

## A COMPARATIVE ANALYSIS OF FEDERALISM AND ITS PRACTICE IN NIGERIA, THE UNITED STATES OF AMERICA AND GERMANY

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### Abstract

*Federalism the world over does not have one single recipe. It follows that federations differ in practice subject to the provision of their constitutions and local circumstances. Societies are complex and institutional designs are not just simple, consequently, it is evidenced that similar institutions can operate differently in various political arrangements. The implication is that the way it is practiced in Nigeria could be different from the way it is practiced in the United States of America or Germany. However, federalism requires some measures of democratic tendencies capable of ushering in the rule of law as undemocratic federalism frustrates autonomy of the sub-nationals. Federalism entails mainly the devolution of power to at least two orders or tiers of government in which each of the orders of government operate separately and independently. Federalism accommodates autonomy and independence of the tiers of government even if they have to cooperate with each other. This article therefore, x-rayed the practice of federalism in Nigeria, the United States of America and Germany with a view to unravelling the differences in the various country's practice of federalism and their similarities. This work recommended amongst other things, that there should be decentralization of powers in various federations as decentralization would encourage local participation, investments and developments. Again, policy-makers should consider and encourage broad-based laws that would enhance competition, cooperation and harmonization; and that democratic principles should be well entrenched and propagated.*

**Keywords:** *Federalism, Comparative Analysis, Decentralization, Nigeria, the United States of America and Germany.*

### Introduction

Federations vary greatly in terms of practices in accordance with the provisions of the constitutions of various countries. It has similarities in some areas and vice versa. It follows that what is obtainable in country 'A' could be quite different from what is seen in country 'B'. There are three-tiers of government in Nigeria; the Federal, State and Local Governments as recognized by the constitution of the Federal Republic of Nigeria 1999 (as amended). Each of the tiers of government has its functions and powers enshrined in the Constitution. In the United States of America, the constitution recognizes two tiers of government: the Federal Government and the States. The US constitution left the Local Government to the States. In Germany, the constitution recognizes five-tiers of government: the European Union, the Federation or National Government, the 16 *lander* (States), rural districts or Counties and towns and Municipalities; all are legally independent. A system can only be federal if there is "a constitutional division of power between one general and several regional governments," each of which, in its own sphere, is co-ordinate with others on the people; each must be limited to its own sphere of action, and each must be within that

sphere, be independent of others.<sup>1</sup> Both the legal and the institutional mechanisms must be put in place before a division of power capable of ensuring total independence and coordination between the central or federal and component units. A written constitution must be in existence. The constitution is therefore, supreme and any other law that is inconsistent with the provisions of such constitution is null and void to the extent of its inconsistency;<sup>2</sup> it is the driving force of any federation.

In an ideal federalism, both the central and component units are coordinate,' independent authorities within their allowed sphere of jurisdictions. Neither the central nor the constituent units encroach into the power and affairs of the other. The provisions of the constitution must be amended when it becomes necessary that the powers as enshrined in the constitution should be altered. And both the federal and constituent units must be involved in the said amendment.<sup>3</sup> It must be noted that federalism is not immune to conflicts or corruption or disobedience to the rule of law. Comparative federalism can provide us with a better sense of the question to ask, the connections to look out for, and likely impacts of certain arrangements.\*

### **Federalism in Nigeria**

Nigeria has had both civilian and military federalism with different shapes and structures. The neo-federalism deals with "what ought to be" as against "how it should be."<sup>4</sup> Neo-federalism model is a philosophy of devolution or the transfer of certain powers from the central or federal government to the component units which include: State and Local Governments. Here, each level of government is with distinct constitutional division of powers, financial autonomy for the levels of government and that none of the government will be seen as inferior to another. However, the practice of federalism in Nigeria negates the above ideology or principles. This is because the 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 the Nigerian federalism. As earlier stated, the 1999 Constitution recognizes three levels of government with Federal Government at the apex, followed by the State Governments - 36 in number and /Local Governments - 774 in number. Nigeria is no doubt a Federal State<sup>5</sup> with its component units, even if it is clothed with some attributes of a unitary garment sequel to the provisions of the 1999 Constitution (as amended), which was the handiwork of the military.

The 1999 Constitution devolved powers to the various tiers of government through the political institutions. The political institutions - legislative, executive, administrative and partisan at the centre of a federation, help define and shape the character of the federation. The institutional arrangements within the constituent units and the central government are usually of the same type. Apart from these basic institutions, there are also other institutions like the security agencies, electoral umpires, federal character commission and other such institutions. A virile and

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<sup>1</sup>K.C. Wheare, *Federal Government*, (London: Oxford University Press, 1963), p. 11.

<sup>2</sup>See for instance, S. 1(1) and (3) CFRN 1999 (as amended).

<sup>3</sup>*Ibid*, SS. 8 and 9.

<sup>4</sup>G. Anderson, *Federalism. An Introduction*, Forum of Federations; Special Edn. for NBA Conference (Canada:

Oxford University Press, 2008), 80.

<sup>5</sup>S. 2 CFRN 1999 (as Amended).

independent judiciary is a *sine qua non* to interpret the laws without fear or favour when called upon to do so. Nevertheless, in order to maintain their legitimacy and effectiveness, central government should meet their constitutional responsibilities, foster national unity, develop national identity, protect rights and minorities and promote the healthy functioning of the federation. The choice of the institutional arrangements will determine their successes.<sup>6</sup>The 1999 Constitution provides for the legislative, executive and judicial functions and powers.<sup>7</sup>The legislative powers of the federal Republic of Nigeria shall be vested in a National Assembly for the federation which shall consist of a Senate and House of Representatives.<sup>8</sup> The National Assembly shall legislate on matters set out in the Exclusive Legislative List.<sup>9</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>10</sup> It follows that the state legislature cannot legislate on the items as contained in Part 1 of the Second 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 contained in the Concurrent Legislative List.<sup>11</sup> The matters or items as contained in the Exclusive List are 68 in number. And that of the Concurrent Legislative List are 30 in number. The 1999 Constitution also provides for the functions of the local government area councils,<sup>12</sup> which will be subsequently dealt with in this chapter.

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. Residual List, which are the left over powers not included in neither the Exclusive nor the Concurrent Lists are left to the states alone to legislate upon. Example of such matters includes chieftaincy matters.<sup>13</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>14</sup> The legislative power of the states shall be vested in the State Houses of Assembly.<sup>15</sup> The State Houses of Assembly shall have power to make laws for the peace, order and good government of the state or any part thereof with respect to such matters which includes; any matter not in the

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<sup>6</sup>Ibid, n 4, 43.

<sup>7</sup>Ss 4, 5 and 6 CFRN 1999 (as Amended).

<sup>8</sup>Ibid, s.4(1).

<sup>9</sup>Ibid, s.4 (1) and (2) P.I, 2nd Sch.

<sup>10</sup>Ibid, s.4 (2).

<sup>11</sup>Ibid, s.4 (4) (a).

<sup>12</sup>Ibid, 4<sup>th</sup> Sch.

<sup>13</sup>See s.4 (7) CFRN 1999 (as amended).See also, Lawakhigbe, \*Powers of the Federal, State and Local Governments in Nigeria,' Lawakhigbe.com, <[https://lawakhigbe.com/2017/06/30/powers-of-the-federal-state-and-k\):al-governments-in-Nigeria/](https://lawakhigbe.com/2017/06/30/powers-of-the-federal-state-and-k):al-governments-in-Nigeria/)> accessed 29 July 2021.

<sup>14</sup>S. 4 (5) CFRN 1999 (as amended).

<sup>15</sup>Ibid, s.4(5).

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>16</sup> The said constitution further provided that the exercise of legislative powers by the National Assembly or by 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>17</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 National Assembly and the State Houses of Assembly are also prohibited by the constitution from enacting a law in relation to any criminal offence to be retrospective.<sup>18</sup> The implication of the above provisions is that the legislative houses cannot 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 which are to be exclusively legislated upon by the National Assembly are very much more important and valuable. The states are left with a few items of which some are to be co-legislated upon with the National Assembly. Items such as accounts of the government, arms and ammunition and explosives, aviation, airports, national honours, banking, copyright, currency, customs, defence, police, military, mines and minerals and oil fields, oil mining, maritime, incorporation, fishing and fisheries, immigration, insurance, maritime, fingerprints, passports, prisons, railway, 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 with respect to which the National Assembly is not empowered to make laws. From the above, it is glaring that the 1999 Constitution (as amended) wielded much powers on the federal government of Nigeria leaving the sub-nationals with little or nothing.

In making laws for the good government of the federation and states, the federal and state legislatures may be faced with some hassles. This article shall consider some of the principles or rules governing the law-making function of the legislature which include: inconsistency rule, covering the field and clearing the field.

### **Inconsistency Rule**

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

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<sup>16</sup>Ibid, s.4 (7) (a), (b) and (c).

<sup>17</sup>Ibid, s.4 (8).

<sup>18</sup>Ibid, S. 4 (9); see also *Aokov Fagbemi* (1961) I ALL NLR, 406.

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.<sup>19</sup> 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. And when the federal law is repealed, the State law therefore, becomes operational and enforceable.<sup>20</sup> The inconsistency rule will however, not apply where the federal government legislate or encroaches on matters which are ordinarily within the powers or purview of the state legislatures. It follows therefore, that the federal law must have been validly made. Inconsistency rule also extends to any inconsistency that may arise between the Act of the National Assembly or the law of a State and the provisions of the constitution. Therefore, if any law, be it that of the National Assembly or State Houses of Assembly is inconsistent with the provisions of the constitution that law shall to the extent of its inconsistency, be void.<sup>21</sup>

Inconsistency between the federal laws and a state law on a matter will arise where the state legislate on a matter embedded in the Concurrent Legislative list, in which the entire field have been exhaustively, validly and completely dealt with by the federal law. The application of the law made by the state will be suspended for as long as the federal law remains in force. The broad approaches to determine when there is inconsistency are as follows:-<sup>22</sup>

- (i) Is it impossible to obey both laws? This is referred to as "simultaneous obedience" test;
- (ii) Does one law confer a right which the other purports to take away? This is known as the "conferred rights" test; and,
- (iii) Does the federal law cover the field in question? And this is referred to as the "cover the field test".

It is submitted by the researcher that if it is possible to obey both laws, the federal government and state could legislate on such items. And where the law confers a right which the other purports to take away, it may not be possible for both the federal and state governments to legislate on such issue. Again, where the federal law has validly and totally covered the field, the state cannot legislate on such issue. But 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.

On the resolution of 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>23</sup> 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

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<sup>19</sup>Ibid, s.4(5).

<sup>20</sup>B.O. Nwabueze, *Federalism in Nigeria Under the Presidential Constitution*, (Lagos State Ministry of Justice Law Review Series, 2003), 41.

<sup>21</sup>S.1. (3) CFRN 1999 (as Amended).

<sup>22</sup>V. Morabito and H. Strain, *'Inconsistency Rule in Australia'*, 1993, 188, available on <[http://en.m.wikipedia.org/wiki/section\\_109\\_of\\_the\\_Constitution\\_of\\_Australia](http://en.m.wikipedia.org/wiki/section_109_of_the_Constitution_of_Australia)> accessed 15 January 2021. See also, 'The Section 109 Cover the Field Test of Inconsistency: An Undesirable Legal Fiction', available on <[classic.austlii.edu.au/UTasLawRw](http://classic.austlii.edu.au/UTasLawRw)>, accessed 14 April 2021.

<sup>23</sup>(2002) 09 LRCN, 1334.

1999 Constitution (as amended)."On whether the provisions of the Independent Corrupt Practices Commission (ICPC) Act impinge on the principle of federalism, the Supreme Court of Nigeria also stated thus:

*It has been pointed out that the provisions of the Act impinge on the cardinal principles of federalism, namely, the requirement of equality and autonomy of the state government and non-interference with the functions of the state government. This is true, but as seen above, both the federal and state governments share the power to legislate in order to abolish corruption and abuse of office. If this is a breach of the principles of federalism, then... As far as the aberration is supported by the provisions of the constitution, I think it cannot rightly be argued that an illegality has occurred by the failure of the constitution to adhere to the principles which are at best ideals to follow or guidance for an ideal situation.<sup>24</sup>*

### **Covering the Field**

The doctrine of 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 states in enumerated lists.<sup>25</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) government and component units, ie, state and local governments have joint interests. The doctrine originated in the US where the expression "covering the same ground" was used in *Houston v Moore*,<sup>26</sup> The doctrine simply means that where there is a conflict between the legislation of a state and the federal parliament on a matter in the Concurrent Legislative List, an inconsistency arises; and as between the two laws so passed, the one passed by the federal parliament prevails and that of the state is rendered inoperative during the lifetime of the federal law.

The policy and basis for the doctrine is that it would be presumptuous of a lower legislative body to legislate on the same subject matter as covered by the higher legislative body; and to subject a citizen to obedience to two laws at the same time on the same subject will be too oppressive. Under the doctrine, acts of the federal government in a federal system of government build the states and their agencies as representing separate segments of the federation within the limits of the enumerated powers.<sup>27</sup> In *Clyde Engineering Co v Cowburn*<sup>28</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

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<sup>24</sup>Ibid.

<sup>25</sup>T. Naidike, 'Doctrine of Covering the Field in Federal Constitutional Theorv.'<https://tnaidike.wordpress.com/doctrine-of-covering-the-field-in-federal>. accessed 2 March 2021.

<sup>26</sup>(1820)18US 1.

<sup>27</sup>*Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920), 28 CLR 129,153, 154.

<sup>28</sup>(1926) 37 CLR, 466.

law.<sup>29</sup>The doctrine does not apply at all times and it must be a constitutional coverage which must bind the federal government and the states.<sup>30</sup> A law passed by the federal legislature is superior to that of the state legislature.<sup>31</sup> Note that administrative rules, acts, directive orders, notices, circulars, etc, made under federal laws are not under the doctrine.<sup>32</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>33</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 National Assembly shall prevail and that other law shall to the extent of the inconsistency be void.

Concurrent Legislative List was defined by Tobi JSC in *Olafisoye v. F.R.N.*<sup>34</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, there are some matters which are strictly concurrent in nature and upon which both federal and state governments are empowered to exercise concurrent power without limitation. Such matters include *trigono-metrical*, 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 act over the entire field. This may lead to conflict between the law made by the federal legislature and the state legislature on the same subject matter. In *George v FRN*,<sup>35</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

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<sup>29</sup>See Dixon J. in *Ex parte Maclean* (1930) HCA 12, 43 CLR 472,482.

<sup>30</sup>*A.G. Ogun State v A.G. Federation* (1982) 2NCLR 166, pi80-181.

<sup>31</sup>*U.G. Ontario v A.G. Dominion of Canada* (1894) AC. 189.

<sup>32</sup>V. Morabito and II. Strain, '*Inconsistency Rule in Australia*', 1993, 188, available on <[https://en.m.wikipedia.org/wiki/section\\_IU9\\_of\\_the\\_Constitution\\_of\\_Australia](https://en.m.wikipedia.org/wiki/section_IU9_of_the_Constitution_of_Australia)> accessed 15 January 2021. See also, 'The Section 109 Cover the Field Test of Inconsistency: An Undesirable Legal Fiction\*', <[classic.austlii.edu.au/UTasLawRw](http://classic.austlii.edu.au/UTasLawRw)>, accessed 14 April 2021.

<sup>33</sup>See generally s.4 (5) CFRN 1999 (as amended).

<sup>34</sup>(2004) 4 NWLR (Pt. 864), p. 580.

<sup>35</sup>(2011) 10NWLR (Pt. 1254)1,72.

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>36</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. The doctrine of covering the field can arise where, in the purported exercise of the legislative powers of the State House of Assembly, enacted a law which an Act of the National Assembly has already made provisions covering the subject matter of the State Law. In this situation, the doctrine of covering the field will apply because of the federal might, which relevantly is the Act.<sup>37</sup>

### **Clearing the Field**

A legislative field earlier covered can be cleared by passing an express provision declaring its intention to do so. In Australia, the Commonwealth can control the operation of section 109 which borders on inconsistency rule in a negative way, by making it clear that related state laws are to operate concurrently with the Commonwealth Laws. By doing this, it is therefore, expressly stated that the field is cleared and the state legislature can legislate on such issue or item. In *R v Credit Tribunal; Ex Parts General Motors' Acceptance Corporation*,<sup>38</sup> Mason J. noted thus:

*The judgment to which I have referred, make the point that although a provision in a Commonwealth statute which attempts to deny operational validity to a state and cannot of its own force to achieve that object, it may nevertheless validly evidence an intention on the part of the statute to make exhaustive or exclusive provision on the subject with which it deals, thereby bringing section 109 into play...*

### **Local Government Area Councils in Nigeria**

Nigeria has 774 local government councils as administered by a local government council chairman and the councillors who are in charge of the various wards and units. The chairman is the chief executive officer of the Local Government Council and the councillors are the representatives of the various wards in the council and they constitute the legislative arm of the government; they make bye-laws for the local government. There are 36 States in Nigeria and a Federal Capital Territory, Abuja. The local government is the third tier of government and it is the lowest tier in hierarchy. It is a grass-root administration, because it deals with the people directly. Local government act within the ambit of the powers devolved or apportioned to them by the constitution or any enactment by the state legislature (State Houses of Assembly). Other names for local governments in

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<sup>36</sup>(2002) 6 NWLR (Pt. 764), 542.

<sup>37</sup>*INEC v Mitsu* (2003) 3 NWLR (Pt. 806), 72.

<sup>38</sup>(1977) HCA 34, para. 28-29.



other countries include: province, district, shire, village, municipal, county, etc. The need to sensitize and bring socio-political awareness to the grass roots cannot be over-emphasized, thus the creation of local government Area councils in Nigeria.

### **Functions of Local Government Area Councils in Nigeria**

The 1999 Constitution provides for the main functions of local government area councils as follows:<sup>39</sup> the consideration and making of recommendations to a State Commission on Economic Planning or any similar body on the economic development of the state, particularly in so far as the areas of authority of the council and of the state are affected and proposals made by the said commission or body; collection of rates, radio and television licenses; establishment and maintenance of cemeteries, burial grounds and homes for the destitute or infirm; licensing of bicycles, trucks, (other than mechanical, propelled trucks), canoes, wheel barrows and carts; establishment/ maintenance of roads, streets, street lightings, drains and other public highways! parks, gardens, open spaces, or such public facilities as maybe prescribed from time to time by the House of Assembly of a state; naming of roads and streets and numbering of house; provision and maintenance of public convenience, sewage and refuse disposal; registration of all births, deaths and marriage; assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a State; control and regulation of out-door advertising and hoarding; movement and keeping of pets of all description; shops and kiosks; restaurants, bakeries and other places for sale of food to the public, laundries and licensing, regulation and control of the sale of liquor.

Again, the 1999 Constitution further provides that the functions of a local government council shall include participation of such council in the government of a state in respect to the following matters: the provision and maintenance of primary, adult and vocational education; the development of agriculture and natural resources, other than the exploitation of minerals; the provision and maintenance of health services; and other functions as may be conferred on a local government council by the House of Assembly of the State. Meanwhile, the 1999 Constitution empowers the State Houses of Assembly 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; any matter not included in the Exclusive Legislative List; any matter included in the Concurrent Legislative List; any matter with respect to which it is empowered to make laws in accordance with the provisions of the Constitution. The 1999 Constitution also provides that the system of local government by democratically elected local government councils is under the Constitution be guaranteed; and accordingly, the government of every state shall subject to the provisions of the Constitution, ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of such councils. The provisions of section 8 of the 1999 Constitution bothers on the creation of a State or Local Government Area. In *A.G. Lagos State v A.G. Federation*<sup>40</sup> where the Supreme Court stated that for a State to create a local government, the provisions of sections 8 and 9 of the 1999 Constitution must be adhered to strictly. However, the wide disparity in the number of local governments in various states of the country has been a subject of discourse. States like Delta has 25 local government Area Councils; Anambra has 21; Katsina has 34; Kwara has 16; Kano State has the highest number of local government

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<sup>39</sup>Pt. III, 4th Sch. to CFRN 1999 (as Amended).

<sup>40</sup>(2005)1 M.J.S.C6.

areas councils 14. The Monthly revenue allocation from the Federation Account is appropriated to every local government as recognized by the 1999 Constitution. This imbalance in the number of local government areas has, no doubt, worked hardship on some states as the revenue that accrues to those states going by the number of local government areas in such states are less than those with higher local government areas. The states too have dabbled into the affairs of some local government areas. The local government is a creation of the 1999 Constitution, unlike in the U.S, where the Constitution never provided for the administration of local government councils.

In the US, the Constitution left the issue of local government to the various States to deal with. The Local Government Areas in Nigeria ought to be protected under the Constitution. Thus, in *Bamidele v Commissioner for Local Government*,<sup>41</sup> the plaintiff brought an action against Lagos State Government over its interference in running of Alayabiagba market in the Lagos Island Local Government. The Supreme Court held *inter alia* that:

*The first lesson is that institutions which ensure democracy must not be allowed to take any other form and be personalized. If they are, they became open to grave abuse. All this applies as such to the doctrine of separation of powers as to powers of the different tiers of government in a true federalism.*

As the third-tier of government, the Local Government Council deals with the people at the grassroots, yet, it is incapable of catering for the grassroots, consequent upon the lean resources that accrue to it. So many people have even advocated that the Local Government as the third-tier of government should be scrapped. Their reason is that, the Local Government in Nigeria is not functional; that its aim and objectives for the development of the grassroots is already defeated. They argued that the chairmen and councillors in the Local Government (Councils are there to receive salaries and allowances and nothing more. However, others were of the view that for an ideal federalism, the Local Government as the third-tier of (government should be well entrenched and that government should shift more of its attention to the Local Government. One other problem that is bedevilling the Local Government Councils in Nigeria is the absence of autonomy to the /peal Councils. The Local Governments are at the behest of the States Governments in spite of its entrenchment in the Constitution. This does not go down well in a federation.

The challenges of local government in Nigeria for example, include: bribery and corruption, political pressure from the grassroots, poor change management, dependence on central government, lack of interest, poor administrative structure, poor links with other Local Governments, etc. It is not clear if these problems are inherent in the Local Government in the U.S. The point to note here is that the local governments in the US are been provided for in the various States Constitution. The Constitution of the US did not make mention of the local governments, unlike in the Nigerian Constitution where the functions of the Local government Councils are spelt out in the Nigeria Constitution.<sup>42</sup> The various States Constitutions grant powers to various Local Governments in their States.

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<sup>41</sup>(1994) 2NWLR (Pt. 328),568.

<sup>42</sup>See, generally Pt. II, 4th Sch. to the CFRN 1999 (as Amended).

### **Federalism in the United States of America**

In the US, the basic attributes of federalism is that, power is devolved between the two-tiers of government, that is, the Federal Government and States. The Constitution of the US, not the president, or any elected leader, reigns supreme.<sup>43</sup> The institution provides thus: this Constitution and the Laws of the US which shall be made in pursuance thereof... shall be the Supreme Law of the Land."<sup>44</sup> The US like Nigeria practice federalism. Nigeria has a Federal Government at the Central and States as the component units. The States have their Constitutions. The US Constitution has been in existence since 1787, with some amendments: Article I covers the legislative branch; Article II deals with the executive branch and Article III<sup>^</sup> the judicial branch; Article IV delineates the relationship between the States and between each State and the Federal Government; Article V provides for methods for amending the Constitution. Being a written Constitution, it is rigid, meaning that the process of altering or amending same is very cumbersome; Article VI established the "Authority of the US, anything in the Constitution or Laws of any State to the contrary notwithstanding Article VII stipulates the method of ratification. The Constitution provided for different Arms of Government in the US, just like in Nigeria, the Legislative, Executive and judicial Arms of Government with their functions.<sup>45</sup>

The Constitution of the US provides that all legislative functions herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.<sup>46</sup> Although, the new framework featured three distinct branches, Congress remained primary in two respects: it initiates legislation and it represented the people. The House of Representatives shall be composed of members chosen by the people of the several States, and the electors in each State shall have the qualification requisite for electors of the most numerous branch of the State legislature.<sup>47</sup> No person shall be a representative, who shall not have attained the age of twenty five years and been seven years a citizen of the United States and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.<sup>48</sup> When vacancies exist in the representation from any State, the Executive Authority there from, shall issue writs of election to fill such vacancies.<sup>49</sup> The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.<sup>50</sup> It must be noted that every person who is entitled to vote, regardless of the State of residence has an equal voice. Every ten years, an enumeration (census) determines the number of representatives for each state.<sup>51</sup> The Senate of the US shall be composed of two Senators from each State for six years; and each

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<sup>43</sup>R. Raphael, *The United States of America Constitution; Explained Clause by Clause for Every American Today*,

Annotated (New York: Vintage Books, a Division of Penguin Random House LLC, 2016, 2017), p. 3.

<sup>44</sup> Art. VI, US Constitution

<sup>45</sup> Arts. I, II and III of the U.S Constitution

<sup>46</sup> *Ibid*, An.I, s. I

<sup>47</sup> Raphael, *The US Constitution; Explained Clause by Clause for Every American Today*, Annotated (New York: Vintage Books, a Division of Penguin Random House LLC, 2016, 2017), 3. 6; see also, Art. I, s. 2(1)

<sup>48</sup> Art. I, s.2(2).

<sup>49</sup> *Ibid*, s. 2 (4).

<sup>50</sup> *Ibid*, s. 2 (5).

<sup>51</sup> *Ibid*, n 47, 3.

senator shall have one vote.<sup>52</sup> No person shall be a senator who shall not have attained the age of thirty years and been nine years a citizen of the US and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.<sup>53</sup>

### **Devolution of Power in the USA**

As a federation, it is divided into 50 independent federating units otherwise called States. States have their own Constitutions apart from the constitution of the country. In 2012, 89,004 Local Governments existed in the US, down from 89,476 in the last census of government conducted in 2007.<sup>54</sup> The US Constitution provides for a tiers of government, viz; federal and States. Federal Government is given some specific powers such as: national defence, printing money, foreign relations, etc.<sup>55</sup> Powers, such as sanitation, education, transportation, medical services, business, regulating property, are reserved for the States.<sup>56</sup> Local governments include cities, counties, towns, school districts and municipal government. Each State Constitution makes provisions for their Local Governments. But in most cases, the local governments in the US are categorized as follows: municipal government; mayor council; the commission; council/city manager; county government; sub-county general purpose governments; township governments; school districts; special districts, etc.

The 10th amendment<sup>57</sup> to the US Constitution grants all powers not given to the Federal Government back to the people through the State and Local governments. Most citizens engage with their Local Governments more often than with their State and Federal Governments. Municipalities, generally takes care of parks and recreation services, police, fire, signage, snow removal, etc. Local Governments build trust within their communities by functioning as transparently as possible. Typical examples that one might find in Local Governments in the US include: police, fire departments, emergency medical services, libraries, public works department, building and zoning departments, schools, municipal courts, streets and sanitation, roads, public safety, cemeteries, housing, community development, environmental protection, etc.<sup>58</sup> Some sources of income to the Local Government include: property taxes, buildings and personal dwellings, licenses, fees, state-operated businesses, federal grants, state grants, lotteries, etc.<sup>59</sup> The local government in the US have some very important characteristics that give it importance, such as decentralization and local autonomy.

The Supreme Court of the US is the only Federal Court established by the US Constitution. It has power of institutional view and invalidation of any federal or State Laws which it deems contrary to the Federal Constitution. US Constitution makes no reference to Local Governments.

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<sup>52</sup>Art. 1, s. 3 US Constitutions.

<sup>53</sup>*Ibid*, s. 3 (3).

<sup>54</sup><<https://www.census.govs/archives/>>. accessed 6 March 2021.

<sup>55</sup><<http://www.cssfoaim.com.pk/css-optional-subjects/group-vi/constitutional-law/59705-american-local-government-structure.html>>. accessed 6 March 2021.

<sup>56</sup>Art. 1, s.8. US Constitution.

<sup>57</sup>*Ibid*, Amendment x (ratified in 1791).

<sup>58</sup><<https://insights.diligent.com/>>, accessed 6 March 2021.

<sup>59</sup>*Ibid*.

The organization and activities of Local governments are therefore, within the ambits of various States and subject State Constitutions.

Sequel to the above, this article observed that, the US Constitution accommodates autonomy in the tiers of Government, which portrays an ideal federalism to a large extent, unlike the 1999 Constitution (as amended) which vested so much power to the/Federal Government of Nigeria to the detriment of the component units. The component units in the US are granted autonomy, ie, the States have their various Constitutions which enable the States to establish the number of local governments as they deserve; the States also have their various State Police.

### **Federalism in Germany**

In Germany, there are five levels of Government, these are:<sup>60</sup> European Union (EU), Federation or National Government; 16 *landers* (states); the rural districts or counties (*Land Kreise*); and the towns and municipalities. The European Union (EU) makes laws, that all other levels of government must execute completely. Any Law made by the EU is binding on the Member States. It is a source of legislation to member States. And where a European Law conflicts with a National Law, the National Law is not rescinded nor repealed but its binding force is suspended.<sup>61</sup>In *Costa v. Enel*,<sup>62</sup>the Court established the primacy of European Union Law (then Community Law) over the Laws of its Member States. It follows therefore, that the European Union Law has primacy or is supreme over National Laws in Germany.

### **Devolution of Powers in Germany**

On devolution of powers, the Federation National Government of Germany is responsible for defence and foreign affairs or policy. The National Government develops standards about the actions of the 16 *lander* (states). The federation gives money to poorer States as it wants all states to be equal. The 16 *lander* (state) governments can create rules for Local Government in each State. But State governments cannot abolish Local Government, as a Local Government is a creation of the Constitution just as it is in Nigeria. The functions of Local Governments and its powers are guaranteed by the Constitution; therefore, the States must uphold the Constitution.

The rural districts or counties comprises of the urban districts or independent towns. The towns and municipalities are parts of a district or suburbs of an urban district. Meanwhile, some States have *regierungsbezirke* which refers to a group of counties and cities in an area to help run certain tasks across the area. Other States have any which is a collection of municipalities in a district usually because the municipalities themselves are too small to run many services. But these are not guaranteed or created by the institution; they are there to help various levels of government to carry out their duties. There are 438 *kreiseor* districts.<sup>63</sup> The federal government retains Executive power over national issues such as defence, foreign affairs, immigration and treasury, while shared responsibilities include

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<sup>60</sup>Local Government Administration in Germany: The German Law Archive, Retrieved 17 February 2008, available on [citymayors.com](http://citymayors.com), accessed 25 April 2021.

<sup>61</sup><<https://fullfact.org/europe/eu-law/>>, accessed 25 April 2021.

<sup>62</sup>(1964) 6/64.

<sup>63</sup><<https://www.theguardian.com/>>, accessed 25 April 2021.

civil law, public health and electoral role.<sup>64</sup> The Basic Law (Constitution) divides the Federal and State Governments legislative responsibilities into Exclusive Federal Powers,<sup>65</sup> deviation power,<sup>66</sup> competing powers,<sup>67</sup> and exclusive state powers.<sup>68</sup> The Exclusive Legislative Jurisdiction of the federal government includes; defence, foreign affairs, immigration, citizenship, communications, and currency standard. The States have exclusive jurisdiction on the police (excluding Federal Police), education, the press, freedom of assembly, public housing corrections, broadcasting and media affairs, etc. The Federal and State Governments have concurrent powers over so many items but not limited to economics, civil law, land management, public welfare, consumer protection, public health, etc. State Laws or Legislations can only remain in effect as long as there is no Federal Law or legislation that contradicts its contents.<sup>69</sup>

In 1969, the Constitution of Germany, the, Basic Law, was amended and by virtue of the amendment, the areas of shared responsibility for the States and Federal Government were enlarged in such areas like higher education, regional economic development and agricultural reform.<sup>70</sup> In the areas of environment, nature conservation and regional planning, State legislation can deviate from federal guidelines. International relations, especially international treaties, are basically the responsibility of the federal government. The States have the right to representation at the Federal level in matters of International Relations that affects them.<sup>71</sup>

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<sup>64</sup>Ibid.

<sup>65</sup>Arts.71 and 73, Constitution of Germany.

<sup>66</sup>Ibid, Art. 72.

<sup>67</sup>Ibid, Arts.72 and 74.

<sup>68</sup>Ibid, Art. 70.

<sup>69</sup>Ibid, Art 72, S. 2.

<sup>70</sup>Ibid Arts.91 and 91(b)..

<sup>71</sup>Ibid, Arts. 23, 24 and 32.

## Conclusions

Having comparatively analyzed the practice of Federalism in Nigeria, the USA and Germany, this article recommended as follows:

1. That there should be decentralization of powers in various federations-as centralization is becoming a thing of the past. Decentralization of powers will encourage local participation, investments, developments, and it will bring governance to the grassroots.
2. That policy-makers including lawmakers and other key actors should consider the Legislation of Broad-based Laws which will encourage competition, participation, differences arising diversities and inter- governmental cooperation and harmonization in various federations.
3. Again, federations should strive to accommodate autonomy of the component units as autonomy herald competition which would in turn culminate in hard work investment and development in a society.
4. Third world and developing federations should divest into agriculture and again strengthen their educational sub-sector where information and communication technology should be encouraged in order to reduce the cost of governance.
5. The Constitutions of various federations should be amendable to changes from time to time, in order to accommodate changes more than day realities, diversities and the yearnings and aspirations of the citizenry as the society progresses.

The rule of law and democratic principles should be well entrenched in the (Constitutions of countries practicing federalism so as to encourage participation, growth and stability in the socio-political and economic spheres of the countries.

There is no gainsaying the fact that, the 1999 Constitution of Nigeria is a product of the military which, never followed the process of Constitutional drafting and same is devoid of ideal federalism. The Constitution devolved more powers to the Federal Government of Nigeria, thereby leaving other tiers of government such as the State and Local Governments with little or nothing. The States are not constitutionally empowered to create or establish their Police outfit thereby relying on only the police established by the Federal Government; and this has resulted in inadequacy of manpower in the security of lives and property which is the objective of any government. This article is of the view, that Federalism in Nigeria is clothed with unitary appendages where the government at the center virtually has control over everything with little or nothing to the component units. There is no autonomy to the sub-nationals. An ideal federalism is one that devolves reasonable powers to the orders of government in accordance with the agreement as embedded in the Constitution which often provides for autonomy to the constituent units and such a Constitution must be workable and acceptable to the people. In comparative terms, federalism in the US is moderately non-centralized. The major feature of the distribution of powers, which applies symmetrically to all 50 States, is the arrangement whereby the institution lists subject matters delegated to the Federal Government and leaves fairly substantial residual authority to the states. Those power delegated to the federal Government are mostly concurrent, with the Federal Law prevailing in cases of conflict with State Laws. Within the Institutions or Organs at levels of Government, the separation of powers between the Executive, legislative and Judicial powers<sup>^</sup> is the prevailing principle, involving a system of checks and balances among these

Institutions. Although, there is no constitutional requirement for the Federal government to cooperate with the States in carrying out policies in those areas in which it has legislative jurisdiction. In practice, federal government has chosen considerable latitude of operation. The separation of legislative and executive power allows for the possibility of different party affiliations between the two branches, a pattern referred to as "divided government."<sup>72</sup>

Again, in Germany, the Federal level has no hierarchical control, no legal supervision, and also no financial appropriation over the State (*Lander*) level. Instead, the *lander* enjoys strong autonomy, yet they have limited legislative authority of their own, for example, the police, schools or culture. The Federal Executive has only very little direct involvement in implementation and service delivery, and thus does not operate with regional or local offices with the exception of issues bothering on defence, customs, Federal Police, etc.<sup>73</sup>

Also, the autonomy of the *lander* in determining their organizational structure has led to considerable institutional variance among the *landers*. The *kinder* participate in policy making at Federal level through the instrumentality of the Bundestrat, which is composed of the *lander* and the German citizens, cannot vote for these representatives directly through specific election but only indirectly through their regular *lander* elections.<sup>74</sup> Federalism in Germany can be said to be decentralized unlike in Nigeria, where the Federal Government has the bulk of powers of control over the component units.

In conclusion, it is submitted that there is no single recipe for the practice of Federalism the world over. Its practice has variants, depending on the provisions of the institution of a particular country, which spells out the *modus operandi* upon which it is anchored on a country's local and prevailing circumstances. Given this obvious reasons, the dynamics of intergovernmental reforms and decentralization are likely to be very different from countries with a different path of historical development.

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<sup>72</sup>R.L. Watts and M. Vigneault, 'Fiscal Federalism in the United States', (November, 2000), I available on <wattsFiscalFederalismUSA2000.pdf>, accessed 6 September 2022.

<sup>73</sup>H. Fuhr, J. Fleischer and S. K-uhlmann, 'Federalism and Decentralization in Germany: Basic Features and Principles for German Development Cooperation' (gix Deutsche Gesellschaft fur Internationale Zusammenarbeit(Giz)6mbH2018), 11.

<sup>74</sup> Ibid.