



Conference for
Federal Studies

ISBN 0194-2840

Spring 1985
Volume 13, Number 3/4

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NEW EDITOR FOR CFS NOTEBOOK

After yeoman duty as CFS Notebook editor, Professor Donald S. Lutz of the University of Houston has handed over the task to Professor Robert D. Thomas, also of the University of Houston. Professor Thomas teaches and publishes in the areas of intergovernmental relations, public policy and administration, and state and urban politics. All future submissions and correspondence to the CFS Notebook should be addressed to Professor Thomas, Department of Political Science, PGH Building, Room 427, University of Houston (University Park), Houston, Texas 77004.

FORTHCOMING ISSUES OF PUBLIUS

PUBLIUS: THE JOURNAL OF FEDERALISM
Volume 15, Number 1 (Winter 1985)

Contents

Symposium

"The Meaning of Federalism in The Federalist: A Critical Examination
of the Diamond Theses"
by Vincent Ostrom

"Federalism at the American Founding: In Defense of the Diamond Theses"
by Paul Peterson

"Rethinking 'The Federalist's View of Federalism'"
by Jean Yarbrough

"Historical Circumstances and Theoretical Structures as Sources of
Meaning: A Response"
by Vincent Ostrom

Articles

"Decay and Reconstruction in the Study of American Intergovernmental
Relations"
by Thomas J. Anton

"Postwar Changes in State Party Competition"
by Frank B. Feigert

"Industrial Policy and the States"
by Mel Dubnick and Lynne Holt

"Hazardous Waste Management: An Emerging Policy Area Within an
Emerging Federalism"
by Ann O'M. Bowman

"Federal Intervention in the Management of Groundwater Resources:
Past Efforts and Future Prospects"
by Zachary A. Smith

"Federal-Provincial Politics and Constitutional Reform in Canada:
A Study in Political Opposition"
by David Close

Book Reviews

Jeffreys-Jones and Bruce Collins, The Growth of Federal Power in American
History
by Carl Grafton

Publius: Volume 15, Number 1 (Con'd)

Book Reviews (Con'd)

Rosenthal and Moakley, The Political Life of the American States
by David L. Cingranelli

Howitt, Managing Federalism: Studies in Intergovernmental Relations
by Philip A. Russo

Lermack, Rights on Trial: The Supreme Court and Criminal Law
by G. Alan Tarr

Schill and Nathan, Revitalizing America's Cities: Neighborhood
Reinvestment and Displacement
by Laura L. Vertz

Johnson, Booth, and Harris, The Politics of San Antonio: Community,
Progress, and Power
by John Kincaid

Contributors

Reviewer Acknowledgement

PUBLIUS Index

***** NOTE TO PUBLIUS SUBSCRIBERS*****

You should have received Volume 15, Number 1 of PUBLIUS by now.
Volume 15, Number 2 will be mailed out at the end of August.
We hope to be back on schedule soon. Thank you for your patience!

PUBLIUS: THE JOURNAL OF FEDERALISM
Volume 15, Number 2 (Spring 1985)

Contents

Articles

"Introduction"
by Daniel J. Elazar

"Non-Majoritarian Democracy: A Comparison of Federal and Consociational
Theories"
by Arend Lijphart

"Federalism and Consociational Regimes"
by Daniel J. Elazar

Publius: Volume 15, Number 2 (Con'd)

Articles (Con'd)

"Consociational Cradle of Federalism"

by Ivo D. Duchacek

"Structure and Process in Consociationalism and Federalism"

by Jürg Steiner and Robert H. Dorff

"Structure and Process in Federal and Consociational Arrangements"

by Herman Bakvis

"Federalism, the Consociational State, and Ethnic Conflict in Nigeria"

by L. Adele Jinadu

"Yet the Age of Anarchism?"

by Thomas O. Hueglin

Book Reviews

Steuer, Diversity and Order in State and Local Politics

by Daniel J. Elazar

Breen, Uncle Sam at Home: Civilian Mobilization, Wartime Federalism,
and the Council of National Defense, 1917-1919

by Irving Hand

Onuf, The Origins of the Federal Republic: Jurisdictional Controversies
in the United States, 1775-1787

by Calvin C. Jillson

Allen, Works of Fisher Ames

by Donald S. Lutz

Contributors

PUBLICATIONS OF SPECIAL INTEREST TO CFS MEMBERS

NORTH CAROLINA CENTER FOR PUBLIC POLICY RESEARCH

After a three year study of state boards and commissions, the Center's researchers concluded that there are too many boards, commissions, and councils in the executive branch of N.C. state government. The Center's 600 page report covers four areas: appointments to boards, costs, powers and duties, and problems with legislators serving on executive boards.

Copies of the report are available for \$15.00 plus \$1.32 for postage and handling from the N.C. Center, P.O. Box 430, Raleigh, N.C. 27602.

SPECIAL BICENTENNIAL ISSUE

The NATIONAL FORUM has published a special issue titled TOWARD THE BICENTENNIAL OF THE CONSTITUTION. Seventeen articles, by knowledgeable practitioners and scholars, examine different aspects of the Constitution--its history, its significance, and the contemporary issues surrounding it.

Free copies are available by writing the Council for the Advancement of Citizenship, One Dupont Circle, N.W., Suite 520, Washington, D.C. 20036-1110.

MINNESOTA'S POLITICAL CULTURE

The Citizen's League (84 South Sixth Street, Minneapolis, Minnesota 55402) has compiled UNDERSTANDING THE QUALITY OF PUBLIC LIFE: AN ANTHOLOGY ABOUT MINNESOTA'S POLITICAL CULTURE. The anthology is divided into three sections. The first is a general overview of Minnesota and the twin cities of St. Paul and Minneapolis, with articles drawn generally from periodicals and shorter works. The second chapter contains some of the relevant academic works analyzing Minnesota. The last section takes a look at the economic and business life of the Minnesota society.

CENTER FOR THE STUDY OF FEDERALISM - UNIVERSITY OF NEBRASKA PRESS SERIES ON THE GOVERNMENT AND POLITICS OF THE FIFTY STATES

The Center for the Study of Federalism has entered into an agreement with the University of Nebraska Press for a series of books on the government and politics of each of the fifty states. Daniel J. Elazar is serving as General Editor for the series with an Editorial Advisory Board composed of:

Thad Beyle, University of North Carolina
Diane Blair, University of Arkansas
Samuel Gove, University of Illinois
Ellis Katz, Temple University
John Kincaid, North Texas State University
Robert Miewald, University of Nebraska
Kenneth Palmer, University of Maine
Charles Press, Michigan State University
Stephen Schechter, Russell Sage College

One volume (Missouri, by Robert Miewald) has already been published. Five additional books are now under contract. They are:

Alabama	-	William Stewart and James Thomas (University of Alabama)
Arkansas	-	Diane Blair (University of Arkansas)
Illinois	-	Samuel Gove (University of Illinois)
Minnesota	-	Daniel J. Elazar (Temple University)
Pennsylvania	-	Ellis Katz (Temple University)

In addition, authors in eighteen other states have either prepared or are preparing prospectuses. Thus, we are almost at the half-way mark in attracting scholars to the project. Individuals interested in participating in the project should contact:

Ellis Katz
Center for the Study of Federalism
#025-25 Temple University
Philadelphia, PA 19122
(215) 787-1482

FEDERALISM PROGRAM AT THE 1985 APSA MEETINGS

The Section on Federalism and Intergovernmental Relations has put together a program of panels and workshops for this year's annual APSA Meeting in New Orleans, August 29 to September 1, 1985. Included in this program are such topics as: Roundtable on Administrative Issues in American Federalism; Bureaucracy, Policy Implementation and Control in Intergovernmental Contexts; Federalism and Industrial Policy; Intergovernmental Perspectives on Political Party Renewal; Urban Political Culture Under Fiscal Austerity; Judicial Federalism in the States; Workshop on State Constitutions; Federalism in Bicomunal Societies; and The Theory of Federalism and the Study of Public Administration. In addition, there will be a Section Business Meeting. For more information, contact: Stephen L. Schechter, Department of Government, Russell Sage College, Troy, New York 12180.

ASPA SECTION ON INTERGOVERNMENTAL ADMINISTRATION AND MANAGEMENT (SIAM)

AN OPPORTUNITY FOR PROFESSIONAL LINKAGE

The American Society for Public Administration has chartered a Section devoted to intergovernmental management and policy. The over 600 members of the Section are drawn from practitioners and academic ranks throughout the country. In providing needed forums for people to exchange ideas and approaches to the theory and practice of intergovernmental relations, the Section promotes a stronger discipline of intergovernmental professionals spanning occupational class and levels of government.

Some of the programs and activities of the SIAM Section include:

- Publication of a quarterly newsletter reporting on developments in the field, including listings of recent publications, policy discussions, and updates of ongoing governmental actions. For the third consecutive year, the newsletter was recognized as the best newsletter among all of ASPA's sections.

ASPA SIAM Section (Con'd)

- Development of timely, relevant panels at national and regional conferences of the American Society for Public Administration.
- Sponsorship of awards programs recognizing outstanding practitioner and academic leadership in the inter-governmental field each year, and a student award with a \$200 stipend to recognize the best student intergovernmental paper.
- Sponsorship of special symposia in journals of public administration and policy to bring sharper focus to key intergovernmental issues.
- Initiation of a new Occasional Papers Series in inter-governmental management, to promote wider distribution of the best papers in the field, as selected by a panel of leading researchers such as Deil Wright and David Walker. (Further description below.)
- Publication of a SIAM membership directory to facilitate professional networking.

Membership in SIAM is open to all members of the American Society for Public Administration. Annual Section dues of \$7.00 is payable to ASPA at the time of initial membership or renewal. Please write or call John Kamensky for further information on SIAM membership.

John Kamensky
SIAM Membership Coordinator
U.S. General Accounting Office
441 G Street, N.W. - Room 3350
Washington, D.C. 20548
(202) 275-6169

SIAM'S NEW OCCASIONAL PAPERS SERIES ON INTERGOVERNMENTAL MANAGEMENT

The Section on Intergovernmental Administration and Management has just announced the initiation of a new Occasional Papers Series, devoted to bringing the best thinking and research in the field to the attention of its members in a timely, inexpensive manner.

Anyone is welcome to submit a paper for consideration--whether or not they are SIAM members. Papers are reviewed by readers who are leading analysts in the field of intergovernmental management. Papers chosen for the Series will be reproduced and made available to SIAM's members through listings in its quarterly newsletter. Subsequently, the best papers of the year may be sponsored by SIAM for publication in a journal like Publius.

SIAM's Occasional Papers Series (Con'd)

It is hoped that not only will the Series provide SIAM members with the results of current research in an expeditious manner, but that potential authors in the federalism area will be encouraged to produce good papers due to the presence of this new form.

Papers submitted can include reports prepared for government agencies as well as papers presented at conferences or other forums. Only unpublished works, however, can be considered. Individuals may submit either their own work or papers produced by others, but permission in all cases will be obtained from the author(s) prior to final inclusion in the Series.

Please submit proposed papers for consideration to:

Jeanne Marie Col
Associate Professor
Sangamon State University
Springfield, Illinois 62708

LIBERTY FUND CONFERENCE ON LAND OWNERSHIP AND
LIBERTY IN AMERICAN SOCIETY

On March 31-April 2, 1985, the Center for the Study of Federalism produced its fifth Liberty Fund Conference. Each conference is supported by the Liberty Fund and commemorates the anniversary of an important event in the development of American society.

The 1985 Conference was entitled "Land Ownership and Liberty in American Society" and commemorated the 200th anniversary of the Northwest Ordinance of 1785. The conference papers included:

- "Land and Liberty in America," Daniel J. Elazar, Temple University
- "Liberty, Development and Union: Visions of the West in the 1780s,"
Peter S. Onuf, Worcester Polytechnic Institute
- "Planning and Anti-Planning in American Development," John Baden,
Political Economy Research Center
- "The Organization of Space and the Character of the Metropolitan
Experience," Mark LaGory, University of Alabama, Birmingham
- "The Future Relationship Between Land and Liberty," John Kincaid,
North Texas State University

FEDERALISM, HUMAN RIGHTS AND MILITARY RULE IN NIGERIA TODAY*

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Federalism, Human Rights and Military Government in Nigeria Today

1

I want to approach the topic of this lecture from a wider historical perspective than the topic itself suggests. There are at least two reasons for doing so. First, federalism in Nigeria today has evolved over the last thirty years. In fact, the first federal constitution in the country came into operation with the Lyttleton Constitution of 1954 which created a federal government and three regional governments, each with specified powers which could not be invaded by the other governments. Secondly, there is the practical constraint that the present military regime is barely four months old, with the result that one must be cautious in pronouncing about the character not only of the regime itself but also about the shape which federalism and compliance with human rights will assume under its administration.

I assume that by federalism we mean a set of constitutional arrangements which bring into existence two levels of government or concurrent regimes, each possessing legislative competence over the citizens of the country which has adopted those constitutional arrangements. The institutional structures to reflect the constitutional arrangements will, of course, differ from one federal polity to the other. Perhaps it is something like this which William Riker had in mind when he suggested that we view federalism as a spectrum.¹ I say this because I want to make a leap of faith by simply asserting that, in spite of over 14 years of military rule (January 1966 - October 1979 and since December 31, 1983), Nigeria has operated a federal system of government since the initial adoption of the system in 1954. The exception is the three-month period between May and July 1966 when the military government of Major-General J. T. Aguiyi-Ironsi attempted to introduce a unitary system of government. Put simply, I want to avoid discussing the theoretically interesting question whether military rule is compatible with federalism. We cannot answer the question in the abstract, for just as there are varieties of military rule, so also are there varieties of federal government. Having said that, however, I hasten to add the observation that, in Nigeria, military rule and federalism have had a mutual impact on one another and I would argue that this derives from the plural character of Nigerian society.

*Prepared for delivery at the Evening Public Forum, North Texas State University, Denton, Texas on April 18, 1984 as part of the program series on Federal Democracy and Human Rights.

But how does "human rights" stand to both federalism and military rule in Nigeria? This is, of course, something to be elucidated in this lecture. But I want to clarify now the three senses in which we have understood human rights in Nigeria. Later I shall link this to the Nigerian conception of federalism. First, there has developed over the years in Nigeria the acceptance of human rights as the customary civil and political liberties to which the individual is entitled and which must be secured to him or her by statutory provisions. In this respect, every Nigerian constitution since 1960 has contained a detailed elaboration of what these civil and political liberties are, although the conditions under which they could be justifiably infringed or curtailed or suspended are also spelled out. In addition to these civil and political rights being made statutory, they are also made justifiable.

Secondly, there is another conception of human rights which has evolved in Nigeria over the years and which, in my view, constitutes the fundamental basis of Nigerian federalism. This is the very "unliberal" or, if you like, collectivist conception of human rights as communal (i.e., ethnic) rights. I think it is this conception of human rights as communal rights which provided the theoretical basis for the design of Nigerian federalism as a method of dispersing and deconcentrating political power along ethnically-delineated territorial lines. Let me elaborate briefly. Nigerian federalism conceptualizes politics in communal or ethnic terms as an adversary process for reconciling ethnic claims to and concern with the exercise of political power. That this conception of federalism, so different from the U.S. one, is accepted in Nigeria, and its practical implications given explicit statutory validation in constitutional division of power between federal and state governments, is due to the inherent design problem which ethnicity has posed for Nigeria since the 1950s. This is how to constitute a polity in which the associating ethnic groups will combine together in pursuing collective, (i.e., national) goals, without alienating their respective ethnic characteristics. This is, of course, a familiar problem in what Eric Foner has characterized as "deeply divided" societies, or what W. H. Smith once described as "plural societies" as opposed to "pluralistic societies."

Let me pursue this point further. It is interesting that Nigeria is almost unique in Africa in this respect for two reasons. First, the emergent political class in the 1940s and 1950s was almost unanimous in emphasizing the salience of ethnicity, and demanding for institutional and constitutional safeguards for the country's ethnic communities; and this was underlined in the constant refrain of the theme of "unity in diversity." Indeed one effect of the 1946 Richards Constitution and, particularly, the Macpherson Constitution of 1954 was to lead to the development of three ethnically-based political parties, reflecting the three dominant ethnic groups in the country. Secondly, Nigeria is almost unique in Africa in designing, operating and consolidating a federal system as a solution to its ethnic heterogeneity. There have, of course, been strains in the system, dramatically and tragically reflected in the civil war from 1967 to 1970, but also in the critical nine months before the civil war began, when confederal solutions were openly discussed and seriously considered in the wake of communal disturbances and massacres of 1966 in the North and the coup of January and July 1966.

I say Nigeria is unique in these two respects because of the unpopularity which federalism has enjoyed in Africa, as well as the disintegration of such federal experiments as the Federation of Rhodesia and Nyasaland and the Mali Federation. In much of Africa, the argument used against federalism is precisely the one which is rejected in Nigeria: this is the argument that the exigencies of national unity and development make it imperative to subordinate, or even do away with ethnic loyalties for the higher order purpose of creating a nation-state. Governmental structures should, therefore, not reflect and institutionally reinforce ethnic differences. A related objection to federalism in Africa has been that it makes for weak and slow government as well as for wasteful duplication of human, financial and other resources of the nation-state. This much is clear from the writing of Frantz Fanon and Kwame Nkrumah, with the latter successfully resisting British attempts in the penultimate years of colonial rule to design a federal constitution for the Gold Coast in order to assuage ethnic fears in Ashanti and the Northern Territory.

Yet in a very paradoxical sense, there is some connection, more historical than logical in nature, between human rights as individual rights and as communal or ethnic rights in Nigeria. The connection lies in the fact that the inclusion of a constitutional bill of rights in the Nigeria Independence Constitution of 1960 was intended to meet the demands of the country's ethnic minorities for the creation of more states, drawn along ethnically-demarcated territorial lines, as a means of protecting their ethnic rights from being abused by the dominant ethnic group in each of the then existing three states/regions. As the history of Nigerian federalism has only too well and too clearly demonstrated the entrenchment of these fundamental human rights did not assuage the fear of or prevent ethnic domination. As the late Billy J. Dudley puts it, this is because of "the very obvious fact that questions of individual rights and those of group rights belong to different logical orders."³ The Nigerian experience between 1960 and 1966 with the inadequacy of entrenched bills of right to protect and safeguard ethnic rights, particularly for minority ethnic groups, was therefore an important consideration in the inclusion of explicit statutory consociational provisions for communal rights in the 1979 Constitution.

The third conception of human rights covers what might be regarded as economic, social and cultural rights, although one can argue that cultural rights are also ultimately communal or ethnic rights or that at least the two can coincide, especially when ethnic groups are defined in linguistic or religious terms. This conception of human rights as social and economic rights is one of the significant innovations introduced into Nigerian federalism by the 1979 Constitution with the inclusion of statutory provisions relating to the fundamental objectives and directive principles of state policy.

As the late Billy Dudley has shown, the inclusion of these provisions was another reaction to Nigeria's political experience between 1960 and 1966 when the political class was preoccupied with accumulating wealth through their control of and access to the paraphernalia of state power and were hardly concerned with the public interest or the welfare of their fellow Nigerians. It is no doubt debatable whether strictly speaking social and economic rights can or should be described as human rights. And there was much disputation as to whether, like the traditional civil and political rights, they should be made justiciable. They were, of course, not made

justifiable but, in the words of Billy Dudley, "the objectives do provide a yardstick against which the activities of government can be measured and evaluated, and, as such, they serve to provide a normative standard to guide government action and the behavior of public officers." One must also add that, though justifiable, the civil and political rights are themselves of no force if they are not rooted in a materialist foundation which only the enjoyment of economic and social rights can provide.

All of this may sound like a perambulatory approach to the topic of this lecture. But before going into more specific illustration of some of the points I have sought to make in a round-about way, some reference to how all of this is related to democracy is necessary. And by democracy, I am referring to liberal, bourgeois democracy which is the variant we have practiced in Nigeria, even under military rule. It seems to me that, in some way which may neither be easy nor at least uncontroversial to determine, there is a connection between federalism and the statutory entrenchment or protection of human rights, as civil and political rights on the one hand and liberal bourgeois democracy on the other hand. The connection, I would suggest, is to be sought in the fact that both federalism and the protection of civil and political rights demand some check on those who exercise the prerogative of ruling. I think this is one reason why judicial review and separation of powers are much more pronounced in most federal systems than in unitary ones in liberal democratic polities. To the extent, therefore, that democracy is opposed to absolute rule, then there is a connection, perhaps not a logical one, between it and federalism and the protection of civil and political rights. And, if recent developments in places like Great Britain are anything to go by, there may be some ground to believe that unitary systems may be tending towards the adoption not only of federalist solutions but also of statutory human rights provisions as answers to the crises of democracy facing them, especially in dealing with ethnically-induced or inspired sources of political conflict.

If Nigeria is a federal polity in which human rights are statutorily protected, then, on the basis of the preceding discussion, we must regard it as a democratic one in the sense in which I have indicated. This is, of course, compatible with an admission that the Nigerian state is full of contradictions or that the various Nigerian governments may have acted in "undemocratic" ways. But this will also require arguing that, in some meaningful sense of the word, "democracy" military rule can be compatible with it. I cannot argue this here and must make another leap of faith by merely asserting that we should not confuse form with content. If, as I have suggested earlier on, military rule in Nigeria is compatible with federalism, and if the connection I have sketched between federalism and democracy is plausible, then military rule in Nigeria might not be undemocratic. Just as federalism can wear different institutional forms, so also can democracy. Or, put differently, there are shades of federalism and democracy.

Let me now be a little bit more specific by illustrating some of my earlier remarks. In the rest of this lecture, I shall therefore focus on the relationship between federalism, human rights and democratic government in the following way. I shall highlight some important trends in Nigerian

federalism especially focusing on federal-state relationships. Then I shall turn to how federalism has been structurally and institutionally organized in Nigeria to deal with human rights issues in the three senses I have identified earlier on. For purposes of analysis, I proceed by making the following demarcations in Nigeria's political history: 1960-1966; 1966-1975; 1975-1979; 1979-1983; and the period since December 31, 1983.

Trends in Federalism

At independence in 1960, Nigeria inherited what has been rightly described as a structurally-imbalanced or lop-sided federation. This was because of the fact that the then Northern Region was bigger in both geographical size and population size than the two other regions combined, in classical illustration of what some have characterized as John Stuart Mill's "Law of Instability" in federal systems. Nigeria's federal experiment since 1960 has been marked by attempts to redress this imbalance at critical periods in the country's political history. Much of the initial controversy over state creation in the country, at least between 1960 and 1966, was concerned with this issue. How was the issue dealt with?

Between 1960 and January 1966, the federal coalition government for much of the period, made up of the N.P.C. and the NCNC, resisted efforts to create more states in the federation, a resistance that stemmed more from their reluctance to allow the dismemberment of the two states, the North and the East, which constituted their power bases. In fact, the only state created during this period was the Mid-West in May 1963 out of the then West. And this was politically motivated to spite the Action Group whose power base, although marginal because of substantial NCNC electoral strength there, was in the West. We, therefore, see that under civilian rule during what is now generally referred to as the First Republic, not much progress was made to redraw the territorial bases of state boundaries even though there was sufficient evidence to justify minorities fears. The first important attempt to deal with the matter on a national scale since independence occurred in 1967.

The communal upheavals and massacres of July to October 1966 led to intensified demands by minority ethnic groups in the North and East for their own states. The period from July to October 1966 was also one in which the future of the country as one entity hung in the balance as secessionist sentiments were openly expressed and confederal options advanced at the series of Ad Hoc Constitutional talks held between September and October 1966 and at the Aburi Meeting in January 1967. This was part of the immediate background against which the military government divided the federation into 12 states on May 27, 1977, as follows: six in the North, three in the East, and one each in Lagos, the Mid-West, and West.

Demands for more states were, however, not quelled by this action. The military government itself promised in the announcement creating the new states to look into the matter again in the near future, and indicated that to this end a States Delimitation Committee would be set up to look into demands for more states. The Civil War, July 1967 to mid-January 1970, muted demands for more states, but no sooner had the Civil War been successfully concluded by the Federal Government than there were renewed demands for more states, especially in the West and North. For example, one Northern

state, the North-East state, covered one-third of the total land area of the federation. It was, however, not until the overthrow of the military government of General Gowon on July 25, 1975 that another serious effort was taken to deal with the state creation issue.

The new military government appointed a five-man panel, the Irikefe Panel, on August 7, 1975 to advise it on the creation of more states. The work of the panel resulted in the Federal military government's increasing the number of states in the country from 12 to 19 in February 1976 as follows: ten in the North, four in the East, three in the West, one in the Mid-West and one in Lagos. It was expected this would be the last such exercise and the 1979 Constitution which was drafted under the encouragement of the military government laid down elaborate provisions which were intended more to discourage than to facilitate the creation of more states. Yet a marked feature of the Second Republic, as the period from October 1, 1979 to December 30, 1983 has come to be known, was a proliferation of demands for more states. The action of the Federal Parliament in recommending the creation of about 40 states was viewed by many as an irresponsible action at a time of serious economic crisis in the country.

Let me make some observations on federalism, human rights and democratic government in Nigeria in the light of my discussion of the state creation issue. First, the two major exercises in 1967 and 1975 which altered the inherited size imbalance between the initial three regions were carried out by military governments. The 1963 exercise which split the West did not address itself to the overall balance of power in the federation. Although there was some consultation, primarily between federal civil servants and various interest groups, prior to the 1967 exercise, the 1975-76 exercise was much more open and consultative. Yet neither exercise seemed to have stemmed the tidal wave of demands for state creation. This then leads me to my second observation.

That is that, although Nigerian federalism is based, as I have argued, on the satisfaction of ethnic rights, it has never been clear how such rights are to be defined for the purpose of state creation. This is partly a practical constraint, in the sense that it is almost impossible to delimit a territorial space that will be ethnically homogenous, or which will not include ethnic individuals whose territorial bases are in another state. It is also partly due to a conceptual ambiguity in how, for instance, an ethnic group is to be defined, thereby providing universal criteria for determining the legitimacy of demand for state creation. The criteria which guided the Irikefe Panel, for instance, are in themselves woolly, viz the need (a) to bring government closer to the people; (b) to ensure even development; (c) preserve the federal structure of government; (d) maintain peace and harmony within the federation; and (e) minimize minority problems. My own conjecture is that the salience of state creation as a policy issue in Nigeria reflects attempts, particularly in the post-war period, by various fractions of the political class to acquire political power at the state level as a means to the accumulation of wealth.

Thirdly, the 1967 and 1976 state creation exercises have contributed significantly to tipping the balance of power between the federal and state governments in favor of the federal government. Many of the new states have not been economically viable, and thus lack the fiscal resource base with which to carry out their statutorily allocated functions. The result is that they have increasingly come to rely on the center for conditional and

non-conditional grants. Even in some cases, the center has had to assume direct responsibility for some state functions (e.g., higher education). But federal preeminence in Nigeria must also be related to other aspects of Nigeria's political economy--the phenomenal increase in revenue from petroleum, the fall in the world prices of primary commodities, constitutional provisions which restrict or prohibit the states from obtaining international loans, the imperative of national planning which assigns an important coordinating role to the federal government and the civil war itself. Also important, of course, is the fact of military rule itself. This is not simply because of the command hierarchy of the army and the fact that state governors are appointed from the center. It is also, and more importantly perhaps, due to the virtual absence of experienced politicians at the state level under military rule to stand up for state rights. Much has been written in this respect about the crucial role played by a number of federal civil servants, the "Super" Permanent Secretaries between July 1966 and July 1975 in consolidating the federal preeminence over the states.

One example will illustrate the extent to which military rule eroded the legislative competence of the states. The creation of the 12 states in May 1967 was accompanied by the introduction of a number of constitutional changes which redefined the statutory relationship between federal and state governments. According to the changes, the legislative and executive powers of the states were limited to residual matters, and the specific consent of the federal government was required before a state could exercise its discretion in respect of any matter included in the Concurrent Legislative List. The background for those changes, it should be pointed out, was the declaration of emergency in the country on May 27, 1967 to deal with what turned out to be incipient secessionist measures which the then Eastern region was embarking upon.

That was not, however, the first time a state of emergency had been declared in the country. Under civilian rule in May 1962 a state of emergency was declared in the West following disturbances in the House of Assembly. It involved a suspension of the region's constitution and the appointment of an Administrator by the federal government to oversee the administration of the region for an initial but renewable six-month period. In taking this action, the federal government was exercising powers granted to it by the 1960 Constitution.

Another area of federal-state relations which deserves some passing reference is what is generally referred to in Nigeria as fiscal federalism, important because it pertains to the financial competence of the two levels of government. It touches on issues concerning, among others, who should be the taxing authority, whether the taxing authority should also be the collecting authority, and whether taxes collected should be retained in part or in a whole by either level of government, and what principles should govern the allocation of revenue to the states. It is this last issue, the revenue allocation one, which has generally proved the most controversial problem of fiscal federalism in Nigeria; so controversial that in 1953-54 it resulted in secessionist threats by the then Western Region and by the then Eastern Region in 1964.

Under civilian rule between 1960 and 1966 and before the creation of states in May 1967 the basis for revenue allocation was as follows:

- (1) Revenue raised, collected and retained by the federal government: company tax (100%); import and excise duties on beer, wines and liquor, import duties (except on motor spirit, diesel oil and tobacco) (66%); and mining rents and royalties (15%).
- (2) Revenue raised and collected by the federal government and transferred to state governments on the principle of derivation: export duties on primary produce (100%); import and excise duties on motor spirit, diesel oil and tobacco (100%); and mining rents and royalties (15%).
- (3) Revenues raised and collected by the federal government, credited to the Distributable Pool Account and shared among the states on a specified percentage basis: import duties (except on beer, wines, liquor, motor spirit, diesel oil and tobacco) (35%); and mining rents and royalties (35%).
- (4) Revenues raised, collected and retained by state governments: personal income and poll tax, sales tax on produce (except on tobacco, motor fuel, diesel oil, hides and skins), license and government service fees, fines, rents on government property, revenue from lotteries, etc.

The Distributable Pool Account, intended to be a correction factor for disparities between the states created by the derivation principle adopted in the allocation of revenues, was based on the following formula: 42% for the North, 30% for the East, 20% for the West, and 8% for the Mid-West. The formula itself was based on a mix of the following factors: population, financial need, contribution to revenue and balanced development. With the creation of 12 states in May 1967, the formula was changed and state allocations were divided as follows: the allocation to the former Northern Region was divided equally among the six new states, each state receiving 7%, whereas that for the old Eastern state was divided apparently according to the relative populations of the three new states into which the state had been divided, viz. East Central, 17.5%; South-East, 7.5%; and Rivers, 5%. The distribution of the share of the former Western Region was also shared on a relative population basis between the Western state, 18% and Lagos state, 2%.

This new formula created considerable resentment, especially in the most populous Northern states (i.e., Kano, North-Central, and North-Western), where it was argued that the new arrangement did not take account of their declining revenue capacity and the need for balanced development. It was not until January 1970 that the federal government introduced a new revenue allocation formula which deemphasized the principle of derivation and relied more on the principles of need, equality among the states and balanced development. For example, the basis of sharing the Distributable Pool Account, hitherto based on derivation, was now to be shared on the basis of equality among the states and on the basis of relative population.

Some further developments occurred between 1973 and 1975. The 1974-75 Budget allocated to the federal government the responsibility for fixing the rate of income tax, although revenue from income tax still remained a state revenue. This had the effect of eliminating differences in "take-home pay" that then existed among people with the same income in the various

states. The following year, with the 1975-76 Budget, some further changes were announced. Customs and excise duties, formerly paid to the states, were now to be paid into the Distributable Pool Account while the federal government was to surrender to the account its share of royalties from off-shore and on-shore drilling. These changes were further blows to the derivation principle. The overall impact of these changes was to strengthen the fiscal capacity of the states, to increase the revenues accruing to them. But much more phenomenal was the increase in the federal revenue. Sam Oyovbaire has calculated that the federal revenue increased by over 14 times in a single decade and he attributed this to revenue yield from oil production.⁶ It must also be pointed out that, although the revenue capacity of the states was now strengthened and the principle for allocating transfers from the federal to state governments more equitable, all this has served to make them more dependent on the federal government.

Let me end the discussion of trends in Nigerian federalism with some observations on the constitutional structure of that federalism during the Second Republic (October 1979 - December 1983). The 1979 Constitution which provided the operational constitutive rules for the Second Republic created a Presidential executive, popularly elected by the national electorate. In this sense, it marked a departure not only from the practice under the First Republic but also from the practice in some of the member-states of the Commonwealth of Nations--Australia, Canada and India--which operate federal government. The case for this choice rested upon the consideration that Nigeria's experience during the First Republic showed that the distinction between head of state and head of government tended to exacerbate political conflict and clash in the polity.

In addition, the 1979 Constitution was deliberately designed to establish a strong center; so much so that, as Dudley has observed, "even an item like local government, which in most federal systems is left the exclusive preserve of the 'component' governments...has, in the Nigerian system, been made subject to federal control and regulation."⁷ The 1979 Constitution therefore continued the trend towards federal preeminence in Nigeria's federalism.

Trends in Human Rights

What trends in observance of human rights in Nigeria have emerged? Here again the tripartite analytical division of such rights into civil and political rights, communal rights, and social and economic rights must be kept in mind. Let us take civil and political rights. The various Nigerian constitutions have generally guaranteed the following civil and political rights:

- (a) the right to life;
- (b) freedom from inhuman treatment;
- (c) freedom from slavery and forced labour;
- (d) the right to personal liberty;
- (e) the right to a fair hearing;
- (f) the right to private and family life;
- (g) freedom of conscience and religion;
- (h) freedom of expression and the press;
- (i) freedom of peaceful assembly and association;

- (j) freedom of movement and residence;
- (k) freedom from discrimination;
- (l) freedom from deprivation of property without compensation; and
- (m) the right to vote and be voted for.

These rights are, of course, not absolute although they are entrenched and cannot therefore be set aside by ordinary legislative process. Where it becomes expedient to derogate from or suspend some or all of these rights, it is expected that such measures must be reasonably justified in the light of prevailing circumstances.

Whether these enumerated civil and political rights are dead letters or not depends on a rule-conscious citizenship prepared to bring their infringements to the attention of the judiciary. Their effective observance thus also depends on an impartial judiciary and a government which is prepared to submit itself to litigation and accept judgements against it. Nigeria has not been lacking in individuals and groups who are prepared to take the government to court, even under military rule, to assert the inviolability of these rights. On the other hand, however, the attitudes of the judiciary and the executive, to the enforcement of and compliance with these rights, have varied, both under civilian and military rule. In this respect, military rule can be said to be problematic to the enforcement of these rights because, almost by definition, it is unconstitutional rule as well as emergency rule. Military regimes have always proceeded by banning such mechanisms of freedom of expression, freedom of speech and freedom of association as political parties and para-political associations, thereby infringing the very basic right of individuals to choose their rulers. In this sense, military rule is analogous to colonial rule. Both are in a manner of speaking "closed" systems, depending more on force than on societal consensus for their existence.

But in another sense, and drawing from the Nigerian experience, one can say that military rule is at worst a partially "closed" system; that it has been less arbitrary than military rule elsewhere. It must be noted also that as far as infractions of civil and political rights are concerned, Nigeria has generally passed the litmus test of Amnesty International. If we define a liberal bourgeois democratic polity in terms of the overall observance of these rights, then Nigeria under both civilian and military rule since 1960 has been democratic. This view is consistent or compatible with the admission that there have been and there are violations of these rights at various phases of Nigeria's political history. But when we look at the picture in its entirety, what is inescapably clear is that counter-pressures to forces tending to curtail or infringe these rights are now firmly rooted in Nigeria's political and legal cultures. Let me now make some brief references to judicial decisions on some of the civil and political rights I referred to earlier on.⁸

(1) Right to personal liberty: In Minere Amakiri v. R. M. Iwowari (1973), the plaintiff, a journalist claimed a total of N10,000 as damages for false imprisonment, assault and battery against the defendant who was the A.D.C. to the military governor of the Rivers State. The A.D.C. had caused Mr. Amakiri to be given 24 strokes of the cane, had his head shaven and then detained for over 27 hours because Mr. Amakiri had written an article in the Daily Observer which was not only critical of the governor but had also appeared on the governor's birthday! The Acting Chief Justice of the state ruled in favor of the plaintiff.

(2) Right to fair hearing: In Awolowo v. Minister of Internal Affairs (1960), the plaintiff, leader of the Action Group, the opposition party, who was standing on a treasonable felony charge, had employed the services of an English Queen's Counsel who was qualified to practice in Nigeria to defend him. But the Minister of Internal Affairs exercised his power under Section 13 of the Immigration Act to declare that the entry of the counsel into Nigeria was not in the public interest. The plaintiff sought declaration that the action of the Minister constituted a violation of his constitutional right to fair hearing by being defended by a legal representative of his own choice. The presiding judge, Mr. Justice Udo Udoma, denied the plaintiff's application on the ground that the right to a legal representation of one's choice provided for by the 1960 Constitution contemplated a legal practitioner "not under a disability of any kind." This was duly interpreted to mean that if the practitioner was outside Nigeria he must be one who could have entered the country as of right, provided he was also enrolled to practice in Nigeria. In Tajudeen Bello v. The State (1981), the Federal Court of Appeal held that failure of the state to provide a legal practitioner to defend an accused person charged with a capital offense amounted to a denial of fair hearing under Section 33 of the 1979 Constitution.

(3) Freedom of conscience and religion: In Ojiegbe and Another v. Ubani and Another (1961), it was claimed that by fixing an election date on a Saturday, the sabbath day of the Seventh Day Adventists, the freedom of religion of some voters belonging to the faith was being violated. The Federal Supreme Court dismissed this position on the factual premise that, had all the adventists in the constituency voted, the result would not have made a difference to who won in the constituency. However, the interesting constitutional question whether the adventists were right to equate the exercise of the right to vote with work, or whether their right to freedom of religion had been infringed.

(4) Freedom of expression and the press: The 1979 Constitution provides that any individual is free "to own, establish and operate any medium for the dissemination of information, ideas and opinions," other than a television or wireless broadcasting station. In Okogie v. Attorney-General of Lagos State (1981), the courts decided that the word "medium" is not limited to the traditional mass communication media but to schools as well. On the basis of this interpretation the courts have held that any statutory proscription of private primary schools would constitute a violation of the right of proprietors of the proscribed schools to freedom of expression. Another interesting case on freedom of expression and the press is Tony Momoh v. Senate (1980), where the courts held that a journalist could refuse to disclose the source of his information before a Senate Committee under the protection of freedom of expression, although the issue whether a journalist could refuse to disclose his/her information source before a court was not considered.

(5) Freedom of personal assembly and association: In Adewole v. Jakande (1981), and also in Okogie v. Attorney-General of Lagos State (1981), the Lagos High Court ruled that the abolition of fee-paying primary schools in Lagos state was a violation of the right to assembly of the children affected because they would be forced into schools which were not of their own choosing.

(6) Freedom of movement and residence: The case of Shugaba v. Minister of Internal Affairs (1981), and that of Adewole v. Jakande (1981) both involved issues of freedom of movement. In the Shugaba case, the plaintiff had been deported to Chad by the federal government on the ground that he was not a Nigerian citizen. The High Court held that Shugaba was a Nigerian and that the deportation order violated his freedom of movement. It was also decided that the seizure of his passport would affect his freedom of exit from the country and was also a violation of the freedom of movement. In the Adewole case, the Lagos High Court decided that a circular by the Lagos state government purporting to abolish private fee-paying schools violated the freedom of movement of the affected students.

What about communal rights? As I indicated earlier on, Nigerian federalism is fundamentally based on a theory of communal rights. It should be restated that a bill of rights was entrenched in the Independence Constitution of 1960 precisely because of the need to protect communal rights of the minority ethnic groups in the country. However, these communal rights are not now simply rights belonging to minority ethnic groups but to all ethnic groups in the country. One way in which effect has been given to ethnic rights is in the creation of more states, from three to four in 1963, from three to twelve in 1967, and from twelve to nineteen in 1976. But there is another sense in which Nigeria's federalism has responded to ethnic rights.

I am thinking here of constitutional and statutory provisions for the application of such affirmative action-type policies as reverse discrimination or quota in the public sector in Nigeria. The justification for such policies has tended to be that they were needed to bridge the gap between those ethnic groups--not necessarily minority ethnic groups--which had been placed, either through conscious or unconscious public policies in the past, in a disadvantaged or uncompetitive position relative to other ethnic groups.

Consociational or affirmative action-type arrangements were included in the 1960 and 1963 Constitutions, as in provisions for the fair representation of ethnic minorities in the public services of the regions and the convention regarding proportionality in the allocation of ministerial appointments in the First Republic. Even a quota system was introduced into recruitment and perhaps in promotions in the army in 1961. That same year entry qualifications were reduced for Northerners seeking to join the army or enter the Nigerian Military School, Zaria. As Robin Luckham has pointed out in his study of the Nigerian army, this was "largely the result of the alarm of the Northern politicians in the Federal government at the small proportion of Northerners in the officers' corps--as in other federal bureaucracies to which similar remedies were applied."⁹ About the same time, from about the late 1950s, places were reserved for Northerners on the Higher School Certificate class at the King's College, Lagos.

If the application of these affirmative action-type policies was muted or rare during the First Republic, it was given prominence and encouraged under military rule. It was during the period of military rule that affirmative action-type policies were viewed as means for achieving some equitable distribution of employment in the various sectors of the national economy along ethnic lines. The policy area in which the policies were primarily targeted was policy on education. The policies were designed to deal with the educational imbalance in the country on a North-South axis,

with the advantage lying with the South. But within the South as within the North, there were also pronounced imbalances.

As a result, a national policy on admissions to certain categories of federal educational institutions was worked out in the 1970s and it involved some dilution of the merit principle. For instance, admission to federal government colleges, except to the King's College and the Queen's College, was to be based on 20% National Merit; 50% state quota and 30% Environmental quota; and to the King's and Queen's Colleges and Federal Advanced Teachers' Colleges, National Technical Teachers' Colleges and the Federal Technical College in Lagos, on 20% merit, and 80% state quota. Virtually the same formula was adopted for admission to the universities, with slight variations. I would point out, however, that the merit system is not altogether ruled out since a candidate must meet some national minimum standards before he/she is admitted to any of these institutions, particularly to the universities.

The 1979 Constitution consolidated on the explicit prominence given to ethnic rights by making justiciable statutory provisions for the reflection of the federal character in the country's public life. There is much force in Bill Dudley's observation that no other phrase captures the elite consensus underlying the Second Republic than "the federal character of the federation."¹⁰ It is another name for "ethnic balancing" in appointments to public office, in the allocation of the country's resources and in admission to federal institutions. At the state or local government level, it has its counterpart in the provisions for such appointments, allocations and admissions to reflect and recognize "the diversity of the peoples within its areas of authority."

The application of the federal character clause as a deliberate policy in admissions to federal and state institutions during the Second Republic generated controversy in the country. And what the controversy highlighted above all was the tension between human rights defined as individual rights, for example, the right to freedom from discrimination, and human rights defined as communal rights. What was surprising about the controversy was that no action was instituted in the courts to settle it; nor did it lead to the type of political demonstrations that erupted in Gujarat state in India in 1981 with the reservation of 25% of the places in medical schools for untouchables.

Let me now turn to human rights as social and economic rights. This is an area where much is yet to be achieved. Nigeria's political economy is still characterized by a galloping income disparity between the petit-bourgeois class and the working class peasantry. Rural-urban inequality is still escalating and the vast majority of the people live in poverty. The paradox of Nigeria's heavy social investment in the oil boom years of the 1970s was that it provided a few Nigerians with access to political power the opportunity to enrich themselves at the expense of the vast majority of Nigerians. No wonder such projects as the Universal primary education or free medical care have barely taken off. An important aspect of capitalism in Nigeria under both civilian and military rule has been the utilization of public funds in the form of government contracts and loans, among others, to prop up and serve the essentially economic interests of and facilitate the accumulation of wealth by the various fractions of the political class.

Military Rule Since December 31, 1983

Let me now turn to the present military government which came to power on December 31, 1983. I have avoided considering the causes or justification of military intervention in Nigerian politics. I think we need to focus less on the reasons why the military intervene, especially the precipitating ones, than on why such precipitating reasons do not lead to military rule, say in India or Italy or even in the U.S., and by military rule, I mean the formal capture of state power and the displacement of constitutionally or legally elected governments by the military. Formal military rule in that sense is not representative government, although the notion of a military-industrial complex would tend to suggest that, even in bourgeois, liberal democracies there was a sense in which the military could be said to be ruling.

The context in which the 1983 military intervention occurred is briefly the following. Federalism as operated by the political class during both the First Republic (1960-1966) and the Second Republic (1979-1983) involved significant deviations from the constitutive rules establishing that form of government. The 1983 elections like those of 1965 were manipulated and were characterized by blatant if sophisticated tampering with the electoral machinery and electoral processes. But what made 1983 more unbearable was not so much the arrogance and intolerance of the ruling party at the federal level as the conjunction of destabilizing factors unleashed by the world recessionary situation--the dramatic drop in oil revenue, the squeeze on international credit--as well as incessant disruption of public utilities, a rising unemployment worsened by run-away inflationary pressures and chronic shortages of food and other basic commodities. In fairness to the political class of the Second Republic, it must be conceded that some of these problems were the direct result of investment and other public sector macroeconomic decisions taken by the military governments that preceded them. Nevertheless, their imprudent and kleptocratic behavior compounded the problems.

One effect of the situation which I have described is a cynical and often-times skeptical attitude towards public office-holders. This even sometimes extends to a lack of confidence in the judiciary to provide redress from electoral fraud, something which is aided by the long-drawn-out judicial process. This cynical attitude has been extended to the present military government, as people have become impatient with its lack of a program of action to deal with the country's economic crisis, except in the negative sense of detailing and exposing the level of kleptocracy under the Second Republic. And this cynicism is buttressed by what is generally believed to have been the high level of corruption under previous military governments.

Against this background, let me briefly indicated what is happening to federalism and human rights under the present military government. Let us take federalism first. Federalism has been retained, even though like previous military governments in the country, the present government has suspended parts of the constitution in operation at the time it took over power. For example, sections of the constitution dealing with federal and state legislatures and executives have been suspended. But the 19-state structure has been retained and the military governors of the 19 states

are members of the National Council of States. No doubt we shall continue to see federal preeminence, but then this merely continues a trend which began in the 1960s.

It is in the area of human rights defined as civil and political rights that there have been significant developments. Here again, there is a tendency under all military governments to take off by taking measures that portend serious infractions of some of these rights. This is perhaps in the nature of military rule but also over a time period, there is a tendency for these infractions to be relaxed or lifted, at least partly in reaction to public outcry and pressures.

The following decrees passed by the federal military government have implications for civil and political rights.¹¹ The State Security Decree which empowers the government to detain people, who constitute threats to public order, for up to six months in the first instance without trial. The Public Officers (Protection Against False Accusation) Decree makes offensive any print or transmission, any false statement or any rumor calculated to bring public officers to ridicule or disrepute. The Recovery of Public Property (Special Military Tribunal) Decree empowers the Head of State to constitute a panel to "conduct an investigation into the assets of any officer who is alleged to have engaged in corrupt practices, unjust enrichment of himself or any other person who has abused his office or has in any other way been guilty of breach of the code of conduct for public officers contained in the fifth schedule of the constitution of the Federal Republic of Nigeria." The Political Parties (Dissolution and Prohibition) Decree dissolves and bans all political parties, other similar organizations and state creation movements.

There has already been public outcry against some of these decrees. For instance, The Public Officers (Protection Against False Accusation) Decree has been criticized because it would curb press freedom. The federal government had to explain that it was enacted to ensure that the press did its job well!!! The detention of Tai Solarin, the vocal social commentator, for an article he wrote in The Tribune, has been challenged in court and a Lagos High Court ordered the Chief of Staff, Supreme Headquarter to appear in court to show justifiable reason why Tai Solarin was being detained. Reactions to the Recovery of Public Property (Special Military Tribunal) Decree have also been critical. The Nigerian Bar Association expressed shock at the provisions of the decree and described the penalties as outrageous and excessive. The decree has also been criticized because it is to operate outside of Nigeria's criminal code and provides procedures and punishments under a new law for offenses committed under different laws. Concern has also been expressed that the decree provides for trial of civilians by the military and that it allows for no appeals. Above all, the concern is with due process and fair hearing, a concern which becomes all the more legitimate in the light of the Head of State's observation early in the New Year that the new military administration would not tolerate the "nonsenses" of litigation.

With respect to human rights defined as community rights, there is reason to believe that the new military administration will continue the practice of accommodating those rights and pursuing affirmative action-type policies already described. But even here too there have been some changes. First, critics of the administration have argued that the composition of the Supreme Military Council does not reflect the federal character of the

country in that it is preponderantly made up of Northerners, and Northern Muslims for that matter. The implication is that the coup was a Northern Muslim affair, inspired by the so-called Kaduna Mafia. However, later appointments to the National Council of States and the Federal Executive Council have reflected the federal character of the country. Secondly, the appointment of governors was not strictly based on consideration of ethnicity alone. Thus, some states do not have their indigenes as governors, but there are only some two or three such states. This practice was, however, common under previous military administrations. Thirdly, state creation movements have been proscribed. But it seems this was due to the belief that the country cannot now afford to create more states, given the state of the nation's treasury.

What has been done with human rights as social and economic rights? Free health and free education, both of which have been enjoyed in much of the country, will likely be suspended, especially in light of the economic situation in the country. In a recent interview, the Head of State was quoted as saying that Nigerians must now prepare to pay for these services. This possibility has led to some serious debate within the country as to whether, given the state of the country's economy, it could still afford the services or to continue subsidizing them at current rates. The student unions in the various universities are in no doubt about this and they have indicated their opposition to any increases in their tuition and boarding fees.

IV

Some Conclusions

Let me indicate what my discussion so far suggests, particularly about federalism, human rights and military rule. Military rule in Nigeria has been "benevolent" at best, in the sense that it has rarely led to strong arm or strong man rule which the notion of a military rule or military dictatorship would suggest. I think this is due partly to the federal character of the Nigerian political system. It is also partly due to the important and critical role which the bureaucracy has inevitably had to play in the administration of the country under military rule. Social and cultural forces in the country have combined to prevent in Nigeria the excesses of arbitrary rule which the notion of military rule tends to conjure in people's mind.

With respect to federalism and military rule, I have indicated the trend towards federal preeminence which was facilitated by military rule, although other political and economic factors contributed to it. But one other point which needs emphasis is that, growing *pari passu* with federal preeminence, especially under military rule, was the notion of federalism as cooperative federalism in Nigeria. This is no doubt a strange development in view of the secondary role which state governments have played and are playing in the areas of national planning as virtual agents for the delivery of federal projects. Nevertheless, I think the notion of federalism as cooperative federalism has survived as part of the political or ideological myths of the Nigerian state.

As for human rights, what needs emphasis in conclusion is that, because of Nigeria's underdevelopment and the liberal bourgeois democratic ideology on which Nigerian state has been built, objective conditions have tended to militate against the enjoyment, even of civil and political liberties by the vast majority of Nigerians. A result of this is that the enjoyment of these rights as well as organizing for their protection has largely been an urban middle class affair. This situation is, of course, further compounded by the duality of legal systems in the country, especially the problem which the coexistence of common law, Shari's law and customary law poses for the exercise and enjoyment of these rights.

V

Future Trends?

What about future trends? The cynicism which characterized politics in the Second Republic was so deep that, in the last three months or so before military coup, people had lost faith in politics and in politicians. This explains the popularity and ecstasy which accompanied the coup. Yet this popularity is yet to be adequately tapped by the present military regime and I think it has now been realized that the popularity of the coup does not automatically translate into popularity of the coup makers. But because of the deep cynicism, reinforced by reminiscences of the politics of the penultimate years of the First Republic, people are not even now talking of an agenda for demilitarization. It is not that the military has not encouraged such talk. That is to be expected. What is troublesome is that civilians are not also talking about it. Maybe it is too early yet for the issue to be debated. But some currents are already emerging, although it is unclear how deep they are.

First, there is the suggestion made by retired Major-General Danjuma that before power is handed back to civilians again, the military should consciously select and groom those to whom power is to be handed. The implication then is that the military should have played a much more active role in the last few years of military rule between 1975 and 1979 to ensure that power was handed over to the "correct" crop of politicians. Secondly, there is muted talk about whether federalism is after all well-suited for Nigeria; that in spite of two exercises in state creation, the potential for perpetual domination by one section of the country has not been destroyed. While no one has suggested disintegration of the country or secession, there has been open talk, even before the 1983 coup, of a confederal arrangement as an alternative to federalism.

Yet, it seems to me that the enduring promise as well as the enduring challenge of Nigeria, if it is to remain Nigeria, is that it is still a nation in the making, still in the process of reconciling structurally and historically-determined problems, still in the process of untangling its rich heterogenous and plural web, so that the idea of Nigeria as a nation can become stronger, more durable. If this has been problematic so far, it has been owing less, in my view, to federalism than to certain colonially-inherited assumptions about government, assumptions which in any way, are alien to the democratic principles which underline government in some of the traditional political systems in the country.

FOOTNOTES

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2. Eric Nordlinger, Conflict Resolution in Divided Societies, Cambridge, Mass: Center for International Affairs, Harvard University, 1972; M.G. Smith, The Plural Society in the British West Indies, Berkeley: University of California Press, 1965.
3. Billy Dudley, An Introduction to Nigerian Government and Politics, Bloomington, Indiana: Indiana University Press, 1982, p. 58.
4. Ibid, p. 132.
5. In discussing the question of revenue allocation, I have relied on, Dudley, Introduction to Nigerian Government and Politics, pp. 253-264; and S. Oyovbaire, "The Politics of Revenue Allocation," in K. Panter-Brick (ed.), Soldiers and Oil: The Political Transformation of Nigeria, London: Frank Cass, 1978, pp. 224-249.
6. Oyovbaire, op. cit., p. 234.
7. Dudley, op. cit., p. 166.
8. Some of these cases are discussed in, A. Ojo, "Constitutional Developments in Nigeria Since Independence," pp. 1-20, and L.O. Adegbite, "Human Rights in Nigeria," pp. 228-253, both in T.O. Elias (ed.), Law and Social Change in Nigeria, Lagos: University of Lagos and Evans Brothers Ltd., 1972; J. Akande, Introduction to the Nigerian Constitution, London: Sweet and Maxwell, 1987; and O. Fowehinmi, Nigerian Constitutional Law Reports, Vol. 2, Lagos: Nigerian Law Publications Ltd., 1981.
9. Robin Luckham, The Nigerian Military 1966-67, London: Cambridge University Press, 1971, p. 188.
10. Dudley, op. cit., p. 162.
11. My discussion of the decrees is based partly on reports in West Africa, 19 March 1984 and 9 April 1984.

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CFS NOTEBOOK is published by the Center for the Study of Federalism,
Temple University, Gladfelter Hall, Philadelphia, Pennsylvania 19122.

Editor: Robert D. Thomas

Production: Mary A. Duffy
La Von Drennon

CFS NOTEBOOK is distributed on a biannual basis to members of the
Conference for Federal Studies.

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