

Federalism, Democracy and Constitutionalism: The Nigerian Experience

Dr. Amah Emmanuel Ibiam
Lecturer, Faculty of Law, Ebonyi State University Abakaliki, Nigeria

Abstract

A great democracy must either sacrifice self-government to unity or Preserve it by federalism. The co-existence of several Nations under same state is a test, as well as tshe best security of its freedom. Federalism has been described as the best form of governmental organization capable of accommodating diversities of interest. Federalism, democracy and constitutionalism all have their underlying characteristics and their advocates employed them as a measuring tool in ascertaining the extent on which individual states conformity or nonconformity. In this article, we examined these basic and related concepts after which we examined these features as provided in the 1999 Constitution of Nigeria so as to measure the extent of her conformity or non conformity with these principles in practice and made some recommendations that will further upgrade her to the level of modern advanced federations.

Keywords: Federalism, Federal Principles, Democracy, constitutionalism, rule of law.

1. Introduction: Origin and Meaning of Federalism.

The concept of federalism is said to be traceable to the ancient twelve tribes of Israel and the league of Greek city-states. According to Chukwujekwu¹ the term originated from a Latin expression pronounced; “*faedus*” which refers to a covenant. It is believed to have originated from some Bible- centred federal theologians of the 17th century Britain and New England.

By definition a federation is consists of a state with a central government and a number of component units with autonomous power to conduct their affairs free from control or interference from others. According to Wheare,² federalism or federal principles, denote the division of law making authorities in a federal set up between the central authority of the federation and the authority of the components or units of government and the vesting of autonomy to each of these different governmental authorities in such a way that none can interfere with the legislative authority of the other. In his words federalism is; “The method of dividing governmental legislative powers so that general (central) and regional (component) governments are each within a sphere coordinates”³. This represents a classical definition of federalism.

A federation is a governmental organization that consists of a union with a central authority constitutionally empowered to stand in for the rest of the component members in matters of foreign relation and few other matters that may be shared in common among all the components while reserving matters of domestic nature to the individual component parts. In the words of Appadorai:

a federal state is one in which there is a central authority that represents the whole and acts on behalf of the whole in external affairs and in such internal affairs as are held to be of common interest and in which there are also provincial or state authorities with powers of legislation and administration within the spheres allotted to them by the constitution.⁴

Federalism may be described as a mode of political organization that unites separate states or other polities within an overarching political system in such a way as to allow each to maintain its own fundamental political integrity.⁵ The political principles that animate federal systems emphasize the primacy of bargaining and negotiated coordination among several power centres; they stress the virtues of dispersed power centres as a means for safeguarding individual and local liberties.⁶ A federation is therefore a congregation of different autonomous and self governing political organization with a central body assembled in such a manner that both the central body and the individual autonomous units maintain their respective control over the citizens in a manner prescribed by the state’ constitution, such constitution being usually made by the people either directly or through representatives elected by the citizens for that purpose⁷. A basic feature of a federation is therefore the

¹ C. Chukwujekwu, Historical Origin and Evolution of Nigeria Federalism in O. E. Anthony et. al. (eds.), *Federalism and National Integration in Nigeria*, (Onitsha: Book point Ltd 2004) p. 19

² K .C .Wheare, *Federal Government* (New York: Oxford University Press, 1963), p. 10.

³ *Ibid*

⁴ A. Appadorai, *The Substance of Politics*, (New York: Oxford University Press, 1968), p.495.

⁵ Encyclopædia Britannica "Federalism", Encyclopædia Britannica Student and Home Edition, (Chicago: 2010).

⁶ *Ibid*.

⁷ D. J. Elezar, “Federal System of the World”, *A Hand Book of Federal, Confederal and Autonomy Arrangements*; Harlow, Essex: Longman, 1994, p.3 JCPA online <http://www.jcpa.org/dje/books/fedsysworld-intro.htm> (accessed 12/3/14)

existence of a territorially delineation and distribution of governmental functions and powers in a constitutional document.

Though federal systems may possess considerably differences in numerous respects, however there exists certain basic commonality of characteristics and principles that identifies truly federal organizations.

2. Federalism; Primary Nature and Character

An essential characteristic of a federal arrangement is a pragmatic distribution of power and resources by means of a legal document with a provision ensuring the impossibility of a unilateral abrogation of same by a member party without recourse to the other members. Other basic characteristics includes, autonomy, constitutional supremacy, constitutionalism and rule of law, separation of powers, shared rule and self rule, minority right protection, and democracy. We shall hereunder highlight few of the primary or basic characteristics of federalism.

3. Federalism and Power Divisions

Arguments surrounding federalism have always been on what should be the parameter for the division of powers among the component parts of the federation and between the parts and the central government? In fact, this has remained the major problem associated with federalism in practice. Governmental administration is all about exercise of power. Existence of different levels of government therefore, demands that power is shared among them to prevent one level from encroaching on the powers of the others. It is thus the constitutional sharing or division of the governmental powers between different levels of government and among component units that markedly differentiate federalism from other forms of governmental organizations.

While some scholars' have favoured reposing predominant powers and functions on the central government others have advocated granting equal powers and functions to all the member components of the federal union. Adediran¹ a proponent of the second school opined that the realities of the modern world require a relatively stronger central government such that the central government should possess an overriding control and influence over the rest of the subsidiaries. These demand that the central union ought ordinarily to possess more authority than the components. Some other scholars however, think otherwise.²

Nwabueze in his earlier work had opined that while powers may be shared and demarcated between the federal government and the units, there should be a proviso empowering the federal powers to override that of the component units in cases of conflicts.³ Nwabueze however, seemed to have made a volte-face from his earlier position when he opined that a federal organization as a form of government requires a fair balance of power and resources such that no level of government can conveniently over power the rest of the members of the union in any manner, especially in terms of resources and allocation of functions.⁴ Therefore, the resources sharing formula should be aimed at maintaining balance between the union members.⁵ This is because according to him where the national government at the centre possessed such enormous power; this will breed conflict amidst the federal union whereas conflict and mutual suspicion will be minimal where the national government possessed a minimum amount of power, in which case, consultation, negotiation and mutual cooperation will be promoted.⁶ On the other hand, where the component unions of the government are very powerful in comparison with the national government they will likely overshadow the federal government such that citizens may hardly develop loyalty to the central national government. According to Nwabueze⁷ if the regions are so powerful as almost to submerge the centre or to cause the inhabitants to think of governments in terms largely or mainly of the regional governments, then it will be hard for them to develop any loyalty to the nation, let alone one which will equal loyalty to the region.⁸ Nwabueze had posited in another work⁹ that:

Federalism presupposes that the national and regional government should stand to each other in a position in a relation of meaningful independence arresting upon a balance division of power and resources.

¹ M. O. Adediran, "Critical Examination of the Constitutional Provision on the Legislative Power of the Federal and States" being a chapter in proceeding of the Conference on the 1995 Nigeria Constitution edited by J. O. Ojo at p. 11

² See T. N. Tamuno, "Nigerian Federalism in Historical Perspective", in K. Amuwo et. al,(eds.) *Federalism and Political Restructuring in Nigeria* (Ibadan: Spectrum Books Ltd,1998), p.13.

³ B. O. Nwabueze, *Constitutionalism in The Emergent State* (UK: C. Hurst & Co. 1973), p.12

⁴ B.O. Nwabueze, *How President Obasanjo Subverted Nigeria's Federal System*, (Ibadan: Gold Press Ltd, 2007), p. 402. Note however that the learned professor had earlier maintained a contrary view. See B. O. Nwabueze, *Constitutionalism in the Emergent State*, (UK: C. Hurst & co.1973), p.12

⁵ *ibid*

⁶ B.O. Nwabueze, 'How President Obasanjo Subverted Nigeria's Federal System', *Op. cit.* p.392

⁷ *Ibid.*

⁸ *Ibid.*

⁹ B. O. Nwabueze, 'Nigeria under the Presidential Constitution', *Op. cit.*, p.182

Omaka,¹ seems to agree with this argument while commenting on the *unfederal* nature of the Nigerian Environmental Impact Assessment (EIA) Act 1992. He stated of federalism thus:

...the constituents units which are closer to the people must be allowed power, initiative and autonomy to achieve or work for the sustainable development of their territories by their own effort.²

It is of noteworthy that revolution in federalism did not end the debates about the proper distribution of power between the states and the national government. Disagreements about the proper role of national and state governments within the federal system continue to be an important part of American politics. While we respectively acknowledged the opinion of Justice Niki Tobi (rtd.)³ that states federate to the extent allowed by her constitution, we insist that there are standard marks. A federal state must meet up with the basic and underlying principles of federalism before it could rightly be called a federal state.

4. Federalism and Fiscal Autonomy

Federalism leans in favour of financial autonomy, which include the autonomy of the units to have a sufficient measure of control over resources accruing in and derivable from area of their individual territorial jurisdiction. Wheare⁴ had emphasized on the need for financial independence or autonomy of each of the sphere or constituents units of government in a federal order and their unrestrained liberty to pursue their respective development without depending on the other(s) constituents units for aid. Ihebom⁵ on his part therefore rightly defined federalism as the division of public sector functions and finances in a logical way among different tiers of government. In other words, it is basically the allocation of government expenditures and resources among levels of government. Ihebom opined that in order to maximize both the benefits of central and decentralized revenue collection, revenue collection powers should be distributed among the different governments of the federal union with a view to ensuring that revenue collection powers are closely aligned with expenditure functions. Further, Ihebom identifies as one of the fundamental debilitating factor or clog in the wheel of Nigerian federalism as how to equitably share the revenue between the centre and the federating units. According to him part of the reasons is because the component states are extremely dependent on their share of federally collected revenue to maintain their services. Nwabueze, on his part observed that the Canadian federation permits its provinces a measure of considerable control of its revenue resources. According to Nwabueze, this practice bears an eloquent testimony of the Canadian's sincere commitment to the strict adherence of derivative principle, despite the fact that not all the provinces are equally endowed. On the need for fiscal autonomy Ihebom⁶ asserted that because in a country with a federal government, its lower tiers of government be it states, region or local government are deemed to be autonomous and enjoy some degree or medium of independence in their area of competence, federal relations must therefore replicate fiscal autonomy. These are essential because the constituent parts are said to possess some sovereign powers provided in the federal constitution.

¹ C.A. Omaka, "The Concept of Environmental Impact Assessment in Nigeria", *Ebonyi State University Law Journal*, Vol.2 No.1, 2007, p.65.

² *Ibid*, at p.81

³ *Olafisoye v. Federal Republic of Nigeria* [2004] 4 NWLR (Pt. 864) 580. Given The fact that any federalism is a creation of the constitution and it is the constitution that determines what federalism is Niki Tobi in *Olafisoye v. Federal Republic of Nigeria* tried to distinguish between the 'best ideals "which follows from the classical federalism as the case may be, with Nigeria's peculiar federalism, he stated that federal system of government in theory is clearly different from the actual practices of government. According to the learned justice the fact that a state claims to be a federal state does not necessarily mean that it must realize or meet up with all the demands of federalism in theory. A state must rather than pursuing what he called "ideals" and "utopian" goals, adhere to its constitutional provisions no matter whether such provisions agrees with federal concept in theory or not. Niki Tobi further stated that what amounts to federations including its nature and structure and features in theory is quite in sharp contrast with what may be obtainable in reality or practice. He added that any attempt to meet up with federal theories or concept are rather utopian, day dreaming and unrealistic. In the words of the learned justice; "...Ideal federalism or true federalism is different from specific or individual federal constitutions of nations, which may not be able to achieve the utopia of that ideal federalism or true federalism but which in their own sphere are called federal constitutions...there is no universal agreement as to what is a federalism or a federal government...".

⁴ K. C. Wheare, *Op. cit.* p.44

⁵ Ihebom, Ihebom G. O. C. (2011) "Fiscal Federalism in Nigeria: A Comparative Analysis", *Journal of Commercial Law and Contemporary Law (JCCL)* (Department of Commercial Law, Faculty of Law Imo State University), (vol.1) June 2013, p.46

⁶ Ihebom G. O. C. *Op. cit.* p.47

5. Democracy

Democracy is a condition of federalism. According to Wheare,¹ federalism demands a form of government commonly associated with republicanism. In other words, federalism thrives on democracy and can hardly survive independent of democracy. Elezar² on his part exposes the truism in the intrinsic nature of Federalism; that is, that federalism embodied a combination of a shared rule and self-rule, an autonomous government as well as participatory democracy. According to Elezar³ all federations must involve these basic principles. In a federation, shared rule is much more accorded a preeminence and importance even though self-rule of the constituent government is as well a significant feature of a federal order. Further, it is the view of Elezar⁴ therefore that federalism emphasizes relationship especially constitutional one of which the self rule- shared rule relationships are indispensable. Federal system cannot but grapple with the issue of collective identity; federalism and democracy are therefore mutually reinforcing conceptual, theoretical and professional categories that are locked up in the dynamics of a dialectical relationship. Therefore when federalism finds copious and robust expression in the form of democratic practices demonstrated in the form of politics of collective identities which accommodates ethnic, racial, tribal, religious, and language differences in connection with their interaction with themselves and the state polity, the federal idea is likely to be less acrimonious than when the democratic idea is little more than a putative or theoretical construct⁵. Supporting the relationship between a healthy democratic practice and federalism Amuwo and Herault⁶ opined that the clamour for political restructuring is more rampant in countries with federal system of government and possibly federal constitutions than with unitary practices. Citing Olukoshi and Agbu, they opined that the crisis of the Nigeria Federation is not just about bickering tribes but also about social injustices that are rooted in cross-national classes and gender conflicts. Political restructuring in a federal set-up is however indispensable as a steering mechanisms to properly focus and attempts at collective identity and distributive politics, by way of correcting the perceived structural defects and institutional deformities in a federal polity with multinational groups and thereby solidifying or perhaps engendering a sense of national community. It is however unfortunate that in Nigeria, the federal structure has been perceived as a device for the elite to take advantage of the state largesse.

6. Federalism, constitutionalism and Rule of law

Constitutionalism and the rule of law are two Distinct but related concepts. They both relate to how the powers of government and of the state officials are to be exercised. They both therefore, provide limitations on the agents of the state to prevent abuse of power and tyranny. Although these two concepts are related they are not in all fours the same. Constitutionalism emphasizes the adherence to the wordings or text of the constitution while the rule of law advocates that all government actions must comply with the law including the constitution. The rule of law embodies certain standards that identify the characteristics virtues of a legal system as such. These include constitutionalism, judicial independence, fair hearing, fundamental human rights, and such other devices associated with democratic society. The principle of Rule of Law is therefore wider in scope than that of constitutionalism. Nwabueze⁷ had earlier summaries federal features, according to him federal or simply federal system of state organization envisages among others the distinctive character of formal governmental legislative power division in a country. It is an agglomeration of coordinate component authorities with each exercising the powers allotted to it in a manner and within the confines of the constitutional prescription. The constitution itself being the source, from which the central government and the government of the component units draw their life, none can terminate the existence of the other and none can unilaterally change or modify or amend the constitution or any of its provisions/clauses thereof. Indeed any amendment of the constitution or of its provision must necessarily be effected strictly in accordance with the relevant processes which themselves are clearly spelt out within the constitution itself. A constitutional government upholds the supremacy of the constitution. These envisage the existence of a rigid and rigorous procedure of constitutional amendment. This is important to prevent abuse and therefore secure the rights and interest of all.

Finally, we shall re-echo the incontrovertible opinion of the *federalists*⁸ that at the heart of the federal idea lays a combination of some basics principles. These common basic principles peculiar to every federal structure include: the recognition of the citizens as the repository of state power, the practice of periodic election

¹ K. C. Wheare, *Op. cit.*, p.10, cited in K. Amuwo and G. Herault, "On the Notion of Federalism Restructuring in Federal Systems", being a chapter in Amuwo et. al. (ed.) *Federalism and Political Restructuring in Nigeria*, (Ibadan, Spectrum Books Ltd, 1988) p.10

² D. J. Elezar, 'Federal System of the World', *Op. cit.*

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ K. Amuwo and G. Herault, *Op. cit.*, p.10

⁷ B. O. Nwabueze, 'The Presidential Constitution of Nigeria', *Op.cit.*, p.40

⁸ "The Federalist" History of Federal Thoughts.(2009) online http://www.wikipedia_federalism, (accessed 20/10 2015)

by which the people are allowed to demonstrate their power through the ballot box, the enshrinement and existence of a legal grundnorm which subordinates every individual to the authorities of the rule of law, the existence of an independent judiciary, the recognition of the need to preserve and uphold the minorities interest etc. Wheare¹ had earlier identified four primary principle of federalism as follows:

- (a) The division of power among levels of government.
- (b) Written constitution showing this division.
- (c) Coordinate supremacy of the two levels of government with regards to their respective functions and,
- (d) The existence of an arbiter outside the levels of government (supreme or constitutional court) whose job is to settle jurisdictional disputes.

Wheare further emphasized:

I have put forward uncompromisingly a criterion of federal government, the delimited and coordinate division of government function and I have implied that to the extent to which any system of government does not conform to this criterion, it has no claim to call itself federal.²

By way of summation, Federalism is embedded in constitutionalism, the existence of a written constitution. A federal constitution is usually described as rigid. Other features include division of powers, provisions for periodic elections, separation of powers, rule of law, rule by the majority, constitutional guarantee of minority rights, democracy that ensures self rule and shared rule among the components members of the federation, existence of an independent judiciary whose responsibility includes constitutional interpretation and settlement of disputes between and among members of the component parts of the federation, existence of an independent electioneering body responsible for the conducting of free and fair election, guarantee of free speech and other fundamental rights to the citizens etc. Examples of federal constitutions include that of the USA, India, Canada, Australia, Switzerland, Nigeria etc. We shall hereunder discuss the basic federal features of the Nigerian constitution vis-à-vis the above mentioned basic federal features.

7. The Making of the Nigerian Federal Constitutions

The independence federal Constitution of Nigeria came into force on 1st October 1960. It is noteworthy that the said Constitution did not secure true independence to the country as the country remains under the political influence of the British government in several ways. However, in the spirit of the newly found federalism the Constitution provided for regional constitutions. Separate constitutions were established for the federal and for each of the regional governments in separate schedules annexed to the independence Order –in- Council. Though separate and independent of one another the several constitutions derived from a common authority, namely the independent Order made by the British government. Such a common source of authority which is not that of the federal government is not inconsistent with federal principle.³

However, by 1963 the Nigerian parliament adopted a new Constitution. A significant feature of this new constitution was basically its republican nature as apart from this it maintained most of the provisions of the 1960 independence constitution. The 1963 Republican Constitution however did not last as the country suffered series of military dictatorship between 1966 and 1979. By 1979, another new constitution was made for Nigerian federation. This Constitution which was basically federal in name but unitary in nature marked the beginning of Nigerian federal problems. The single Constitution provided for a stronger central government and weaker component states partly because of the experiences of the then recently fought civil war as well as its experience from the military dictatorship in which the military head of state and commander in chief of the Armed forces held enormous and unchallengeable powers. This 1979 Constitution also did not last long as the military struck again imposing dictatorship on the supposedly federal and republican state.

The Constitution of the Federal Republic of Nigeria (promulgation) Decree 1998 came into force on the 29th of May 1999. The Constitution, which is supreme and whose provisions "have binding force on all authorities and persons throughout the Federal Republic of Nigeria"⁴ was promulgated as part of the process of ending 15 years of uninterrupted military rule. The Constitution is essentially an embodiment of the 1979 Constitution of the Federal Republic of Nigeria with very little amendments. Like the 1979 Constitution, it was designed under military tutelage and enacted as supreme law of the land by military decree. It will be recalled that the military Government of General Abubakar had appointed the Justice Tobi Constitution Debate Co-ordination Committee to review the 1995 Draft Constitution and supervise a public debate with regard to the constitutional preference of Nigerians. After barely two months of sitting, the committee handed in its report

¹ K. C Wheare, 'Federal Government', *Op. cit.*, p.10

² *Ibid.*

³ See Nwabueze Ben, 'How President Obasanjo Subverted Nigeria's Federal System', *Op. cit.* p.403

⁴ Section 1(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended.

stating that Nigerians had shown a preference for the 1979 Constitution with few amendments.¹

The 1999 Constitution segregated in separate parts of the same chapters, provisions relating to the federal and state governments, except that miscellaneous and transitional provisions common to both tiers of government are dealt with together in the same sections, as are the division of powers, fundamental objectives and directive principles, citizenship and fundamental rights². The extant 1999 Constitution has a slightly more acceptable political pedigree because the General Abubakar's regime was widely considered by the public to have been more committed to genuine democratic transition as it kept its promise of organizing elections and handing over to a democratically elected government on the 29th May 1999.³

However, since its promulgation to date, the 1999 Constitution is being severally criticized, seriously condemned and scarcely commended. Some Nigerians have even gone to the extent of calling for its outright rejection. Be that as it may, the fact remains that 1999 Constitution is a legally binding document having been promulgated by Decree 24 of 5th May, 1999. In view of the fact that the 1999 Constitution was promulgated by virtue of the law making power conferred on the then Provisional Ruling Council by Decree No. 107 of 1993, the legitimacy of the Constitution is therefore not in doubt.

Present attempt to create a new and democratic constitution for the country has consistently met with brick wall most apparently due to the lopsided structure of the supposedly federal Nigeria. Our discussion of Nigerian federal constitution shall be based on this current Constitution.

8. Provisions for Federalism in the 1999 Constitution of Nigeria

The Constitution of the Federal Republic of Nigeria 1999 provides for a federal system of government. According to the Constitution,⁴ Nigeria is one indivisible and indissoluble sovereign state to be known by the name of the Federal Republic of Nigeria. It further provides that "Nigeria shall be a federation consisting of states and a federal capital territory."⁵ The federating states, thirty-six in all are spelt out in the Constitution.⁶ It would appear therefore, that the basic goal of federalism in Nigeria, given the previously mentioned provisions of the 1999 Constitution, is to promote the unity of the country while creating space for the political autonomy of the different sections of Nigeria. However, it appears the constitution was not able to realize this lofty ambition. Let us appraised hereunder in detail some of the basic features of federalism as contained under this 1999 Constitution of Nigeria.

8.1 Division of Powers and State's Autonomy

Generally, the rationale behind the idea of division of powers in a federal states is that matters of common interest and concern to the country as a whole should be allocated to the central (or federal) government while matters that are clearly regional or local in nature should be allocated to state governments.⁷ Therefore, matters such as national defence, foreign policy, banking, nuclear energy and currency, among others are usually placed within the domain of the federal government whilst more regional or local matters such as social services, primary and secondary education and public health, public welfare and other local or municipal matters among others are assigned to state governments. However, where there is coincidence of national and regional interests, usually; powers are defined to have been either concurrent or further sub-divided into federal and regional realms.⁸

Under the 1999 Constitution of the Federal Republic of Nigeria⁹ powers are classified as exclusive and concurrent legislative powers. The authority to legislate on the Exclusive Legislative list is vested in the federal government and the states may legislate on the provinces specified in the list, only to the extent expressly authorized by the federal law. Whereas the powers to legislate on matters specified in the concurrent list belong to both the federal and state governments such matters include Allocation of Revenue, Collection of Taxes, Archives and Electoral laws, among others. The Exclusive Legislative list has 68 items, while the concurrent Legislative list has 12 items.

It is essential to state here that the fourth Schedule of the 1999 Constitution provides the list of

¹ Tobi, N. "The Legitimacy of the Constitutional Change in the Context of the 1999 Constitution", in Ayua A.I, Guobadia D.A. and Adekunle A.O. (eds.) *Nigeria: Issues in the 1999 Constitution*, (NIALS 2000) at 21-42

² B. O. Nwabueze, 'How President Obasanjo Subverted Nigeria's Federal System', Op. cit. p.404

³ *Ibid*, p 24.

⁴ See section (1) of the Constitution of Federal Republic of Nigeria 1999, See *A.G. Ondo v. A.G., Federation* (2002) 9 NWLR (Pt. 772) 222 SC.

⁵ See section 2 (2) C.F.R.N. *supra*

⁶ See section 3(3) *ibid*.

⁷ Elaiwu J.I., P.C Longams and H.S. Galadima, *Federalism and Nation Building*, (Publ: National council of inter. 2008), p. 64

⁸ *ibid* at p.66

⁹ Nwabueze B.O., *Federalism in Nigeria*, (London; Sweet & Maxwell 1983) p. 41

functions of the Local Government Council (the third tier of government in the Nigerian federal arrangements). However, the constitution did not expressly or by any implication bestowed on the local government councils any legislative functions. They are to exercise functions to the extent allowed by the laws of the individual states. Under the constitution, every matter relating to local government is in the province of the state government rather than that of the government of the federation. However there are exceptions to this general rule of law. First the National Assembly has power to make laws relating to the registration of voters and the procedure regulating election to local government councils. Secondly the National Assembly can lawfully make statutory allocation of public revenue to local government councils in the federation. Other than these, there is no provision in the Constitution empowering the National Assembly to make laws affecting local government councils.¹ All legislative items not provided for in the Exclusive and Concurrent legislative list belong to the state's governments. A Supreme Court exists to settle any dispute between the Federation and the States, A cumbersome process of amending the Constitution exists.²

The above elements are notorious or self-evident traits of the federal arrangement in Nigeria. For example, the country in 1960 was a Federation of three Regions, then four by 1963, then twelve States in 1967 and thirty-six by 1996. There are seven hundred and seventy four Local government councils under the 1999 Constitution.³

Further respecting the division of legislative powers under the Constitution, while the powers under the Concurrent Legislative List are shared between the Federation and the States,⁴ however, if any law made by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law (made by the state) shall be void to the extent of the inconsistency.⁵ The foregoing mirrors the doctrine of 'Covering the Field' often applied by the Supreme Court. In defining this concept as captured by the division of powers under the Constitution, Eso J.S. C. (as he then was) stated that:

Where a matter legislated upon is in the concurrent list and the Federal Government has enacted a legislation in respect thereof, where the legislation enacted by the State is inconsistent with the legislation of the Federal Government, it is indeed void and of no effect for inconsistency. Where however the legislation enacted by the State is the same as the one enacted by the Federal Government, where the two legislations are in *pari materia* I respectfully take the view that the State legislation is in abeyance and becomes inoperative for the period the Federal legislation is in force. I will not say it is void. If for any reason the Federal legislation is repealed, it is in my humble view that the State legislation, which is in abeyance, is revived and becomes operative until there is another Federal legislation that covers the field.⁶

It is clear from the foregoing constitutional provisions that, even on the concurrent legislative list, the federal government still possesses an overriding power over the state governments.

The Constitution ensures both horizontal as well as vertical separation of powers. Legislative powers are shared between the federal legislature and the state legislature. Powers and functions are also allocated along the executive, legislative and judicial bodies such that none is allowed to usurp the functions and powers of the other.⁷ However note the unclear nature of section 13⁸ of the Constitution in comparison with section 4(7)(c),⁹ the question is, to what extent may a State House of Assembly legislate on matters related to chapter 11 of the Constitution. We submit that the States Houses of Assembly may only legislate on matters under chapter 11 to the extent of its legislative powers under section 4(5) and (6) of the Constitution and vice versa. This is not withstanding the decision in *A.G. Ogun state v. A.G. Federation*.¹⁰ This is because federal law shall prevail over

¹ Section 7(1) (6)(b) and 197 and item 22 of the Second Schedule Part 1 of the Constitution. *A.G. Abia v. A.G. Federation* (2002) 6 NWLR (Pt. 763) 264, (2006) 16 NWLR (Pt. 1005) 265 SC.

² See section 9 CFRN. 1999

³ See section 3 & Part 1 of First Schedule, *ibid*.

⁴ See section 4 and Second Schedule, *ibid*.

⁵ Section 4 (5) *ibid*.

⁶ *Attorney General Ogun State v. The Attorney General Federation* (1982) 3 N.C.L.R.P. 166 at 206

⁷ See *Olafisoye v. FRN* [2004]4 NWLR (864)580 SC.

⁸ It shall be the duty and responsibility of all organs of government and of all authorities and persons, exercising legislative, executive or judicial powers to conform to, observe and apply the provisions of this chapter of this Constitution.

⁹ the sub section provides; the House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters, that is to say-© any other matter with respect to which it is empowered to make laws in accordance with the provisions of this constitution.

¹⁰ (1982) 3 N.C.L.R p. 166 at 206

a conflict with state law only to the extent that the federal laws were competently enacted.¹

It is pertinent to examine the logic behind the evidently uneven distribution of powers between the federal government and state governments. The argument has been canvassed that owing to the experience of the civil war fought between 1967 and 1970, there has been the necessity to strengthen the federal government both politically and economically to ensure the unity of Nigeria and peaceful co-existence of her disparate ethnic nationalities.² It is our well-considered submission that the reason proffered in the argument for over centralization of powers in the federal government is at best tenuous and self serving. It is submitted that the legislature occupies a pivotal position in a federal system of government and the need for federal equilibrium is unarguably vital to the success of any federal state, thus, there is the need for a practical parity of powers between the federal government and the state governments. This balance of powers will ensure as well as foster political interdependence and mutual cooperation among and between the central government and the states.

What one finds in the case of Nigeria is the clear-usurpation of powers by the federal government as evidently shown in the items on the Exclusive legislative list (68 in all) while even on the Concurrent list (which contains 12 items) the power of the state to legislate has been abridged by the inconsistency rule.

As rightly argued by a distinguished legal scholar, the inconsistency rule should not be used as an opportunity to completely subordinate state laws to federal legislation, even on matters that are not necessarily in conflict with the general policy of the federal government.³ It is submitted that items such as birth and death registrations, elections to the offices of the governors and the members of state houses of assembly, incorporation, regulation and winding up of bodies corporate, labour, including trade unions, industrial relations; safety and welfare of labour industrial disputes and arbitration, and national minimum wage for the states of the federation, mines, minerals including oil fields, oil mining, geological surveys and natural gas within the territories of the states, police and other security services, prisons, professional occupations, taxation of incomes of states workers and residents, issues of marriage registration and dissolution, trade and commerce within states have no basis being in the Exclusive Legislative list. The transfer of some of these items to either the concurrent list or allowing most to be within the residual matters for the states will go a long way in strengthening the practice of fiscal federalism in Nigeria. It is to be noted that most advanced federations allocated the aforementioned items to the federating units. For example in Canada the federal government retains only 29 items while most of the items are left for the component provinces.⁴ The over centralization of powers at the centre negates the principle of autonomy upon which federalism is based.

Constitutional provisions that infringes on the federal principle of autonomy includes the provisions granting powers to the National Assembly in matters relating to the creation of a local government council,⁵ provisions empowering the federal government to directly allocate money to the local councils⁶ etc. It is submitted that the involvement of the federal government in the way implied would have the effect of abolishing the distinction between matters of local concern and those of national concern. The basis for the division of powers under federalism is that within the framework of a general government charged with the responsibility for matters of national concern; those of local concern should be managed by the state governments. Local government being an example par excellence of a matter of local concern, and being generally recognized as the exclusive responsibility of states government, federal government involvement in local government is a contradiction of the very idea of federalism and a negation of the fundamental principle of autonomy.⁷

8.2. Separation of Powers

This principle originated by John Locke and popularized by Montesquieu is to the effect that none of the 3 arms of government under the constitution should encroach into the powers of the other. Each arm, executive, legislative and judicial is separate, equal, and coordinate department and none can constitutionally take over the functions clearly assigned to the other. Separation of powers may be divided into three meanings;

1. Federalism as a division of powers between different governmental units.
2. Traditional separation of powers between 3 arms of government and;
3. Presidential separation of powers by way of checks and balances on the powers of the executive.

The traditional concept of separation of powers is predicated on the idea that none of the three arms of government should encroach into the powers of the other. Each arm- Executive, Legislature, and Judicial- is separate, equal and coordinate department and no arm can constitutionally take over the functions clearly

¹ See A.G Abia & 35 Ors v. A.G Federation, *supra*

² Nwabueze B.O. 'Federalism in Nigeria', *Op. cit.* p.41

³ *Ibid*, p41

⁴ The Provinces have legislative powers over items like the establishment and maintenance of prisons, asylums, public lands, education as well as direct taxation powers.

⁵ Section 8(5) *supra*

⁶ Section 162(5) *supra*

⁷ B.O. Nwabueze, 'How President Obasanjo Subverted Nigeria's Federalism', *Op. cit.* 26.

assigned to the other. The doctrine is to promote efficiency in governance by precluding the exercise of arbitrary power by all the arms and thus prevent friction.

The function of the legislature is primarily to enact laws while that of the executive is to execute the laws made by the legislature. The judiciary on the other part interprets and enforces the legislative enactments. It has however been held by the Nigerian Supreme Court that the constitution being the grundnorm and the organic law of the state, it may restrict or ignore the full application of this principle by means of an express provision of the constitution itself. Therefore, the supreme law of the land may expressly expand, widen or restrict the application of the principle of separation of powers.¹ In *A.G. Abia v. A.G. Federation*² the Supreme Court upheld the provision of section 315(2) of the 1999 Constitution which empowers the President as the chief executive of the state to modify an existing law either by way of alteration, omission, or repeal if the President considers it necessary to bring such law into conformity to the Constitution. The Supreme Court herein validated the legislative action of the President when he without any recourse to the National Assembly modified the Allocation of Revenue (Federation Account etc.)(Amendment)Act.³ On the other hand, the Supreme Court acknowledged the process of impeachment by the legislative arm as a judicial function but however held that it is an exercise within the legislative functions of the House of Assembly, a legislative arm of government.⁴

Areas of checks and balances includes sections 143 of the Constitution which empowers the removal of the President or his vice by way of impeachment proceedings on grounds of “gross misconduct” as well as on ground of “permanent incapacitations” under sections 144,⁵ the control of the National Assembly over revenue of the federation⁶ as well as its oversight functions,⁷ etc.

The judiciary has a duty to interpret the constitution inter alia and not to amend or substitute provisions which they consider unwise or improper. This is an area within the exclusive competence of the legislature. The constitution as well places the operation of the legislative arm under judicial control⁸ therefore, the legislature cannot make any law ousting the jurisdiction of the court. In the case of *A.G Bendel v A. G. Federation*⁹ Kayode Eso JSC stated of the powers of the court thus:

The powers conferred on the courts by section 4(8) are wider than the inherent powers to interpret the Constitution admittedly vested in the courts in a constitutional system such as ours. The express provision of the powers vested in the courts and the mandatory nature of it, indicate to my mind an intention on the part of the framers of the Constitution that the courts should have this power to scrutinize the exercise of legislative power by the National Assembly. The inherent power is provided in section 6(6)(b) and the ultra vires doctrine could be applied in respect of any law which violated section 4(2) and (3) but yet, the Constitution stipulated section 4(8).it seems to be one of the many checks and balances contained in our Constitution. It is also unique among written constitutions⁹.

On the part of the executive, the executive may check the legislative arm by means of its control over public funds of the federation. Though it is the function of the legislature to approve the appropriation bill and make provisions for the execution of its project and functions, the actual release of the fund is the responsibility of the executive. The executive may therefore frustrate legislative duties through its process of release of funds to the National Assembly. This is in addition to the power to veto legislations made by the legislative arm of government. On the other hand, the oversight function of the National Assembly is all embracing as to checkmate the excesses of any parastatals of the executives or even the judiciary. The constitution of Nigeria therefore embodied the principles of separation of powers as well as checks and balances.

8.3 Supremacy of the Constitution and Rule of Law

By supremacy, it means that every authority, bodies, and all functionaries and persons are subordinated to the Constitution. It means that actions and omissions contrary to the Constitution shall remain a nullity. On the other hand, rule of law means government by law, government according to the law of the land. It chiefly connotes: equality before the law; independence of the judiciary; and that citizens can only be tried under a written law. Rule of law has its origin from Aristotle when he postulated that it is better for the law to rule than a single man.

¹ See *AG Abia state v. AG Federation* (2003) 4 NWLR (Pt. 809) 124 SC; *Amadi v. NNPC* (2000) 6 SC (Pt. 1) 66 at 94-95.

² *supra*

³ Cap. A27 LFN 2010

⁴ See *Abaribe v. Abia State House of Assembly* (2002) 14 NWLR (Pt. 788) 466 CA

⁵ See *Inakaju v. Adeleke* (2007) NWLR (Pt. 1025)423 SC; *A.G. Federation v. Abubakar* (2007)10 NWLR (Pt. 1041) 1 SC

⁶ Section 80 (2) –(4) of the C.F.R.N.1999

⁷ Section 88(1) *ibid.*

⁸ See section 4(8) *ibid.*

⁹ (1981) All NLR p.81

On the other hand, A.V. Dicey is reputed as the father of the concept. According to Dicey:

The absolute supremacy or predominance of regular law as existence of arbitrariness or prerogative or even of wide discretionary authority on the part of the government...a man may be punished for a breach of the law but he cannot be punished for nothing else.

The principle of rule of law and supremacy of the constitution is part of Nigerian constitution. For example, section 1 of the Constitution provides:

This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.

The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the government of Nigeria or any part thereof, except in accordance with the provisions of this constitution.

If any law is inconsistent with the provisions of this Constitution, this Constitution shall prevail and that other law shall to the extent of the inconsistency be void.

It is to be noted that in the recent years the Nigerian courts have consistently done well in upholding constitutional supremacy and the practice of rule of law as guaranteed under her constitution.¹

Rule of law however includes obedience and respect to decisions of the courts. An executive who adheres to this sanctimonious principle not only adheres to the decisions of the courts but help the court in enforcing same. The Executive class in Nigeria has actually fared badly to adhere to this principle of upholding rule of law especially the executives represented by the President Muhammadu Buhari as he is reputed to have consistently ignored many court orders of recent.

8.4 Minority rights protection under the 1999 Nigerian Constitution

We shall hereunder examine those provisions under the 1999 Constitution that relate to minority rights protection and guarantee. However, before, we delve into that it is pertinent to highlight the various areas of discrimination against the minorities in the Nigerian society. The major areas in which minorities are being discriminated against include: access to social and economic opportunities especially those provided by government; representation in government and in decision-making levels; use and development of minority languages and cultures; violation of the rights of minority religious groups to practice and propagate their religion on equal terms as the majority religions and suppression of minority political groups. Other areas include the suppression and violation of minorities' rights to own, control and manage natural resources located within their respective communities. The 1999 Constitution has elaborate provisions that guaranteed and provided for the protection of the rights of the minority groups in the country.

It is to be noted that the issue of fear of domination of the minority by the majority has lingered on right from pre-independence era to the present day. To allay the fears of the minority ethnic groups during that era, the British colonial government set up a Commission of Inquiry chaired by Sir Henry Willink to investigate the matter and proffer solutions. The Commission recommended, among others, the incorporation of fundamental rights in the Constitution.

Since the enactment and entrenchment of the fundamental rights inclusive of minority rights provisions in the independence Constitution 1960, such provisions have become an enduring feature of all subsequent Constitutions including the 1999 Constitution. Let us hereunder isolate some of these provisions.

8.4.1 Minorities right to religious freedom

Section 38 of the Constitution of the Federal Republic of Nigeria 1999 is unequivocal on its guarantee of everyone's right to religion of his or her choice as well as right of irreligion.² The rights include the rights of the individual to propagate his religion, to maintain a place of worship in association with others of the same religion, the right not to be compelled to accept or learn religious instruction or ceremony different from one's own, and the right not to be restricted from giving religious instructions to pupils belonging to one's religious community.

The right to freedom of thought conscience and religion is guaranteed by section 38 and therefore has some potential in protecting minorities. Further, the relationship between state and religion is explicitly demarcated by section 10 of the same Constitution. It states that "The Government of the Federal or of a state shall not adopt any religion as State Religion".³ This section along with section 38 of the Constitution which secures the right of individuals to freedom of thought, conscience and religion is aim at securing the rights of religious groups that are in minority in the various states and to ensure that they are by no means or

¹ See *Governor of Lagos State v. Ojukwu* (1986) 1 NWLR 621, 647; *Amechi v. INEC* (2007) 9 NWLR (Pt. 1040) 504 CA; *AG Abia v. AG Federation* (2002) 6 NWLR (Pt.763) 204 SC.

² See E. C. Ngwakwe, *Issues in Human Rights Guarantees*, Revised Edition (Owerri: Hudson Jude Press Nig., 2008), p.31

³ Section 10 1999 Constitution, *Op. cit.*

circumstances denied these rights. This is because in some states, minority religious groups are denied land to build places of worship, time slots on the electronic media to propagate their religion as are accorded to the majority religious groups, and it is indeed improper and thus unconstitutional. In fact, there are several other constitutional provisions under the 1999 Constitution that if properly implemented can protect minority rights. The entire Chapter IV of the Constitution which is essentially civil and political rights is very instructive here. Chapter IV is a combination of rights ranging from:

- (a) The right to life;¹
- (b) The right to dignity of human persons;²
- (c) The right to personal liberty;³
- (d) The right to fair hearing;⁴
- (e) The right to private and family life;⁵
- (f) The right to freedom of thought, conscience and religion;⁶
- (g) The rights to property, etc

These are all constitutional guarantees that confer equality on all citizens irrespective of tribe, race and social status. These rights are indeed conferred on all the citizens of the world and are expected to act as a check against the excesses of the strong against the weak. The only exception is that only citizens of Nigeria are entitled to the rights to private family life, freedom of movement, freedom from discrimination and to acquire and own immovable property anywhere in Nigeria.⁷

Among some other important aspects of these rights with regard to minority protection include section 42 (1) which guaranteed equality before the law. Although the rights accrue to individual and not group, individual members of minorities group are as well protected. Therefore, it is a means of minority protection.⁸

Besides providing for these rights, the 1999 Constitution, like the others before it, has also provided for the appropriate machinery for the realization and enforcement of these rights. In this regard, any person who alleges any breach or even likely contravention of his rights may seek redress in a High Court,⁹ Section 46 has been frequently resorted to by persons in the enforcement of their fundamental rights,¹⁰ Also the Constitution directs the National Assembly to make provisions for rendering financial assistance to the less privileged whose rights have been infringed upon. It further directs that in those circumstances, such infringement must be substantial and the need for financial assistance real. It should however be noteworthy that some of these rights are not absolute and may be derogated from in two specific circumstances.¹¹

In addition, it has been argued that the fact that some of these provisions such as Sections 14 and 15 of the Constitution are non-justiciable; that is the economic, social and cultural rights under the Fundamental, Objectives and Directive Principles of State Policy in Chapter II, does not really matter. Although the Constitution makes them non enforceable citizens can still use the provisions as a parameter for assessing the performance of their political officeholders. If the essence of any right lies in its enjoyment and compliance with the same, then that they are rendered non enforceable by the constitution does not limit these rights as the electorates can demand compliance to these provisions as a basis for electing their political officeholders and the civil society groups could as well publicly educate the general public on these rights therein and the other ways of bringing the government accountable. Although actions cannot be brought to court following these provisions as in Chapter IV, government can still be held responsible.

From the foregoing, it can be discerned that there are substantial provisions in the 1999 Constitution for the guarantee and protection of the rights of the minorities in Nigeria. What needs to be harnessed is the political will to begin to enforce such provisions. The government can effectively enforce these minority rights if it for instance creates a special fund from which victims can draw for the purpose of challenging or prosecuting cases of the minority rights abuses. The Human Rights Commission, the Federal Character Commission and Public Complaints Commission should be strengthened to enable them investigate cases of minority rights abuses.

In some other areas however, minorities' rights protections are lacking. For an example, there is no

¹ Section 33, *ibid*.

² Section 34 *ibid*.

³ Section 35 *ibid*.

⁴ Section 36 *ibid*.

⁵ Section 37 *ibid*.

⁶ Section 38 *ibid*.

⁷ E. C. Ngwakwe, *Op. cit*.

⁸ E. S. Nwauche, *Op. cit*. p.33

⁹ E.g. *Ojukwu v. Government of Lagos State* (1986) 1 NWLR, pp. 621-719

¹⁰ Section 46 (4)(b)(ii) C.F.R.N 1999.

¹¹ Section 45 (1) provides; nothing in sections 37, 38, 39, 40, and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society, in the interest of defence, public safety, public order, public morality, or public health; or for the purpose of protecting the rights and freedom of persons. See also section 45(2), *ibid*.

protection of the language of minority group in the Constitution. The Constitution allows for the conduct of the business of the National Assembly only in English, Hausa, Ibo and Yoruba, thereby excluding the language of the minorities. This is also applicable to the States Houses of Assembly. Further the Constitution as well as federal legislations rather than secure the right of the minorities' over their natural resources denies these resource rights.

Minority protection however traversed the scope of human right provisions. Political devices aimed at granting them access to power at the centre and to give them a sense of belonging are quite essential. Further, it is advocated that we go a step further by providing or making specific legislations aimed at ensuring some important and specific rights of minorities. This is the trend in most advanced federations like in Canada and Australia, USA and India where specific legislations exist guaranteeing the right of indigenous or aboriginal communities to the land, grazing rights and even mineral rights.¹

8.5 Democracy

As a concept, democracy involves such variables as an enabling constitutional order, political parties, institutions or organs like the Electoral commission, tribunals etc. Other variables include the electorates, political actors, voting behavior, political culture political leadership etc. A good democracy must provide enabling environment in which these variables must thrive and subsists.

The Nigerian Constitution made provision for periodic election for four years interval for the offices of the President, the vice President and members of the National Assembly as well as those of the state governors and their deputies as well as those of the state Houses of Assembly. The tenure of the officers of the local government councils is dependent on the laws of the individual Houses of Assemblies. The fourth Republic in Nigeria has witnessed and uninterrupted democratic succession from 1999 till date.

Section 153(1) (f) created the Independence National Electoral Commission while 158(1) of the Constitution ensured the independence of the national election body. The right to peaceful assembly and association guaranteed by section 40 of the Constitution also ensures a competitive multi-party system. Further, paragraph 14 of part 1 in the third scheduled provides for the membership of the Electoral commission. Whereas paragraph 3 of part II made provisions for the states Independent Electoral Commission.

While we acknowledge that the provisions in the Constitution relating to conduct of election are practicable, we must state that most aspects of these provisions are bedeviled with palpable contradictions capable of eroding the principle of democratic society. We shall herein below examine critically some of these areas.

8.5.1 The appointment of the INEC Chairman

The presidential power over the appointment of the INEC chairman and the Resident Commissioners tends to weaken the independent of this Commission. The reason is based on human nature as is most likely to compel shadow loyalty to the executive.

8.5.2 The problem of double/multiple voting

The problem of double/multiple voting is a prevailing factor militating free and fair election in Nigeria. It is suggested that a comprehensive national identity card policy if properly implemented can reduce this menace to the lowest minimum.

8.5.3 Existence of Ethnic or regional based political parties

The evolution of political parties on ethnic and regional lines has a tendency to produce political actors whose motivation had sectional rather than national calculations. The resultant effects are the up growth of sectional and subgroup sentiments, which tends to becloud national interests. It is submitted that Nigeria should develop a positive national political ethic that can serve as a standard for future political office holders in the country. Further, without necessarily casting aspersion on the Supreme Court judgment² validating multiparty system in Nigeria, it is suggested that the adoption of a maximum number of multiparty system, say 5 political parties will help discourage political party formation based on ethnic configuration. This number will on the other hand provides a politically elastic formulae for inter play of divergent views in a pluralistic polity like Nigeria. It will at same time enable for a politic of accommodation at the central level of governance as political parties membership will embrace individuals and groups from the different ethnic, class, and even economic strata of the polity.

Finally the issue of democracy and political participation lies not merely in the provisions in the constitutions but in the actual working of the constitution. it must be noted that there can hardly be any political community where the barest essentials of life are absent, where food, health, and shelter are available below subsistence level, people will be so pre-occupied with how to get these essentials that they may not bother about who governs or whether or not political actors play the game according to the rules. Political life will tend to be

¹ See e.g. First Land Management Act .SC 1995, C.24. Section 35 Canadian Constitutional Act of 1867.

² *INEC v. Musa* (2002) 17 NWLR (Pt.796) 412 SC

more individualistic than collectivistic. On the other hand, in a federal state like Nigeria, where these essentials are to be available in a lopsided manner, the units that are relatively in abject want will tend to be apolitical, apathetic and negative in their supportive responses.

The founding fathers of the United States wisely interpreted liberty widely to include freedom from overbearing governmental executive. However, most constitutional scholars are in agreement that liberty includes the freedom from ignorance, poverty and disease. It was for the realization of such a society that the US government enacted the Economic Act of 1964. The Act states by its preamble:

The United States can achieve its full economic and social potential as a nation only if every individual has the opportunity to contribute to the full extent of his capabilities and to participate in the working of our society. It is therefore the policy of the United States to eliminate the paradox of poverty in the midst of plenty in the nation by opening to everyone the opportunity for education and training, the opportunity to work and the opportunity to live in decency and dignity.¹

Nigeria is a country replete with extreme underdevelopment in the areas of education, health, shelter, food, welfare to mention but few. If the Nigerian nation could embark on a massive industrialization, and welfare schemes, problems associated with poverty and want, ignorance and disease will likely be reduced to the minimum. When this happens, democratic process will deepen as political participation will no longer be seen as an opportunity to partake in the “national cake” but an opportunity to serve. Election expenses will drastically come down and campaigns will cease from being a life and death struggle to project ethnic identities but a process of choosing citizens capable of formulating and executing policies that will reflect national objectives.

When politics is no longer seen as a way of making a living by foul or fair means, nor as a chance for imposing the whims and caprices of one ethnic group on another, but as a way of rendering selfless services to the country, the tendency to cling to political position in defiance of public opinion will be eroded to ensure the survival of democracy.

9. Conclusion

Nigeria federalism is a developing one. The constitutional provision mirrored the desire of the founding fathers to pursue federalism principles and ideology as a form of government best suited to her multi-ethnic and multi-religious background. The history of the practice of federalism in Nigeria has showcased the manipulations of her constitution in favor of over-centralization of power at the center, as against federal ideology which favors state autonomy and mutual noninterference. While federalism is not antithetical to constitutionalism, a federal constitution must reflect in practice the preference for federal ideas and principles and jettison anti-federal practices: The same principles that other modern advanced federations have pursued. Nigerian constitution makers, legislators, policymakers, and most importantly our judges are urged to follow suit. Federal constitutions ought to be interpreted to reflect federal principles in reality.

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