A Comparative Analysis of Constitutional Provisions for Power Sharing Among The Federating Units in The USA and Nigeria

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Abstract

This study carried out a comparative analysis of constitutional provisions for power sharing among the federating units in the United States of America (USA) and Nigeria. In the course of the analysis, it was discovered that there are no body of rules governing the fiscal relations between the component units in the USA, rather the federation of the USA relies on institutional arrangement based on shared understanding. While in Nigeria, rules governing fiscal relations between the tiers of government are clearly stated in the constitution, under the exclusive, concurrent and residual lists. However, the governments of the USA and Nigeria assign more powers to the central government. This has led to overreliance on intergovernmental transfers from the federal government to the state government. The study relied on qualitative measures of sourcing data and anchored on the Fiscal Decentralization theory. It made several recommendations on how the governments of the USA and Nigeria can improve on power sharing among the units of government. The recommendations are centred around granting the units or states more powers to control their resources and also increasing their powers to collect revenue.

Introduction

Power sharing is a basic feature of all federal systems. Provisions are made in the constitutions of federal nations to ensure a fair distribution of powers amongst the various tiers of government. Federalism as a form of government allows for the state power to be divided between the central or federal government, and regional governments (or provincial, state, territorial, cantonal, or other sub-unit governments) creating what is often called a federation (Arowolo, 2011). Egboh, Okeke & Anichie (2010), described federalism as the theory or advocacy of federal political order, where final authority is divided between sub-units and a centre. In a federal government each level of government should have adequate resources to perform its functions without appealing to the other level of government for financial assistance.

As a distinctive feature of federalism, legal sovereignty is shared between the federal government and the constituent states; the federal constitution thus creates layers of government with specific functions allocated to each unit (Hague & Harrop, 2011). Unlike a unitary state, sovereignty is constitutionally split between at least two territorial levels so that units at each level have final authority and can act independently of others. Several devices found in federal systems serve to maintain the federal principle itself. Two of these are of particular importance.

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The maintenance of federalism requires that the central government and the constituent polities each have substantially complete governing institutions of their own, with the right to modify those institutions unilaterally within limits set by the compact. Both separate legislative and separate administrative institutions are necessary.

Duruibe et al (2019,) stated that the contractual sharing of public responsibilities by all governments in the system appears to be a fundamental characteristic of federalism. Sharing, broadly conceived, includes common involvement in policy making, financing, and administration. Sharing may be formal when functions and responsibilities are clearly stated in the constitution or informal, when these functions and responsibilities are not stated but assigned to the various tiers of government. In federal systems, it is usually contractual. The contract is used as a legal device to enable governments to engage in joint action while remaining independent entities. Tamuno (1998,) argues that even where there is no formal arrangement, the spirit of federalism tends to infuse a sense of contractual obligation.

This work will thus carryout an analysis of the constitutional provisions for power sharing among the federating units in the USA and Nigeria. This work is divided into several parts and they are the introduction, definition of concepts, theoretical framework, and constitutional provisions for sharing of powers among federating units in the USA, constitutional provisions for sharing of powers among federating units in Nigeria, summary, conclusion and recommendations. This comparison hopes to identify the differences and similarities in the USA and Nigeria; and how the lessons learnt can help improve on the areas of weaknesses and also avoid certain practices that could be detrimental to the nations under discourse.

DEFINITION OF CONCEPTS

Constitutional Provision

A constitutional provision is a specifically designated rule or law within a nation's or state's constitution. The constitution outlines specific provisions for a variety of areas such as functions of the arms of government, citizenship, fundamental rights of citizens etc. Any law that is not derived from statutory or common law but is centered on the founding law is considered a constitutional provision. Provisions cannot be changed through court or common law regardless of the circumstance that may arise. For a constitutional provision to change, it must undergo a specific process. For example, a change may require approval by both the US congress and the ratification of the states. Examples of constitutional provisions in the USA constitution are the establishment of the three major branches of the US government.

- Article I of the constitution establishes congress and its main powers. The provision allows for the House of Representatives and a House of Senate. It allows them the right to create legislation for the entire country and also regulate commerce with other nations.
- Article II establishes the Presidency and the executive branch. The president is authorized to serve as the commander in chief and to direct the military as well as grant pardons.
- Article III sets up the Supreme Court and the remainder of the judicial branch (Seidel, 2020).
- In Nigeria, section 4 of the 1999 constitution vests legislative powers of the country in the National Assembly which consists of the Senate and House of Representative.
- Chapter V of the 1999 constitution deals with matters pertaining to the operation of the legislature.
- Chapter VI deals with matters related to the executive
- Chapter VII is concerned with matters related to the judiciary.

Power sharing

Power sharing is a term used to describe a system of governance in which all major segments of society are provided a permanent share of power (Sisk, 2003). It is designed to propagate the principle of democracy. Power sharing in political arrangements is usually seen in constitutions in which the principal elements of a society are guaranteed a place and influence in governance. It thus prevents a political agency from monopolizing power. It has become a popular concept as it has reunited a lot of societies by putting an end to tussles between units. Power sharing promotes inclusiveness and enables a coexistence of divergent cultures within a state.

Federating units

It can be referred to as unity in a league. It usually involves a political unit with a central government. There are also separate states, units or divisions, each of which retains control of its own internal affairs. It can also be seen as a form of government of a nation in which power is divided between the central government and the various units. The USA has a central government with 50 federating units. It was the first modern federation in which the federal government could exercise powers within its member states on matters assigned to the federal government. Nigeria is also a federation with a central government and 36 states. Power is shared between the central government and the 36 states as enumerated under the constitution of the Federal Republic of Nigeria.

Theoretical Framework (The Fiscal Decentralization Theory)

This research adopts the theory of fiscal decentralization. The basic foundation of the theory of fiscal decentralization was laid by Arrow in his discourse on the role of the public and private sectors, Samuelson's work on the theory of public goods and Musgrave's study on public finance. These provided the framework for what became the acceptable role of the state in the economy. The theory was later popularized in the works of Oates (2006), as "Decentralization Theorem".

The central idea of the decentralization theory is to:

i. correct market failure in the economy.
ii. ensure equitable distribution of income.
iii. maintain stability in the macro- economy at full employment and stable prices.

The theory laid out a general normative framework for the assignment of functions to different levels of government and the appropriate fiscal instruments for carrying out those functions. It contends that the central government should have the basic responsibility for the macro- economic stabilization function and for income redistribution by assisting the poor through adequate provision of basic socio- economic needs while the allocation of resources should be the responsibility of state and local governments.

Garca-Milla, Mcguire & Oates (2017,) stated that, the theory has been categorized by Oates into first and second generations. They argue that, the first-generation theory of fiscal decentralization tends to focus on situations where different levels of government are responsible for the efficient provision of public goods for citizens. The role of government in maximizing social welfare through public goods is usually assigned to lower levels of government and the central government will be in charge of income stabilization and distribution. Through this role assignment, the central governments are expected to ensure equitable distribution of income, maintenance of macro- economic stability and the provision of public goods at the national level, and the lower levels of government are to concentrate on the provision of local goods while the national government will render assistance through grants in aids especially in emergency situations.

The second-generation theory focuses on equalizing the distribution of resources across regions while taking into account the political interest of the public office holders to foster the growth of sub-regional economies. The theory basically hinges on two arguments:

i. Public choices and political economy with focus on the behaviour of political agents and the political process
ii. The problem of asymmetric information where the central government act as the principal. The principal tries to structure intergovernmental fiscal relations in such a way that the regions play complimentary roles. Asymmetric information takes place as the centre only has imperfect information over the fiscal activities of regional public officials (Welcherberger, 2015).

The theory has been criticized on the basis that certain functions performed by the central government should also be performed by the regional government. An example is the case of Nigeria, where the security of lives and property is only in the hands of the Federal government.

The relevance of the decentralization theory to this study cannot be over emphasized, as fiscal federalism is a veritable tool for generating, allocating and redistributing revenue in a federal system of government. Fiscal federalism in the USA and Nigeria has indeed been an important tool for economic development. Through fiscal decentralization in the federating units in these nations, provisions of public goods are made at the local level and this impact the population immensely. Decentralization as a social strategy gives priority to social sector spending. Accordingly, Wieuser (1995) postulated that a well-designed policy framework of decentralization leads to improvement in spending on social services and a well-controlled system of local government transfer.

Fiscal federalism does not only produce efficient and equitable services through the assistance of local understanding, but also leads to greater participation and democracy that would result in popular consent to government and improve political stability (Olaleye and Olowu, 1989). The good quality of increased resource mobilization results to reduced dependence on the central finance, greater accountability and more responsive and responsible government.

Constitutional Provisions for Sharing of Powers among federating units in the USA

There is absence of a discrete body of rules governing the fiscal relationship between national and sub-national governments in the USA. There are hardly constitutional mandates allocating taxing and spending powers among different levels of government (Hellestein, 2003). The USA government rather focuses on institutional arrangements derived from shared understanding regarding the allocation of fiscal authority, judicial interpretation of constitutions/provisions in fiscal federalism as historical practice.

There are five provisions in the US constitution that addressed the federal government's substantive power to impose taxes (Bizziolo & Sacchetto 2011). The constitutional provisions directed to the federal taxing power include:

- Power to lay and collect taxes, duties, import and excises
- Prohibition on taxation of exports
- Uniformity in federal taxes throughout USA
- No imposition of direct taxes except it is apportioned among the states by population, although this was amended in 1913 from the 1787 constitution.
- The power to grant tax income without apportionment among the several states was given to the Congress (US constitution amendment XVI in Bizziolli & Sacchetto 2011).

From the above provisions, it is obvious that central government of the USA has enormous discretionary powers to raise revenue; however, the central government does not possess exclusive rights to collect tax revenue as the states can also raise taxes.

Federal Spending Power

The Federal spending power is granted as a condition on the federal taxing power. Article 1&8, clause 1 of the USA constitution states that, "The congress shall have the power to lay and collect taxes to pay the debts and provide for the common defense and general welfare of the United States" (Watts. 1999).

The Federal Government possesses other fiscal powers which include: -

i. The power to borrow
ii. The power to coin money
iii. The power to regulate value

States Fiscal Powers

According to Alexander Hamilton, states which existed as political entities prior to the adoption of the constitution retained all powers not delegated to the federal government in the constitution (Sheehan, 2004). Throughout American constitutional history the Supreme Court has made similar statements reflecting its view that the states' Fiscal powers are critical to their separate existence and are essential elements of State sovereignty. The Chief Justice Marshall observed this in 1824 as he stated that the states' power of taxation is indispensable to their existence, many years later the statement still stands. (US Constitution, Act.1&10, CL 2).

There are two provisions in the U.S Constitution that mentioned the state tax power; the import-export clause and the duty of tonnage prohibition. According to U.S Constitution Act 1&10, Clause 2 concerning the Import-Export:

No state shall without the consent of the congress, lay any duties on imports or exports, except what may be absolutely necessary for executing its inspection law and the net produce of all duties and imports, laid by any State or imports and exports, shall be for the use of the Treasury of the United States: and all such laws shall be subject to the revision and control of the congress.

In the case of the Duty of Tonnage; the Supreme Court observed that the prohibition of the duty of Tonnage was a move made by the framers to supplement (the import-export clause), thereby denying the states the power to lay duties on import or exports by forbidding a corresponding tax on the privilege of access by vessel to the ports of a state (Bizzioli & Sacchetto, 2011).

State Spending Power

There are no explicit federal constitutional restraints on state spending power, although virtually all states constitutions contain requirements that spending be limited for "public purposes." Under the fourteenth amendments due process clause, state taxing power can be exerted only to effect a public purpose and does not embrace the raising of revenue for private purposes (US Constitution amendment XIV). The constitution also denies to the states the specific powers granted to the central government necessary to exercise their spending powers, including the power to coin money and intuit bill of credit (US Constitution, Art 1 & 10).

Distribution of Taxing Powers

Except for some restraints and congressional legislation, both Federal and State Governments remain free to exercise their respective sovereign taxing powers as they deem fit, even in cases where the taxing authorities (Federal and State) overlap. The areas which the Federal and State Government usually overlap are the areas of the income tax, property tax and corporate tax; consumption and other excise taxes (Nukpezah & Ahmadu, 2019).

Property Tax

Property tax imposed by the Federal Government must be levied so that the revenues derived from each state reflect its relative population rather than the relative value of property located in the state (Bizzioli & Sacchetto, 2011).

Income Taxes

Both Federal and State Governments enjoy broad power to tax income, a resident of New-York city pays income taxes to the United States, the state of the New York and the city of New York. The sixteenth amendment in 1913 provides that "the congress shall have power to pay and collect taxes on income from whatever source derived, without apportionment among the several states and without regard to census or enumeration" (US Constitution Amendment XVI).

Consumption and other Excise Taxes

Both Federal and State Government have broad power to impose consumption and other excise taxes. These taxes are classified as indirect rather than direct and so the limitation on direct taxes imposed by the Federal Government has no application on it. The principal constitutional restraints bearing on the Federal Government's power to impose these levies are the requirements that the taxes be uniform throughout United States and these do not include Articles exported from any State (US Constitution, Art 1, & 8, Cl.1).

Intergovernmental Transfer in the United States of America

Intergovernmental transfer existed in the United States of America long before the Great Depression; however, it represented a small fraction of revenues of state and local government. There was an increase in intergovernmental transfers from the 1930's, 1960's and 1970's. In 1929 Federal transfer comprised only of 1.3% of State and Local Government revenues, whereas in 1997, they comprised of 20% of State revenues and 3% of Local Government revenues while intergovernmental transfers from State to Local Government in 1997 was at 35% (Watts & Vigneault, 2000).

There are different forms by which intergovernmental transfers are carried out in the USA.

- **Categorical Grants:** This is the most popular form of financial assistance to sub-national governments. Categorical grants aid the provision of funds for specific programmes. These grants provide financing for numerous projects and programs such as health care, income redistribution, education, transportation, housing and community development.
- **Conditional Block Grants:** These are funds provided for expenditure incurred within a general functional area such as welfare or housing. They allow greater discretion for how funds are spent than categorical grants.
- **General Purpose Grants (General Revenue Sharing):** this program was enacted in 1972 under the state and local Fiscal Assistance Act. The program provided funds for State and Local Governments to spend at their discretion. From 1972 – 1980, States received one-third of the funds and Local Governments received two-thirds. In 1980, States were removed from eligibility in the program and the program for Local Governments was terminated in 1986.

Other means of Intergovernmental transfers include; Tax Deductions, Tax exempt, municipal board interest, Federal mandates and Threats of loss of funds.

Constitutional Provisions for Sharing of Powers among Federating Units in Nigeria

In line with the provisions of section 2(1), (3) of the 1999 Constitution of the Federal Republic of Nigeria; Nigeria is a federation consisting of thirty-six states and a Federal Capital Territory. The federal arrangement in Nigeria under the constitution is premised on a distinctive division of powers of the federation between the central (federal) and the States' governments. This involves the sharing of powers between the federal government and the state governments to foster easy administrations, cooperation and promote the principles of separation of power.

Embedded in the Nigerian constitution are functions that are to be performed by the various levels of government. Functions allocated to the Federal Government, Regional Government and local governments are grouped under the exclusive and concurrent and residual lists respectively.

The 1979, 1989 and 1999 Federal Constitution identified functions of the government as follows: -

i. **Exclusive list:** These are functions to be performed solely by the Federal Government. These functions include external affairs, issue of legal tender currency, police, defense, accounts of government of the federation.

ii. **Concurrent legislative list:** These include functions to be performed by Federal and State/Regional Governments. They include census, higher education, industrial development, prisons, national parks and antiquation etc.

iii. **Residual List:** These are the left over power not included in either the exclusive or the concurrent list. Residual list thus contains the powers exercised by the state government and the local government. Such matters in the residual lists include chieftaincy matters, health services, rural development, and social welfare.

Functions of Local Government: These functions are those performed by the Local Government and are listed in the fourth schedule of the 1979, 1989 and 1999 Federal Constitution. The main functions of the Local Governments are the provision of public goods, cemetery, refuse disposal/public convenience, naming of roads, streets and house numbering, licensing, regulating and control of the sale of liquor, collection of rents, radio and television license etc. Notwithstanding, the Local Governments are still subject to state control, the Local government can still exercise their authority only in accordance with enabling legislation passed by the States (Salami, 2011).

Revenue Allocation in Nigeria is carried out on two levels and they are the Vertical Allocation which is between Federal, State and Local Government Councils; and the Horizontal Allocation which is carried between the States and Local Government councils. Revenue sharing in Nigeria began in 1946 under the Richard's Constitution. Nigeria's fiscal arrangement has been guided by the country's Constitution. Section 162(1) 1999 of the Constitution states that the Federation shall maintain a special account to be called the "Federation Account" in which all revenues collected by the Government are paid in and those monies paid into the Federation Account must be distributed among the levels of government as mandated by the National Assembly, that is the legislative body in Nigeria.

There are exceptions of revenues which are not paid into the Federation Account and they include the proceeds from the Personal Income Tax (PIT) of members of the Armed forces, the Nigeria Police Force, the External Affairs Ministry and residents of the Federal Capital Territory. Certain principles are applied in Revenue sharing in Nigeria and they include population, equality of states, internal revenue generation, landmass and the derivation principle.

Under the Revenue Mobilization Allocation and Fiscal Commission (RMAFC) established in 1989, the principles of equality, population, social development, internally generated revenue and land mass are applied in revenue allocation.

Vertical Allocation of Revenues in Nigeria

The Federal Government retains some revenues paid into the Federation Account as its independent revenue and they distribute the balance among the other tiers of government according to the sharing formulae.

Prior to independence, the revenue allocated to the Federal Government was far lesser than that of the Regional Governments. In 1958, the sharing formula as recommended by the Raisman Commission was 40% for the Federal Government and 60% for the Regions. Since then, the Federal Government is allocated the highest share of the federally collected revenue.

However, the Federal Government share has been on the decline in favour of lower tiers of government. In 1992, the Vertical Allocation was reviewed to 48.5%, 24% and 20% for Federal, State and Local Government respectively (Salami, 2011).

The derivation account was as high as 50% in 1958; it was phased out by the military regimes and was re-established in 1999. Presently, the derivation account is 13% of the revenue obtained from oil produced on-shore that is on the land areas of each of the nine oil producing States namely; Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Rivers, Imo, and Ondo

Horizontal Allocation among Federating States and Local Governments in Nigeria

Horizontal allocation of revenue among the states and local government areas in Nigeria favours states with large land areas, large number of councils, high population more than the others. Prior to 1964, the derivative principle was given more credence, a 50% of revenue was allocated to producing areas and the remaining 50% was shared based on the principles of equality of states and population. However, from 1964 to 1976, the derivative principle was relegated while the principles of equality of states and population were applied in the allocation of revenues among states; they were both applied on the basis of 50% (Duruibe, Nwabeke & Ogoke, 2019).

From 1977 to 1981, the principles of equal access to development opportunities carried a weight of 25%, national minimum standard 22%, absorptive capacity 20%, independent standard efforts 18% and fiscal efficiency 15%.

From 1982 – 1998, revenues were allocated using the principles of equality of states 40%, population 30%, independent revenue efforts 0%, landmass and terrain 10% and social development 10%.

From 1999 to date, the principle of equality of States was 40%, followed by the principle of population 30%. The remaining balance of 30% was divided using the principles of social development, 10%, landmass 10% and internal revenue effort 10%. The horizontal distribution formula has remained stable since 1981 except for the increase in derivative principle for mineral revenue to 13% in 1999 to the oil producing states (Vincent, 2002 in Salami, 2011).

A brief appraisal of the Constitutional provisions of Nigeria and the USA

Constitutional provision of power sharing in federal states is an imperative, as it enables every unit to carry out their functions and responsibilities without the interference of the other units. It thus creates room for autonomy which is a salient feature of every federal state.

In analyzing the constitutional provisions of power sharing between the USA and Nigeria, it was discovered that there are no body of rules governing the fiscal relations between the component units in the USA, rather the federation of the USA relies on institutional arrangement based on shared understanding. While in Nigeria, rules governing fiscal relations are clearly stated in the constitution. Powers are distinctly shared amongst the three units of government under the exclusive, concurrent and residual list. However, the analysis carried out points to the fact that the USA and Nigerian government assign more powers to the central government. This has led to overreliance on intergovernmental transfers from the federal government to the state government.

Conclusion

Constitutional power sharing has been employed as an effective system as it enables every unit within a federation a level of autonomy. It enhances these various units to be functional and responsible without the interference of other units. It has recorded a level of success in the United States as the various units of government are granted a level of autonomy. This has inspired many nations worldwide including Nigeria to follow a similar course or to incorporate the practice. Despite the reception, the Nigerian state has hardly been successful in the sharing of powers amongst its units. This can be seen from how the centre has dominated over the affairs of the nation. There remains a need for proper practice of constitutional power sharing amongst the various units of government so as to promote functional units which in turn will lead to a greater development in the nation. There is a fair working relationship in the USA, not necessarily in the way it was formed but most importantly because the people and the leaders were committed to making it work. The only factor that can make it work in Nigeria is the desire of the people and the leaders to make it work. Against this backdrop, it is pertinent to state that Nigeria should imbibe the true virtues and tenets of true fiscal federalism

Recommendations

For USA

1. The government of the USA should grant lower governments the independence to tax their jurisdiction and diminish the use of transfer funds in order to eliminate manipulation and control of lower level government.
2. Equalization payments from the national government should be made to struggling units in order to create a fiscal balance amongst the subnational units.
3. The national government should design policies that discriminate against the manipulation of certain segments of the population by public office holders. The powers of the central government should be reduced and also checked because the larger the discretionary resources available to the central government, the powers it possesses to manipulate the behaviours of the citizen.

For Nigeria

1. Issues of intergovernmental relations should be reviewed and respected so that functions

to be performed by each tier of government would be explicitly stated.

2. The appropriate strategies for raising the necessary funds should be adopted while the formula for the distribution of federally collected revenue including VAT proceeds, need to be further amended to increase share of state and local government. This is because; the state and local governments have certain development functions that are vital to the people.
3. Reform of tax administration should be addressed to enhance the growth of non-oil tax revenue in order to reduce the reliance on the oil sector for both foreign exchange earnings and revenue.
4. Government should aim at achieving macro – economic stability in order to enhance savings and investment which are prerequisites for capital formation and economic growth.
5. There is need to ensure that the distribution of the revenue to encourage each state and local government to improve internal revenue generation, not to constantly and wholly depending on the funds coming from the federation account.
6. The Nigerian government should grant the states with the power to levy taxes and other fees alongside the federal government, especially when it concerns them.
7. States in Nigeria should be allowed to control the resources they produce so as to enable them develop their regions while they are made to remit a percentage to the federal government.

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