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**RE-EXAMINING TRUE FEDERALISM CONUNDRUM IN  
NIGERIA**

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**ABSTRACT**

*This article examined the debate on true federalism in Nigeria. Nigeria is a multi-ethnic nation with a versed population of about 200 million people. It was as result of the diversities in Nigeria that the British colonial masters instituted federalism in the country. Federalism in every country has its recipe akin to the provisions of the Constitution. The Nigerian version has Exclusive Legislative List which the federal government alone can legislate or act upon, and the Concurrent Legislative List which the States and the Federal government can legislate upon. The Residual List (leftovers) is legislated upon by the states alone, and a sharing formula of revenue favourable to the federal government. Nigerian federalism have been criticized on the ground that the Constitution yielded to so much power to the central government, thereby positing that there is no true*

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*federalism in Nigeria. There is no gainsaying the fact that there are some challenges confronting federalism in Nigeria. This article concluded that there is true federalism in Nigeria despite its shortcomings. It is suggested that the Constitution should further be altered and more powers should be devolved to the component units so as to promote socio- economic growth at the grassroot.*

**Key words:** Federalism, Nigeria, Constitution, Power devolution, true federalism.

## 1. INTRODUCTION

Federalism in Nigeria could be traced to the colonial era. There is no doubt that there are a series of problems bedevilling the entity known as Nigeria, and these range from insecurity, improper devolution of power, inadequate and unacceptable sharing formula, constitutional constraints, secession imbroglio, ineffective Federal Character, quest for autonomy, resources control, quest for regionalism, etc. These problems have, in one way or the other, hindered economic and political development. Nigeria has numerous ethno-tribal groups and a vast population of about 200.96 million, ranking 7<sup>th</sup> in the world<sup>2</sup> in terms of population and a landmass of about 923,768kmsq.<sup>3</sup> Being a heterogenous nation, its ethnic groups are over 250 distinct

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<sup>2</sup>Collated in 2012 by the Nigeria National Bureau of Statistics; see also World Bank and United States Census, <<https://tradingeconomics.com>>, accessed 17 January 2023.

<sup>3</sup>Country Overview, available on<[www.nationsencyclopedia.com](http://www.nationsencyclopedia.com)> accessed 23 June 2023.

nationalities with respective cultures, traditions, practices, values, political leadership and successors. Nigeria adopted a federalist political structure to ensure efficient administration of the country's vast territories and its ethno-tribal heterogeneous population. However, some analysts have stated that Nigerian federalism did not just emerge, rather they were of the view that the evolution of Nigerian federalism is a deliberate creation of the British colonial government to maintain a neo-colonial control of the country even after independence.<sup>4</sup> On the other hand, they argued that Nigerian federalism was borne out of historical and geographical factors.

The Lyttleton Constitution marked the beginning of a full-fledged federal system as it devolved powers to the center and the sub-nationals. Again, the 1960 and 1963 constitutions embraced federalism because those two constitutions recognised the central government and the component units and power was devolved between the central government and the sub-nationals during the Westminster system. The Constitution of the Federal Republic of Nigeria in 1979 jettisoned the Westminster system of government for an American-styled presidential system, and the issue of federal character and fundamental rights were introduced. The 1999 constitution came into being and maintained the federal system of government. It retained the fundamental rights, federal character, grants power to the federal government, states and local governments, etc. All the constitutions have their procedures for amendment.

Flowing from the above, it is glaring that federalism has been enthroned in Nigeria for long. Even during the military administrations, there were federal, states/regions and local governments, all performing their various functions

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<sup>4</sup>Available on<[www.britannica.com](http://www.britannica.com)>, accessed 30 May 2023.

as enshrined in the Constitution or the various decrees at that time, irrespective of the fact that there were draconian laws during the military era. The question that comes to mind is whether the federalism that Nigeria practices today is true or false as many have posited that there is no true federalism in Nigeria. From the analysis above, Nigerian federalism is basically on the provisions of the various constitutions of the country at one particular time or the other. It is not very clear what true or false federalism seem or appears to mean but suffice to state categorically that the Constitution of a country shapes its federalism and if there is any thing wrong with the Constitution or the practice of federalism, there is always an option of amending the Constitution to safeguard and remedy the situation. There is no federal system without its shortcomings because there is no perfect constitution or federalism any where.

## 2. MEANING OF FEDERALISM

Federalism is a concept or system of government in which power is devolved or divided among the tiers of government. This sharing of power must be enshrined in the Constitution. It is the method of dividing powers so that, the central and component units are each, within a sphere, co-ordinate and independent.<sup>5</sup> It follows that the power-sharing between the government at the centre and the sub-nationals is constitutionally done. And the tiers of government must be independent – and autonomy but should be cooperative in their dealings. However, the Supreme Court of Nigeria held that:

There is, however, no universal agreement  
as to what federalism is. A federal

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<sup>5</sup>K.C. Wheare, *Federal Government*, 4<sup>th</sup>edn.(London: Oxford University Press 1963), 18.

government would mean what the Constitution says it means and this must be procured within the four walls of the Constitution only...<sup>6</sup>

Although, a particular country's Constitution sets up a federal system, no where did the Constitution of any known country define federalism.<sup>7</sup> The 1999 constitution of Nigeria provides that Nigeria shall be a federation consisting of states and a Federal Capital Territory<sup>8</sup>; there shall be 36 states in Nigeria<sup>9</sup>. Much literature on federalism often starts with the issue that federalism lacks a standard definition. It follows therefore, that the meaning of federalism differs and means different things to people living in a particular geographical location. This assertion may be acceptable in that a definition of federalism accepted by a people in one specific area might not be good enough for those in another area. It is against this backdrop that Omoregie<sup>10</sup> stated that:

Social scientists involved in federalism studies appeared to be most, if not solely, culpable of the pitfall of denying the definitional consistency or clarity of federalism. They seem to equate perspective variations with explaining what the notion is a proof of its formlessness. In an attempt

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<sup>6</sup>FRN v. Amache (2004) 4 WRN 1.

<sup>7</sup>Cliffsnotes Study Guides, 'Concepts of Federalism,' <<https://www.cliffsnotes.com/study-guides/american-government/federalism/concepts-of-federalism>> accessed 12 June 2023.

<sup>8</sup>S.2(1) CFRN 1999 (as Amended).

<sup>9</sup>Ibid, s.3(1).

<sup>10</sup>E.B. Omoregie, Nigeria, Between Re-Federalization and Disintegration, Being a Paper Delivered at a Symposium with the Theme: Critical Perspectives on Political Restructuring in Nigeria in the Department of Political Science, University of Pretoria, Hatfield Campus, Pretoria, South Africa, (16 July 2018), 5.

to clarify this avoidable dilemma, the sociologist, John Locke, rejected the broad definition of federalism favoured by social scientists preferring instead a narrow differentiated definition favoured by the legal academy. I am persuaded by the latter because, really, the apparent variation in defining federalism is similar to the way several persons who saw an elephant from different directions may describe the gargantuan beast. Yet, the different descriptions do not detract from the anatomy of the elephant nor its physiology...

It, therefore, follows that there seems not to be a generally acceptable definition of federalism the world over. Nonetheless, scholars are not agreed on the definition or description of federalism, and it is a fact that one does not decide on merit of federalism in the abstract but rather on its actual meaning for particular societies.<sup>11</sup>

Federalism originated from the word "federal" which in Latin means *foedus*. It means a covenant, treaty or contract to which sovereign states, or communities in equal degree of dependence or independence are parties.<sup>12</sup> Federalism is a concept of governance that is unique and easily distinguishable from confederacy and unitary government. The Black's<sup>13</sup> Law Dictionary sees federalism as "the relationship and distribution of power between the national and regional governments within a federal system of

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<sup>11</sup> A.E. Obidimma and E.O.C. Obidimma, 'Restructuring the Nigerian Federation for Proper Functioning of the Nigerian Federation' (*Public Policy and Administration Research vol. 5, No 9 2015*), 147.

<sup>12</sup>*Ibid.*

<sup>13</sup>B. A. Garner, *Black's Law Dictionary, 7<sup>th</sup>edn.*(USA: West Group Publishing Co. 1999), 627.

government. "The same dictionary defines a federation as "a league or union of states, groups, or peoples arranged with a strong central authority and limited regional sovereignties - though the individual states, groups, or peoples may retain rights of varying degrees. "Federalism could mean a system of government in which sovereignty is constitutionally divided between a central governing authority and constituent political units.<sup>14</sup> It is based upon democratic rules and institutions in which the power to govern is shared between national and state governments, creating a federation.<sup>15</sup>

According to Wheare,<sup>16</sup> "federalism is the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent."The key words in Wheare's definition above are: 'dividing powers' and 'independent.'dividing powers' may mean that powers should be constitutionally shared among the tiers of government, that is, the central (federal), regional or state and local governments, provinces or districts respectively. 'Independent'on the other hand, may mean that the said tiers of government should operate or function on their own without interference by one another except in accordance with the provisions of the covenant or agreement, always embedded in the Constitution establishing such a concept. Wheare's definition of federalism has a distinctive mark in that neither the central nor the component units are subordinate to each other, but rather, the two levels of government are coordinate and independent. Again, Wheare's perspective of federalism has been criticised on the grounds that his definition

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<sup>14</sup>Lumenlearning, 'Federalism in the Constitution,'<<https://courses.lumenlearning.com/boundless-politicalscience/chapter/federalism-in-the-constitution>>accessed 12 June 2023.

<sup>15</sup>*Ibid.*

<sup>16</sup> K. C. Wheare, *Federal Government*, 4<sup>th</sup>edn. (London: Oxford University Press, 1963), 18.

of federal principle is too narrow, the excessive legal approach and undue reliance upon the American experience, there are still some major merits in his work such as reshaping of the studies done on the concept of federalism.<sup>17</sup>

In 1918, Marshall held that the national government wielded power at the detriment of the units under the Constitution ordained in the name of the people and that it was not a compact among states. In *Attorney General for Commonwealth of Australia v Colonial Sugar Refinery*,<sup>18</sup> the court stated that "the natural and literal interpretation of the word 'federal' confines its appellation to cases in which states, while agreeing on a measure of delegation of powers to a Commonwealth government, yet in the main continue to preserve their original Constitution..."

Nwabueze<sup>19</sup> stated that federalism is:

An arrangement whereby the powers within a government within a country shared between a national, country-wide government and a number of regional governments in such a way that each exists as a government separately and independently from the others, operating directly on the persons and property within its territorial area, with a will of its own apparatus for the conduct of its affairs, and with an authority in some matters exclusive of all others.

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<sup>17</sup>A.O. Adedeji and I.E. Ezebasili, 'Resturcturing and Clamour for 'True' Federalism in Nigeria: A Comparative Analysis' (*Advances in Social Sciences Research Journal*, vol. 5, No 2 2018), 160.

<sup>18</sup>(1914) A.C 237, 252.

<sup>19</sup> B.O. Nwabueze, *Federalism in Nigeria Under the Presidential Constitution*, (London: Sweet and Maxwell, 1983), 1.



Also, the Supreme Court of Nigeria, in *Federal Republic of Nigeria v Amache*,<sup>20</sup> stated that the definitions, meanings, concepts or constituents of federalism must be related to how it is adopted in any government's Constitution. The apex court further stated that:

There is however, no universal agreement as to what is federalism. A federal government would mean what the Constitution says it means and this must be procured within the four walls of the Constitution only. Although, the word federalism may be knot in the theory of political science, it conveys different meanings in different constitutions as the constitutional arrangement shows in the legislative unit.

The words of the Supreme Court of Nigeria above is apt to describe the nature of federalism, in that what is obtainable in the US federalism could be different from the practice of federalism in Nigeria. The Constitution of a country is, therefore, the determinant factor of that country's federalism as it provides the mode of the practice of its federal structure. The Constitution devolves powers to various tiers of government as agreed by the people of a particular country or through their representatives. Also, federalism allows distinct communities, defined by their territorial boundaries, to exercise guaranteed autonomy over some issues of specific importance to them while being part of a larger central or federal union through which shared powers and responsibility are exercised over matters of common concern.<sup>21</sup> To

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<sup>20</sup>(2004), 4 WRN 1.

<sup>21</sup> E. Bulner, *Federalism*, 2<sup>nd</sup> edn, (Sweden: 2017), available on <<http://www.idea.int>>accessed 7 June 2023.

achieve this, the components of a federal system include, in addition to legislative and executive and sometimes, judicial institutions at each level of government, a relatively rigid constitution that sets out the distribution of powers among the various levels of government and a supreme judicial body that is responsible for adjudicating disputes between them.

### **3. CHARACTERISTICS OF FEDERALISM**

Flowing from the definition of federalism above, the following characteristics of federalism are deduced. They are as follows:

#### **i. Orders or Tiers of Government**

There are at least two orders of government, one for the whole country (government at the centre) and the other for the regions or states (sub-nationals). Nigeria has three tiers of government: federal, state and local governments. The regions or states and local governments or provinces are referred to as constituent or component units or sub-national governments of the federation. Some federations like Australia, Brazil, Ethiopia, India, Malaysia, Mexico, Nigeria and the U.S.A., refer to regions as states. Argentina, Canada, Pakistan, South Africa refer to component units as provinces. Austria and Germany refers to them as lander; and Switzerland, cantons.<sup>22</sup> There are both regions and communities in Belgium and autonomous communities in Spain. Russia has regions, republic, autonomous areas, territories and cities of federal significance. There is a division of power between the government at the centre and the component units, always

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<sup>22</sup>G. Anderson, *Federalism:s An introduction, Special edn. for NBA Conference:* (London: Oxford University Press 2008), 3.

embedded in that country's Constitution. Each tier of government carry out the functions and powers conferred on it by the Constitution.

## ii. Written Constitution

A federation must have a workable written constitution. The US and Nigeria have their written constitutions which spell out the power of various tiers of government and the procedure for amending the said Constitution.<sup>23</sup> The notion of Constitution applies to a system of law and government by which the affairs of a modern state are governed.

Also, in *A.G. Federation v A.G. Abia State*,<sup>24</sup> the Supreme Court of Nigeria stated that:

It must be remembered that the fountain of all our laws is the Constitution; it is also the composite document setting out how the country is to be held together. It is not a document to be read with levity or disdain, every section must be given its meaning, ie, every section has meaning and not devoid of adequate interpretation. It is the very foundation of the nation's existence. Any slightest disruption of the Constitution be it a dispute apparent or lurking must be addressed in the court when the court's intervention is sought.

The pronouncement of the Supreme Court above on the significance and function of the Nigerian Constitution is very apt, particularly in the context

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<sup>23</sup>S. 9 CFRN 1999 (as Amended).

<sup>24</sup>(2001) 11 NWLR (Pt.725), 507.

of the multi-ethnic nature of the country. Again, the Supreme Court held in *Nafiu Rabi v The State*<sup>25</sup> that:

The function of the Constitution is to establish a framework and principle, broad and general in terms intended to apply to the varying conditions which the development of our general communities must involve, ours being a plural dynamic society and therefore mere technical rules of interpretation of statutes are to some extent inadmissible in a way to defeat the principles enshrined in the Constitution.

Also, Aderemi JSC in *A.G. Federation v Abubakar*,<sup>26</sup> said:

Let me point out that no constitution is perfect in that it provides a clear-cut and/or permanent or everlasting solution to all societal problems that may rear their heads from time to time. As the society grows or develops so also must its Constitution, the grondnorm – whether written or unwritten. If any geographical area which has a written constitution will grow along with that society will depend on whether that area is blessed with articulate, forward – looking industrious and diligent legislators.

The 1999 Constitution (as amended) has altogether thirteen features, which includes; written and rigid, supremacy, republican, federalism, presidential

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<sup>25</sup>(1981) 2 NCLR, 293.

<sup>26</sup> (2007) 3 NWLR (Pt. 1022), 601.

system of government, separation of powers, bi-cameral legislature, the rule of law, independence of the judiciary, fundamental objectives and directive principles of state policy and duties of citizens, fundamental rights and acquisition, renunciations and deprivation of citizenship.<sup>27</sup> Country's Constitution is supreme over any other laws of the land either in the state or country.<sup>28</sup> Where any law conflicts with the provisions of the Constitution, such other law is null and void to the extent of its inconsistency.

### iii. Devolution of Power

Constitutional allocation of legislative, including fiscal powers to the two other tiers of government is another characteristic or feature common to a federal state. This is the formal allocation of legislative, including fiscal powers to the federating units, ensuring genuine autonomy for each order. However, federations differ greatly in the way and extent to which they define distinct powers for the federating units. The 1999 Constitution of Nigeria (as amended), vested the Federal Republic of Nigeria's legislative powers in a National Assembly consisting of a Senate and a House of Representatives.<sup>29</sup> The National Assembly shall have power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in part I of the Second Schedule to the Constitution.<sup>30</sup> The power of the National Assembly to make laws for the peace, order and good government of the federation concerning any matter included in the Exclusive Legislative List shall save

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<sup>27</sup> I.O. Smith, *A Constitution of the Federal Republic of Nigeria Annotated* (Lagos: Ecowatch Pub. Co. 1999), xxx.

<sup>28</sup> A typical example is the CFRN 1999 (as Amended). See s.1(1) thereof.

<sup>29</sup> S.4(1) CFRN 1999 (as Amended).

<sup>30</sup> *Ibid*, sub (2).

as otherwise provided in the Constitution, be to the exclusive of the Houses of Assembly of States.<sup>31</sup> And the National Assembly, without prejudice to the power conferred by the Constitution, shall have power to make laws concerning matters in the Concurrent Legislative List and any other matter for which it is empowered to make laws in accordance with the provisions of the Constitution.<sup>32</sup> From the foregoing provision of the Constitution, it is obvious that the 1999 Constitution (as amended) yielded to much power to the federal government of Nigeria to the detriment of the component units.

#### **iv. Judiciary**

Federalism accommodates an umpire or procedure (usually involving courts), but sometimes referendums or an upper house to rule on constitutional disputes between governments. In a federation, disputes often arise between the Federal, States and Local Governments. It is therefore necessary that a virile, impartial, and independent judiciary be in place to interpret the provisions of the Constitution and any other laws of the land where the need arises. In *Bailey v Drexel Furniture Company*<sup>33</sup> the congress of the US passed the Child Labour Tax Law under which the plaintiff company was assessed \$-312.7 in year 1919. On the plaintiff's suit, the U.S. government argued that the enabling power to enact the law was conferred by section 8, Article 1 of the U.S. Constitution. The US Supreme Court held that such power belonged to the state and not congress and declared the law null and void. Also, in *A.G. Lagos v A.G. Federation*<sup>34</sup> where there was a dispute as to whether it is the states or the federal government that is to develop the physical structure of

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<sup>31</sup>*Ibid*, sub (3).

<sup>32</sup>S.4(4) CFRN 1999 (as Amended).

<sup>33</sup>259 U.S 20.

<sup>34</sup>(2003) 12 NWLR (Pt. 833), 8.

their various states, the Supreme Court of Nigeria held, among other things, that: "where the federation is permitted to exercise a bare and naked power to regulate and plan the development of forms and cities in the state, we could as well forget about federalism." This article applauds the courts in the above two cases for upholding the tenets of federalism.

#### **v. Other Characteristics of Federalism**

Apart from the characteristics of federalism stated above, other characteristics of federalism include: non centralisation; elements of maintaining the federal principle; the provision of a set of processes and institutions for facilitating or conducting relations between government and some special arrangements, notably in Upper Houses, for the representation of the constituent units in key central institution to provide for regional input in major decision-making.<sup>35</sup> It must, however, be noted that not all the countries that practice federalism meet the characteristics stated above. Federalism is practiced in various countries subject to the country's constitutional provisions and prevailing local circumstances. In Nigeria, states do not have their constitutions. There is also no provision for state police in the Constitution,<sup>36</sup> unlike in the US where various states have their constitutions. This does not mean that Nigerian federalism is false or untrue but it is what is embedded in the Constitution that guides the practice of federalism in any country. The issue is whether such country normally operates in a federal manner that is, that there are some genuine, constitutional based autonomy at both levels.

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<sup>35</sup> D. Webster, R.B. Taney, L. Brandeis and J. Althusius, 'Federalism/Definition, History, Characteristics and Facts' <<https://www.britannica.com/topic/federalism>> accessed 1 July 2023.

<sup>36</sup> S. 214, CFRN 1999 (as Amended). See also item 45, Pt. I, 2nd Sch. to the CFRN thereof.

#### **4. MERITS OF FEDERALISM**

Federalism ensures peace, stability and mutual accommodation in countries with differences in identity, ethnicity, religion or language, otherwise referred to as heterogeneous society. In larger or diverse countries, federalism can also improve service delivery and democratic resilience, ensure decisions are made at the most appropriate level, protect against the over-concentration of power and resources at the centre and create more opportunities for democratic participation.<sup>37</sup> Another advantage of federalism is that it provides a framework for the recognition of ethnic, religious, linguistic or other cultural communities reflecting their desire to be recognised as a people with distinct identity and particular interests.

Federalism also guarantees substantial autonomy to the component units, which exercise partial self-government and still share certain functions with the federal or central government. Federalism, therefore, requires power sharing between the central or federal government and the state or regional government on one hand, and the local or provincial government on the other hand. Federalism also allows political groups or people from the minority at the central level and the state or regional level to hold offices. This can have a beneficial effect in promoting political inclusion and a balance of power in countries with a dominant ethnic group at the national level. Federalism also allows sub-national governments develop their ideas in so far it will not run contrary to the central government's policies or the Constitution. Unfortunately, in Nigeria, the sub-nationals are handicapped as they are not given full autonomy thereby putting all their efforts towards developing their ideas in jeopardy.

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<sup>37</sup>*Ibid.*



Again, by allowing sub-nationals to carry out and implement their policies and programmes, federalism frees the central government from having to handle much of domestic administration and service delivery, enabling it to focus on strategic challenges and national priorities. With federalism, the state or region and local provinces will help reduce the burden on the central government in terms of salaries and allowances of staff, the cost of running the offices, etc.

The sub-nationals provide a useful training ground for grassroots citizens, representatives, and public officials. In a centralised country, policies take place in the capital and those far removed from the capital have few opportunities to participate in holding office and making decisions. The fear of minority tribes being dominated by the majority tribes or races are reduced or allayed by a federal Constitution and system of government, as each ethnic group or race is given opportunity to rule itself and manage its affairs in its own way at least at the local government level. In a multi-ethnic nation like Nigeria, the fear of one ethnic group dominating another usually necessitates the adoption of a federal system of government to preserve their freedom and independence or autonomy. Federalism is usually adopted to perfect the interests of minority ethnic people and races, who retain their identity and independence, have the opportunity to rule themselves and run affairs and priorities in their own way.<sup>38</sup>

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<sup>38</sup>*Ibid.*

## 5. DEMERITS OF FEDERALISM

Despite the merits of federalism, as stated above, federalism also has its demerits as follows:<sup>39</sup> federalism may lead to increased inequality between sub-national governments. This is because of their different natural resources or other revenues or levels of development. The Constitution must therefore, provide for effective mechanism for revenue sharing. In Nigeria, the 1999 Constitution (as amended) makes provision for 13% derivation for littoral states with natural resources and other states where oil and natural resources are being produced.<sup>40</sup> Another demerit of federalism is that a strict division of power between the central government and the regional or state government on one hand and local or provincial governments on the other hand will result in series of litigations and disputes would come up from time to time and the need for the interpretation of the Constitution as to the devolved powers would ensue from time to time. Thus, in *A.G. Lagos State v A.G. Federation*,<sup>41</sup> Lagos state along with other states of the federation challenged the Nigerian Urban and Regional Planning Act (Decree No 88) of 1992 as infringing on the constitutional right of the states to develop the physical structure of their States, thereby violating the federal structure principle of the 1999 Constitution (as amended). The Supreme Court among other things, held that section 1 subsection 3 of the 1992 Urban and Regional

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<sup>39</sup>Lumenlearning, 'Advantages and Disadvantages of Federalism,' <<https://courses.lumenlearning.com/atd-odessa-federalgove/chapter/advantages-and-disadvantages-of-federalism/>>. See also, 'Advantages and Disadvantages of Federal System of Government', available on <<https://bscholarly.com/advantages-disadvantages-federal-system-government/>> accessed 17 June 2023.

<sup>40</sup> See the Proviso to s.162(2) of the CFRN 1999 (as amended), bothering on the 13% derivative principles to States with natural resources.

<sup>41</sup>(2003) 12 NWLR, (Pt. 833), 8.

Act offends the principles of federalism and same is unconstitutional and therefore, null and void. The point to underscore here is that there is multiplicity of suits in states that practice federalism either between the central government and the states or states and local government or districts. Also, in *Bamidele v Commissioner for Local Government*,<sup>42</sup> the plaintiff brought an action against Lagos State Government over the interference with the running of Alayabiagba market located at Lagos Island. It was held by the Supreme Court that the first lesson is that institutions that ensure democracy must not be allowed to take any other form and be personalised. The apex court further stated that all these applies as such to the doctrine of separation of powers as to powers of different tiers of government. Again, federalism can expose minorities within a sub-national (state/province) to discrimination and oppression, especially if such states or provinces are established on ethnic, linguistics, cultural or religious lines but contain within them minorities belonging to different groups. In Nigeria, the Ijaws in Lagos, Ondo and Edo states have cried and complained of marginalisation over the years as they are minorities in those States. Also, corruption and other social vices are always difficult to eradicate or tackle at the State or Local Government levels in a country where federalism is practised.

## **6. POWER DISTRIBUTION IN THE NIGERIAN FEDERALISM**

Nigerian federalism comprises three government tiers: the Federal, State and Local Governments.<sup>43</sup> Each of the tiers of government has its functions and

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<sup>42</sup>(1994) 2 NWLR (Pt. 328), 568.

<sup>43</sup> See ss.2, 3 and 7 CFRN 1999 (as Amended).

powers enshrined in the 1999 Constitution (as amended). Neither the central nor the constituent units encroach into the power and affairs of the other. However, in Nigeria, devolution of power is favourable to the federal government; the sharing formula of the revenue accruing to the federation also favours the federal government; lack of State police and autonomy and other shortcomings are the challenges facing Nigerian federalism. As earlier stated, the 1999 Constitution recognises three levels of government with federal government at the apex, followed by the state governments – 36, and local governments - 774. The 1999 Constitution devolved powers to the various tiers of government through the political institutions. The institutional arrangements within the constituent units and the central government are usually similar. A virile and independent judiciary is a *sine qua non* to interpret the laws without fear or favour when called upon. The choice of the institutional arrangements will determine their successes.<sup>44</sup> The 1999 Constitution provides for the legislative, executive and judicial functions and powers.<sup>45</sup>

Again, the 1999 constitution provides that the National Assembly shall legislate on matters set out in the Exclusive Legislative List.<sup>46</sup> In addition and without prejudice to the powers conferred by the Constitution, the National Assembly shall have power to make laws with respect to any matter in the Concurrent Legislative List set out in part 2 of the Second Schedule and any other matter with respect to which it is empowered to make laws in accordance with the provisions of the Constitution.<sup>47</sup> It follows that the state legislatures cannot legislate on the items contained in Part 1 of the Second

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<sup>44</sup> G. Anderson, *Federalism: An Introduction, Special edn. for NBA Conference*, (Canada: Oxford University Press 2008), 43.

<sup>45</sup> Ss 4, 5 and 6 CFRN 1999 (as Amended).

<sup>46</sup> *Ibid*, s.4 (1) and (2) Pt. 1, 2nd Sch.

<sup>47</sup> *Ibid*, s.4 (2).

Schedule to the constitution thereof; that is, such items as embedded in the Exclusive Legislative List. The National Assembly and the State Houses of Assembly have powers to legislate on matters in the Concurrent Legislative List.<sup>48</sup> The items in the Exclusive List are 68, and that of the Concurrent Legislative List are 30 before the 5<sup>th</sup> alteration. The 1999 Constitution also provides for the functions of the Local Government Area Councils.<sup>49</sup>

It must be noted that only the National Assembly (Senate and House of Representatives) representing the federal government of Nigeria can legislate on items contained in the Exclusive Legislative List while the State legislatures representing the States together with the National Assembly have powers concerning the items in the Concurrent Legislative List. However, there are items specifically meant for the states in the Concurrent List. Residual List, which are the left over powers not included in the Exclusive or the Concurrent Lists are left to the States alone to legislate upon. An example is chieftaincy matters.<sup>50</sup> It is equally provided in the 1999 Constitution that where any law enacted by the House of Assembly of a State is inconsistent with a law validly made by the National Assembly, the law made by the National Assembly shall prevail and that other law shall to the extent of its inconsistency be null and void.<sup>51</sup> The legislative power of the states shall be vested in the State Houses of Assembly.<sup>52</sup> The State Houses of Assembly shall have power to make laws for the peace, order and good government of

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<sup>48</sup>*Ibid*, s.4 (4) (a).

<sup>49</sup>*Ibid*, 4th Sch.

<sup>50</sup>See s.4 (7) CFRN 1999 (as amended). See also, Lawakchigbe, 'Powers of the Federal, State and Local Governments in Nigeria,' Lawakchigbe.com, <<https://lawakchigbe.com2017/06/30/powers-of-the-federal-state-and-local-governments-in-Nigeria/>> accessed 29 June 2023.

<sup>51</sup> S. 4 (5) CFRN 1999 (as Amended).

<sup>52</sup>*Ibid*, s.4 (5).

the State or any part thereof with respect to such matters which includes; any matter not in the Exclusive Legislative List; any matter included in the Concurrent Legislative List and any other matter with respect to which it is empowered to make laws in accordance with the provisions of the 1999 Constitution (as amended).<sup>53</sup> The further provided that the exercise of legislative powers by the National Assembly or a House of Assembly of a State shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law.<sup>54</sup> The National Assembly or a State House of Assembly shall not enact any law that oust the jurisdiction of a court of law or of a judicial tribunal established by the law. The constitution Constitution also prohibits the National Assembly and the State Houses of Assembly from enacting a law in relation to any criminal offence to be retrospective.<sup>55</sup> The implication of the above provisions is that the legislative houses can not legislate on any matter that is pending before any court of law or tribunal established by law.

The items included in the Exclusive Legislative List to be exclusively legislated upon by the National Assembly are much more important and valuable. The states are left with a few items, some of which are to be co-legislated upon, and some of which are to be co-legislated with the National Assembly. Items such as accounts of the government, arms and ammunition and explosives, aviation, airports, national honors, banking, copyright, currency, customs, defense, police, military, mines and minerals and oil fields, oil mining, maritime, incorporation, fishing and fisheries, immigration, insurance, maritime, fingerprints, passports, prisons, railway,

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<sup>53</sup>*Ibid*, s.4 (7) (a), (b) and (c).

<sup>54</sup>*Ibid*, s.4 (8).

<sup>55</sup>*Ibid*, S. 4 (9); see also *Aoko v Fagbemi* (1961) 1 ALL NLR, 406.

taxation, marriages, fire service and a host of others are embedded in the Exclusive Legislative List and can only be legislated upon by the Federal Government of Nigeria vide the instrumentality of the National Assembly.

On the other hand, the Concurrent Legislative List contains, among other things, division of public revenue between states and the federation, grants of loans from consolidated revenue, allocation of revenue, making laws for election to the local government councils, generation of electricity, education, etc. The National Assembly may, by an Act, make provisions for the division of public revenue between the federation and the states, among the states of the federation; among the local government councils in the States; and grants or loans from and the imposition of charges upon the Consolidated Revenue Fund or any other public funds of the federation or for the imposition of the federation for any purpose notwithstanding that it relates to a matter to which the National Assembly is not empowered to make laws. From the above, it is glaring that the 1999 Constitution (as amended) yielded much powers to the federal government of Nigeria to the detriment of the sub-nationals.

In view of the fact that the Federal and State governments can both legislate on some matters embedded in the Concurrent Legislative List in the 1999 Constitution, it is very glaring that there is the tendency that there is bound to be conflict and inconsistency between the two tiers of government legislating on the same subject matters. This conflict or inconsistency may occur where the state law is directly in conflict or inconsistent with the federal law. The federal law prevails in this circumstance. It must, however, be noted that the fact that a state law is inconsistent with a federal law under the Constitution does not mean that the state law is illegal or unlawful so as to nullify its existence. The inconsistency rule pre-supposes that though the state

law is in existence, its applicability and enforceability are suspended. When the federal law is repealed, the state law becomes operational and enforceable.<sup>56</sup> The inconsistency rule will, however, not apply where the federal government legislates or encroaches on matters ordinarily within the powers or purview of the state legislatures. It follows therefore, that the federal law must have been validly made.

Again, the state cannot legislate on such issue where the federal law has validly and totally covered the field. However, where the item is within the purview of the state to legislate upon and the federal government legislates on such item, the state may wait until the law made by the federal government is repealed. In resolving the inconsistency in the law made by the National Assembly and a State House of Assembly on a given subject, the Supreme Court stated in *A.G. Ondo State v A.G. Federation*<sup>57</sup> that: "although the power to legislate on the subject is given to the National Assembly and State Houses of Assembly, when both exercise the power, the legislation by the National Assembly will prevail by virtue of section 4 (5) of the 1999 Constitution (as amended)."

Also, covering the field is a doctrine in constitutional theory that applies in Federal Constitutions where legislative powers are shared between the Federal government and the federating units in enumerated lists.<sup>58</sup> It applies only to legislative acts (statutes) made by the Federal and State legislatures under the Concurrent Legislative List, where both the central (federal)

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<sup>56</sup> B.O. Nwabueze, *Federalism in Nigeria Under the Presidential Constitution*, (Lagos State Ministry of Justice Law Review Series, 2003), 41.

<sup>57</sup>(2002) 99 LRCN, 1334.

<sup>58</sup> T. Naidike, 'Doctrine of Covering the Field in Federal Constitutional Theory,' <<https://tnaidike.wordpress.com/doctrine-of-covering-the-field-in-federal>>, accessed 2 June 2023.



government and component units, ie, State and Local Governments have joint interests.

In *Clyde Engineering Co v Cowburn*,<sup>59</sup> where a Federal Act had made provisions on hours of work and a State entered upon the same field to make its own provisions, the High Court of Australia held the State law inoperative. However, for the doctrine of covering the field to apply, it is important to note that there must be an intention in the Federal law to validly, completely and exhaustively cover the field and not merely "supplementary to or cumulative" upon the State law.<sup>60</sup> The doctrine does not apply at all times, and it must be constitutional coverage that binds the federal government and the states.<sup>61</sup> A law passed by the Federal legislature is superior to that of the State legislature.<sup>62</sup> Note that administrative rules, acts, directive orders, notices, circulars, etc, made under Federal laws are not under the doctrine.<sup>63</sup>

In Nigeria, the supremacy clause extends to any inconsistency that arises between such supremacy clause allied to Federal laws against State laws. The 1999 Constitution provides thus:<sup>64</sup>

If any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the

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<sup>59</sup>(1926) 37 CLR, 466.

<sup>60</sup>*Ex parte Maclean* (1930) HCA 12, 43 CLR 472, 482.

<sup>61</sup>*A.G. Ogun State v A.G. Federation* (1982) 2NCLR 166,180-181.

<sup>62</sup>*A.G. Ontario v A.G. Dominion of Canada* (1894) AC. 189.

<sup>63</sup> V. Morabito and H. Strain, 'Inconsistency Rule in Australia', 1993, 188, available on <[https://en.m.wikipedia.org/wiki/section\\_109\\_of\\_the\\_Constitution\\_of\\_Australia](https://en.m.wikipedia.org/wiki/section_109_of_the_Constitution_of_Australia)> accessed 15 June 2023. See also, 'The Section 109 Cover the Field Test of Inconsistency: An Undisirable Legal Fiction', <[classic.austlii.edu.au/UTasLawRw](http://classic.austlii.edu.au/UTasLawRw)>, accessed 14 June 2023.

<sup>64</sup>See generally s.4 (5) CFRN 1999 (as Amended).

National Assembly shall prevail and that other law shall be void to the extent of the inconsistency.

Concurrent Legislative List was defined by Tobi JSC in *Olafisoye v. F.R.N.*<sup>65</sup> while quoting Nwabueze, in his book: 'Federalism in Nigeria', as follows:

The word "Concurrent" means existing together. What is meant therefore, when a matter is said to be concurrent to federal and state governments is that their powers in respect of it exist side by side together. In other words, the powers of both governments in respect of the matter are co-existent, not exclusive; the power of one does not exclude that of the other. Both governments can, in theory at least, act on the matter. But their powers need not necessarily be co-existence in the sense of extending over the entire field of the matter; they may co-exist only in respect of some aspects of it.

Notwithstanding the above, some matters are strictly concurrent in nature and upon which both federal and state governments are empowered to exercise concurrent power without limitation. Such matters include trigonometric, cadastral and topographical surveys in items 25 and 26 of Part II to the Second Schedule to the 1999 Constitution. But the state Houses of Assembly must act subject to the National Assembly. However, in such situations, both the federal government and the state governments can operate over the entire field. This may lead to conflict between the law made by the Federal

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<sup>65</sup>(2004) 4 NWLR (Pt. 864), 580.

legislature and the state legislature on the same subject matter. In *George v FRN*,<sup>66</sup> the Court of Appeal per Ogunbiyi JCA stated that:

The power of the Lagos State House of Assembly to legislate on criminal matters is derived from the residual legislative list in the 1999 Constitution. This is the reason why the National Assembly cannot legislate on a criminal code for the whole country but for the federal capital territory in respect of its residual power to make laws for the Federal Capital Territory.

Also, in *A.G. Abia v A.G. Federation*,<sup>67</sup> the Supreme Court held that the National Assembly cannot validly make a law permitting direct allocation to local government councils. The court further stated that the extensive powers granted the National Assembly to legislate in respect of allocation of federation account is limited strictly to the process of allocating the funds and cannot extend to anything to be done after the fund has been so allocated and paid into the State Joint Local Government Account.

It must again be noted that a legislative field earlier covered can be cleared by passing an express provision declaring its intention to do so.<sup>68</sup>

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<sup>66</sup> (2011) 10 NWLR (Pt. 1254) 1.

<sup>67</sup>(2002) 6 NWLR (Pt. 764), 542.

<sup>68</sup> See, *R v Credit Tribunal; Ex Prte General Motors' Acceptance Corporation* (1977) HCA 34, para. 28-29..

## 7. DOES TRUE OR FALSE FEDERALISM REALLY EXIST?

There is no gainsaying the fact that the Nigerian federalism just like every federal systems have some challenges. It must be noted that there is no perfect constitution or federalism the world over, neither is there any one recipe for the practice of federalism any where. Every society has its peculiar socio-political and economic problems. The concept of "true federalism" has remained elusive and somewhat a fallacy that cannot be realistic as there is no specified parameter for determining what amounts to "true" or 'false' or "perfect" federalism. There seem not to be "true" or "false" federalism the world over. Nigerian federalism is neither false nor untrue; it is the provisions of the Constitution that guide and determine its propagation and practice. Despite the shortcomings in the Nigerian federalism, does it portray it as an "untrue" or "false" federalism? This article is of the view that there is no one recipe for federalism. What is obtainable in the US might be different from what exists in Nigeria or any other federation, depending on the provisions of the Constitution of such countries. Countries practising federalism do so subject to their local or prevailing circumstances by reflecting their respective socio-economic and political realities and peculiarities.<sup>69</sup> Federalism therefore, differs in terms of institutional structures and practical content. The 1999 Constitution is the grundnorm in Nigeria and it remains supreme over any other laws in the country.<sup>70</sup> Until it is amended or jettisoned, it remains binding and supreme over other laws of the land. The 5<sup>th</sup> constitution alteration brought some changes to the devolution of power as some of the items in the Exclusive List were moved to the Concurrent List. It must be

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<sup>69</sup>*Ibid*, 58.

<sup>70</sup> S. 1 (1) CFRN 1999 (as Amended).

noted that there is no federal system that does not have its peculiar challenges and Nigeria is not an exception. The Nigerian Constitution is not the problem of Nigeria whether workable or not, but the key players and corruption which has eaten deep in the fabric of Nigerians are the problem of Nigeria.

This article believes that the Nigerian federalism is not false; it is true. True federalism is used to describe effective and ideal federalism as enunciated by many scholars, appears to be a fallacy and elusive rather than a reality. True federalism has become a buzz word in the lips of many Nigerians and almost on a daily basis, it is used in the media both in print and broadcast. Unfortunately, many people who use the phrase are not abreast with the tenets of federalism and its practice. Federalism is dependent on the provisions of the Constitution of a particular country. Nigeria has had series of constitutions and the 1999 Constitution is now the new order; its provisions are binding on the citizenry until it is further amended. A federal constitution must strive to reflect the practice of Federal ideas and principles and jettison anti-federal practices, just as other modern and advanced federations have accommodated the practice. It is therefore, incumbent upon the Nigerian legislators, constitution drafters, policy makers, stakeholders, to always do the needful when the need arises to do justice to the Constitution further in order to cater for the aspirations of the people in the federal structure.<sup>71</sup>

## **8. CONCLUSION AND RECOMMENDATIONS**

This article has examined the Nigerian version of federalism and the devolution of power to the tiers or orders of government. So many scholars,

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<sup>71</sup>S.9 CFRN 1999 (as Amended).

politicians, stakeholders and legal experts have argued and posited that there is no true federalism in Nigeria due to some shortcomings inherent in the practice of federalism in Nigeria. But the 1999 Constitution of Nigeria (as amended) made provisions to the effect that Nigeria is a federation and further provided for how the country shall be governed, and the same Constitution made provisions for the procedure to be adopted in amending or altering the Constitution when the need arises.<sup>72</sup> Again, as stated earlier, there is no perfect constitution anywhere the world over neither is there a single recipe for the practice of federalism. Each Constitution shapes its federal system and practice, so the way federalism is practiced in various federations varies from one country to another. Therefore, it would be wrong to refer or portray the Nigerian version of federalism as untrue or false. "True federalism" is not defined anywhere. Federalism is what the Constitution of a country says it means and the Constitution of any country is the basic driving force of any federal system and nothing more.<sup>73</sup> Federalism conveys different meanings in different constitutions as the constitutional arrangement shows in the legislative unit.<sup>74</sup> So many Nigerians have criticised the 1999 constitution for being a product of the military but the legislators have had the ample opportunity of amending the said Constitution since 1999 till date to cater for the yearnings and aspirations of the citizenry. It is concluded that there is no "untrue" or "false" federalism anywhere as federalism in any country is what the Constitution says it is. Lesshie posited

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<sup>72</sup>Ibid.

<sup>73</sup>See, the Supreme Court of Nigeria in *FRN v Amache* (2004) 4 WRN I.

<sup>74</sup>Ibid.

that 'federalism is federalism any where across the globe, and that it is either symmetric or asymmetric.'<sup>72</sup>

In order to cushion the continuous debate on true federalism, the following recommendations are advanced: the legislature should further amend the 1999 Constitution of Nigeria (as amended) to move more items such as mines/mining, incorporation, marriage, police, stamp duties and more levies and collections etc, from the Exclusive Legislative List to the Concurrent Legislative List. Again, some items in the Exclusive and Concurrent List should be moved as Residual List. The debate on "True Federalism" should be channelled towards the amendment of the Constitution. Also, more taxing powers should be constitutionally devolved to the component units so that the government at the center would be less attractive as this would herald development at the grassroots. Finally, Nigerians, especially the political class and stakeholders should have a change of mind and attitude towards corruption and amassing of wealth for their generations yet unborn.

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<sup>72</sup>E. Lenshie, 'Is There True Federalism? Revisiting the True Federalism Debate in Nigeria'(Research on Humanities and Social Sciences vol. 5, No. 15, 2015) [https://www.academia.edu/1879841/is\\_There\\_Any\\_True\\_Federalism\\_Revisiting\\_the\\_True\\_Federalism\\_Debate\\_in\\_Nigeria?email\\_card=thumbnail](https://www.academia.edu/1879841/is_There_Any_True_Federalism_Revisiting_the_True_Federalism_Debate_in_Nigeria?email_card=thumbnail) accessed 29 December, 2023.