the extent to which its preconditions are kept to, we can talk of a theory of federalism, one humbly submits.

The role of premises, assumptions and propositions in the theory of federalism, just like in every other theory, is to help develop the good basis for the theory to be able to perform its functions of description, explanation and prediction. When assumptions, premises and propositions are built, we then talk of the existence of preconditions that would allow the theory performs its role and more importantly, we are able to make our predictions. The assumptions, premises and propositions of federalism represent in themselves those things that will make for a true practice of federalism. The apposite question then is: What are these things? One of the assumptions and premises of federalism is democracy. In other words, federalism operates efficiently in a democratic setting. Of course, the type of democracy envisaged is the liberal or laissez faire variant. According to Oyovbaire (1985:19), "... the institutional indices of democracy are free election and a party system with its guarantee of a responsible

opposition, parliament and constitutional checks and balances, and because military rule lacks these, it is basically and conceptually incompatible with federalism". Another assumption upon which federalism is based is the supremacy of the constitution. The constitution is taken to be supreme (relying on the American Constitution) because it is a product of negotiations and consensus and therefore more technically described as "terms of agreement". To quote K.C. Wheare, "... the terms of agreement which establish the general and regional government and distribute powers between them must be (supreme and) binding upon these governments" (cf. Oyovbaire, 1985:19). The supremacy of the constitution is to be complimented with courts that are independent, in particular the existence of a Supreme Court vested with the power to resolve disputes among the composite units, and between these units and the central government and vice-versa. A further assumption is what is called "*substantial sphere of political action*". As a premise, federalism holds it strongly that the levels of government in it should be free enough to act politically – to be able to legislate and administer, especially that the State government be relatively free enough to be able to legislate on, and administer certain matters. Finally, federalism, it is posited, operates well in a liberal economic environment. But how do the assumptions, premises and propositions of federalism configure the division and classification of political powers? The answers to the questions shall form the preoccupation of the next section of the paper.

Federalism has further embedded in its understanding and knowledge the idea of powers and responsibilities. Consequently, what is the paper's understanding of the idea? Powers and responsibilities as an idea is used to refer to the specific duties and functions as prescribed by a federal constitution that are assigned to the composite units making the federation. Though broadly defined as exclusive, concurrent and residual, the idea of powers and responsibilities is in addition used in the paper from a comparative view point as providing the relevant knowledge and understanding for the making of the distinctions and differences between and among federal systems. The idea represents in the paper a formulation that is targeted at further amplification and explanation of the workings of federal experiments to enable the development of generalization on the subject matter of federalism. Instructive to a better understanding and knowledge of the idea is the related concept of power matrix. The latter is used to collectively define and describe the contending ideas and disputes with respect to the

appropriateness, capacity and capability of the composite units and tiers in federal systems of the Third World in particular to be able to efficiently and effectively discharge those functions and duties with overall positive results and effects on the citizens thus justifying the adoption of federalism and its inevitability in heterogeneous societies. Lastly, constitutional and political theories in relation to the argument of the paper is used to describe the whole body of ideas and thoughts in which the idea of allocation of powers and responsibilities are in turn expressed, discussed and amplified in extant literature on federalism as a subject matter of study. The ideas and thoughts further encompass the totality of both the normative and empirical construct that do help in the advancement of federalism as a subject matter from which prescriptions are in turn formulated as yardsticks to both assess and evaluate the extent to which a federal system of government for instance meets the global prescriptions as already advanced by K.C. Wheare.

3. The Theoretical Bases of the Division of Powers in Federal Systems

Basic to federal systems and or organizations is the division of powers into three as exclusive, concurrent and residual. The federal/national government is expected to legislate on exclusive legislative items such as currency, foreign policy, immigration, customs and excise, defense and territorial integrity, armed forces: navy, air and army, etc. Under the lists include: education, health, agriculture, infrastructural provision and development, etc. For the residual lists, only the States can so legislate. They include municipal institutions, hospitals, local public works, property and civil rights, local administration of justice, etc. Of course, there are differences in the interpretation and understanding of these powers as we move from one federal system to the other. Notwithstanding, it has become important to still ask the question: What is the underlying philosophical/theoretical basis that has informed the division of political powers into three in federal political systems? The answer to the question requires a deep probe into the Federalist's papers and the changing scenes of federal political experiences and circumstances. This further requires significant intellectual digging into the intentions of the federalists, their understanding of federalism, and the peculiar constitutional construction of federalism in the United States of America, the model federal system of the world.

Prior to the provocative piece of Martin Diamond titled: "The Federalists view of Federalism", first

published in 1962, students of federalism saw the collection on federalism, the *Federalist papers*, as the “intellectual foundation stones” of the study of federalism. But perhaps because the entire collections were either campaign documents than a rigorous “theory of federalism”, they were significantly presented as rhetoric. Indeed they were rhetoric in significant proportions, and this cannot be disputed. Martin Diamond (1962) had alleged confusion in the language of federalism. According to him, and commenting especially on Alexander Hamilton’s discussion of federalism in *Federalist 9*, Diamond argues that the terms “confederation” and “federal” were not distinguished and hence “... misleading of the *Federalist* is not how to be federal in a better way, but how to be better by being less federal” (Ibid:5). The attention which Diamond drew to the distinction between “*anti-federalist*” and “*true federalists*”, all within the *Federalist papers*, points direction to the futility in the “theory of federalism”. This is significant to the extent to which a true understanding of federalism is constrained, and as well assists in developing the argument that the appropriate meaning of federalism seems to depend on its practice and prevailing context. Going by the evaluations of Peterson (1985) and Vostrom (1985), the *Federalists* only concerned themselves with how to ensure that the various units which now make the present United States of America are secure and safe in the new arrangement which they now found themselves especially following the Philadelphia Convention of 1787. Federalism, it can therefore be argued, is a power sharing arrangement that is meant to “preserve unity in diversity” by ensuring that the composite units are independent and yet coordinate within the new spirit of the experience in federalism. One of the ways of ensuring the envisaged safety is the attendant division of political powers in its system of operation into three. What then is the philosophical/theoretical basis that has informed the division of powers as exclusive, concurrent and residual? The theoretical/philosophical basis can be located in the following events in the history of the organization of human beings into political communities. They are: (i) the experience of the American confederation, (ii) the experience and or failure of the Ancient Republics, and (iii) the hope which the new system of governmental arrangement is expected to provide.

The Experience of the American Confederation:

As this is not a study in American history per se, it is only sufficient to say here that America today is a product of the thirteen New England States that formed themselves into a confederation to begin with. The persecution which they faced in Europe (in

particular England) that led to the initial settlement in Plymouth in 1620 perhaps influenced the need to think of how to live in peace in the new found land. Quick at recognizing the limitless opportunities which they met, it was only appropriate to think of a governmental restructure and arrangement that should be able to galvanize the bountiful resources for common good and overall or joint development.

The Experience of the Ancient Republics:

James Madison and Alexander Hamilton were spectacular in the study of the reasons why the ancient republics especially that of Greece and Italy failed. In *Federalist 9*, Ostrom (1985:6) writes: “Hamilton recognizes that some of the resources of institutional failure in ancient republics had been somewhat ameliorated by improvements in the science of politics” which, in the words of Hamilton himself were either “... not known at all, or imperfectly known to the ancients” (Ibid: 6). Among these developments, according to Hamilton included: “The regular distribution of power into distinct departments – the introduction of legislative balances and checks – the institution of courts composed of judges, holding their offices during good behaviour – the representation of the people in the legislature by deputies of their own election (Ibid: 6).

The Hope of a Federal System of Government:

One of the reasons for the adoption of federalism is that it provided the inherent framework for the exchange of resources as differently endowed by the units making the federation. Consequently, the rich and the poor states will not only cohabitate, the welfare of their individual citizens and states will become paramount and of concern to the running of the federal experiment.

The division of power in the federal system, going by the American experience, is hence informed by certain theoretical bases. First, the saying that “power corrupts absolute and absolute power corrupts absolutely” greatly elaborated by Jean Bodin and Montesquieu in their expositions on the theory of separation of powers and the principle of checks and balances, was seen by the Federalists (given their trainings in law and the workings of the constitution) as a likely threat to the new arrangement that was then proposed- federalism. Clear distinct separation and or division of powers between the federal/national and state government was therefore seen as capable of protecting state interests from the likely overwhelming power of the federal government. This is confirmed by Hamilton when he noted in *Federalist 16*, that: “The government of the Union, like that of each State, must be able to address

itself immediately to the hopes and fears of individuals and to attract to its support, those passions, which have the strongest influence upon the human heart. It must in short, possess all the means and have a right to resort to all the methods of executing the powers, with which it is entrusted, that are possessed and exercised by the governments of the particular States (cf. Vincent Ostrom, 1985: 16). Second, is the principle of equality. The proponents of federalism were quick at noticing the wide disparity in the levels of development of the States. The tendency ordinarily is for rich States to wanting to exercise much power to the extent that the envisaged unity becomes threatened. While representation in the lower house of the national/federal legislature is usually based on population, that of the upper house is on the basis of equality. The very rich states are constitutionally vested with the same powers just as the not rich ones. The States of California and Delta in the United States and Nigeria are on the same constitutional footing as that of Arizona and Jigawa or Yobe in Northern Nigeria. The believe is that while the lower house of the national legislature is comprised of elements that are likely to threaten the federal arrangement, the upper house is expected to balance whatever forces of undue radicalism. The division of powers into three in federal political systems is therefore meant to preserve and protect the States and the rights of the citizens within the framework of the constitution. Also, mention is made of the existence of a written constitution, courts, bicameralism, democracy, etc., as the essential preconditions that are important in the proper functioning of a federal system of government.

4. The Allocation of Powers and Responsibilities in Federal Systems: Critical Issues in Constitutional and Political Theories

What are the embedded problems of theory in relation to the division and categorization of powers, duties and functions in federal arrangements, and to what extent do the problems exist as issues in the emerging constitutional and political theories on the subject matter? For the purpose of the paper, problems and issues, in relation to the ongoing analysis, are formulated to provide important intellectual basis for the understanding of an equally important matter in the theoretical discourse on the subject matter of federalism. Problems and issues within the ensuing context represent matters of intellectual and academic significance that do require appropriate engagement for clarity of the many contentions enveloping the subject matter of

federalism. Consequently, what are these problems and issues, and to what extent will their knowledge and understanding help the further theoretical amplification of federalism and the enhancement of the attendant discourse? What these problems and issues are require immediate categorization and arrangement for the purpose of detailed examination and analysis. They are here labelled as problems relating to: (1) the allocation of resources and revenues between and among the composite units, (2) the allocation of responsibilities in terms of which tier of government has the natural placement for efficiency and effectiveness of performance, and (3) the position of the third tier government, the local government, within the power equations as both defined and specified by the constitution*. While federal systems all over the world seem to pattern their political systems along the division of political powers into three, yet there are fundamental problems relating to the placement of political powers as items in exclusive, concurrent or residual lists. What are the specific items that are affected, and why and how do they constitute problems/issues in legal and political theories in relation to the knowledge and understanding of federalism? This section of the paper shall attempt to provide answers to the questions.

One major problem of federalism is in relation to the power to levy taxes. What taxes, instruments of collection, duration and jurisdictional competence, etc., in most cases, are clearly spelt-out in federal constitutions, especially between federal and state authorities. Usually, subject-areas that attract high taxes (and by extension high revenues) are usually enclosed in the exclusive legislative lists, perhaps for reasons that in turn relate to the magnitude of responsibility of the federal government such as territorial defense, among others. Notwithstanding the fact that this provision is ever clearly spelt-out in most federal constitutions, there are disputes as practically speaking, nearly all the taxation powers belong to the federal government since, where and when conflicts exist in the promulgation of taxation laws (as in every other law), the federal laws become supreme and therefore render that of the states void to the extent of the inconsistency. In the so-called federalizing societies, like Nigeria, the federal government exercises much taxation powers in critical sectors of the economy like oil and energy. In the petroleum sub-sector where Nigeria derives almost 90% of her revenue, the taxes are limitless right from the payment of signature bonuses through prospecting licenses to company taxes, among others. The abundance of these high revenue yielding potentials with other local factors perhaps explain the

call for resource control and the political solutions to the offshore-onshore dichotomy notwithstanding the Supreme Court judgment. Recognized also that the proceeds from the value added tax (VAT) are being shared by the three tiers of government, the position of Lagos state is either that Lagos be allowed to enjoy 15% derivation from VAT as in the case of oil proceeds or that Lagos, because of the neglect as a result of the movement of the seat of government to Abuja, be left alone to collect VAT or that each state in the federation collects its own VAT within its own territory. It is significant to put on record that over half of the proceeds of VAT are being generated in Lagos. With the release of the 2006 Population and Housing Census figures, and the dissatisfaction expressed by Lagos States government, the acrimonies surrounding VAT still remain unresolved.

What is the issue that is being raised in political and constitutional theories in relation to the understanding and knowledge of the subject matter of federalism? First, the fundamental assumptions and premises of the theory of federalism are questioned. It is not always correct, as it is usually made to believe, that the rich states have accepted to be the keepers of the poor states, and therefore are ever ready to allow their resources to be shared. The problem does not present an issue in legal theory with respect to the principle and practice of federalism, but a serious issue in normative political theory. For a good practice of federalism, it suggests thus that operators should constantly seek to know the point at which the citizens of the rich states would not want their resources (to their own detriment) be used to service the operations of the federal systems as the people of the Niger-Delta currently think about the development of Abuja in Nigeria, the Federal Capital Territory (FCT). Second, is the issue of land control as distinct from the contained mineral resources. In Nigeria for instance, while land is under the control of the state, the resources that are contained therein belong to the federal government. While the states as well have control over the inland waterways, the creeks and waters, the resources that are contained in them belong to the federal government. The logic of the principle of federalism perhaps teaches one that this is likely done so as to be able to increase the revenue and revenue potentials of the federal government. It however, constitutes serious problem especially in the application of the revenue derivable from these resources. Among others, how should such revenues be shared, and by what percentage and or criteria, etc., are instant problems. The issue in both constitutional and political theories is the appropriate ownership of land and the resources which it contains. If it is given to a tier of

government, how should other tiers be compensated, and by what equal amount of resources?

In the Nigerian experience of the practice of federalism, the Federal Capital Territory, Abuja has the status of the state. Consequently, all the lands in Abuja belong to the administration of the Federal Capital Territory. Interestingly, the Federal Capital Territory is being administered and supervised by a Minister in the Presidency, the administrative headquarters of the Federal Executive Council. The Federal Executive Council is effectively supervised, managed and controlled by the President who, going by the constitution, is both Executive and Commander-in-Chief of the Armed Forces. An issue in constitutional and political theory (which was least envisaged in the “theory of federalism”) is the fused relationship between the federal and state, which is the status of the federal capital territory. Easily, a President, who never liked a face, could order, through the Minister of the Federal Capital, that a Certificate of Occupancy be revoked, or a house be pulled down under the pretense that such a house has violated the Master Plan of the Federal Capital Territory and this has to be complied with.

There is as well what Engdahl (1974) calls “the commerce power”. According to him: “Even though it may be difficult or may seem unrealistic in certain cases to distinguish between interstate and intrastate activities, the distinction can make a crucial constitutional difference” (Ibid: 99). He continues: “If a matter is ‘in’ interstate commerce, the objective at which a federal regulation of that matter is aimed is immaterial to the regulation’s validity. The objective may be the effectuation of federal policy with regard to interstate commerce itself, federal policy with regard to defense or some other enumerated federal concern, or federal policy, with regard to public health or morals or any other extraneous matter” (Ibid: 99). On the other hand, he continues: “... if the matter being regulated is not ‘in’ interstate commerce the validity of any federal regulation of what matter is entirely contingent upon the finding of a telic relation between the particular regulation, as a means, and the effectuation of some federal policy with respect to interstate commerce itself (or some matter within another enumerated power), as an end” (ibid: 99). The issue in constitutional and political theories is simply that if indeed states are independent of the centre, in interstate relations, they should be free enough to determine how such relations be made beneficial and meaningful to both parties. Therefore, at what point should the federal government intervene, or what should be the acceptable limit of such intervention?

Put in another way, should the federal government be saddled with the responsibilities of managing inter-state relations even though it is less likely affected by the contract of such relations? Is it always the case that the federal will always decide in the overall interest of the composite units?

The final point to be considered has to do with the place or position of the local government in a federal arrangement. Treatises on the “theory of federalism” only focused on power sharing or allocation between the states and the federal or national government. In some federal constitutions like in Nigeria, what is common is that the states are empowered to make laws that would in turn determine the structure and operations of the local government. Arising from such a constitutional stipulation, especially in the Third World federal arrangements, local governments have become appendages of the states, to the extent that their political settings are disrupted most frequently. Closely linked to the issue is the idea of “local government autonomy”, especially from the instrumental grips of the states. Critical issues of constitutional and political theories thus arise. Is it proper for the constitution to allow the states to regulate the structure, operations and establishment of the local government, a tier of government in the federal arrangement? In other words, if indeed, the constitution is the source of powers in federal arrangements, can’t the same constitution be designed in such a way (beyond the mere spelling out of the functions of the local government) that the local government as well derives its powers from it?

5. Conclusion

The paper has focused itself on what it calls the critical, fundamental issues of federalism in both constitutional and political theories. Significant as the issues are, they either remain unattended to, or least, envisaged by the *Federalists* in their attempts to protect the varied interests that existed before and after the famous 1787 Philadelphia Convention in the United States. Accepted that the American system of federalism has passed through its stresses and strains, the outcome remains a blessing as the American environment of federalism is almost agreed to as the model of federalism throughout the world. But with respect to the “federalizing societies” or the “new experiments in federalism”, federalism is constantly challenged and its preconditions remain endangered as the federal principles are sidelined in the practice of politics. The direction of debate and research should most likely be the determination of the extent to which the uniquely, situational elements of federalism can assist not only in making the choice of

federalism enduring, but also in bringing about stability. The issues and fundamentals of federalism, in both constitutional and political theories, as the body of the paper has revealed, should be approached from developmental inclination and through this, it is hoped, federalism will restore its vitality where it has been battered and its direction and its direction where the focus appears uncertain, unclear, or muddled-up.

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