



**TOWARDS A FEDERAL CONSTITUTIONAL FRAMEWORK: A
CRITICAL ANALYSIS OF INTER-GOVERNMENTAL ALLOCATION OF
CONSTITUTIONAL POWERS IN NIGERIA**

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ABSTRACT

Constitutional allocation of powers among levels of government is a problematic issue in many federal States. In Nigeria, where many ethnic groups are regionally concentrated, the problem of power allocation is often a huge source of conflict considering its real and perceived implications for ethnic survival and dignity. This article examines the history and nature of inter-governmental allocation of powers in successive pre- and post-independence Constitutions of Nigeria, with particular focus on the extant 1999 Constitution. The article argues that the centralised power-distribution architecture entrenched in the 1999 Constitution is a colonial cum military legacy that is completely incompatible with the federal idea and unsuitable for a multi-ethnic State like Nigeria. The article proposes a counter-hegemonic federal constitutional framework for Nigeria that recognises the country's diversity without undermining its unity.

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1.0 INTRODUCTION

For decades, debates about Nigeria's constitutional architecture have revolved around the subject of power allocation among the country's levels of Government.¹ It is not difficult to imagine why this is the case. Inter-governmental allocation of powers is notoriously controversial in many federations.² Classical and contemporary history shows that many federal States are often enmeshed in the difficult contentions associated with power struggles between central and regional governments. Indeed, some scholars have argued that the power allocation controversy is the dominant problem of federalism.³

In Nigeria, power allocation problems are particularly difficult and contentious because of the country's ethnic diversity and the long history of acrimonious struggle for ascendancy among the ethnic groups, most of which are territorially concentrated. It is for this reason that the tensions and controversies over the division of powers set out in the extant 1999 Constitution of Nigeria⁴ can only be adequately understood against the background of the country's socio-political history. This article aims to critically discuss that history with a view to highlighting the very flawed nature of the country's

¹ See generally the discussions in A.A. Ikein (ed), *Oil, Democracy, and The Promise of True Federalism in Nigeria*, (University Press of America, 2008), pp.1-484; See also T.Y. Danjuma, "Revenue Sharing in Nigerian Federalism" in J. Isawa Elaigwu, P.C. Logans and H.S. Galadiman, *Federalism and Nation Building in Nigeria: The Challenges of the 21st Century*, (National Council on Intergovernmental Relations: Abuja, 1994), pp.87-115; A.G Adedjeji, *Nigerian Federal Finance- Its Development, Problems and Prospects* (Hutchinson Educational Ltd, 1969), pp.1-265.

² R. Watts, *Comparing Federal Systems*, (McMillan-Queen's University Press, 2008), p.96; See also G. Anderson, *Fiscal Federalism: A Comparative Introduction*, (Oxford University Press, 2010) p.v.

³ See A.H. Birch, *Federalism, Finance and Social Legislation*, (Oxford University Press, 1957), p. xi; See also K.C. Wheare, *Federal Government*, (Oxford University Press, 1963), p.93.

⁴ The Constitution of the Federal Republic of Nigeria, 1999 (as amended 2011).

federalism. The main argument of the article is that given Nigeria's glaring diversity, the highly centralised division of powers entrenched in the 1999 constitution is grossly untenable. Indeed, this power allocation structure represents the very antithesis of the federal idea. And except this structure is urgently revised to reflect and accommodate the country's diversity, the Nigerian State, as we currently know it, may completely unravel in the nearest future.

The article starts with a historical analysis of Nigeria's constitutional evolution, highlighting the country's precolonial make-up as a collection of distinct, separate, and independent empires, kingdoms, city-states and communities with different cultures, languages, orientations and peculiarities. The discussion highlights how these stark differences were ignored in the compulsive and arbitrary colonial amalgamation of these distinct entities to form the Nigerian state in 1914. As shown in the article, the seeds of the current centralised State structure in Nigeria were sown during the colonial and immediate post-colonial era, as the colonial authorities and their military successors unilaterally authored successive constitutions and incrementally strengthened the central government's control over powers and fiscal resources.

As we shall see in the article, unilateralism and centralisation have, for decades, been employed as instruments of governance in Nigeria despite the country's character as an agglomeration of different ethnic nations separated by language, culture, economic

needs, and political orientation.⁵ Today, Nigeria is, without doubt, a caricature of a federation, a crude distortion of the federal idea.

What follows is not intended to be an exhaustive analysis of federal constitutionalism in Nigeria. No single article can accomplish that. This article highlights and discusses the aspects of the nation's history and constitutional experience that are relevant for a proper understanding of the challenges militating against federal constitutional advancement in Nigeria. It may well be that these challenges are not peculiar to the Nigerian federal system. However, in Nigeria, they have become huge death traps impeding the country's march towards genuine federal Statehood. The major proposition advanced in this article therefore is that the way to address the existing crisis of Statehood in Nigeria is to abrogate the extant constitutional arrangement and replace it with a counter-hegemonic federal constitutional framework that recognises the country's diversity without undermining its unity.

1.1 Pre-Colonial Era- Era of Kingdoms, Empires and City-States

Nigeria, as we know it today, with its physical boundaries and landmarks, is essentially a colonial creation.⁶ There was nothing like 'Nigeria' prior to the arrival of Europeans on the shores of West Africa in the late 14th century. What we had, scattered all over the territory now called Nigeria, were well established independent empires, kingdoms,

⁵ Nigeria's ethnic groups "are diverse in their origins and speak different languages. In many respects, their cultural patterns, political, institutional, social standards, and customary usages differ very widely." See O.Awolowo, *Thoughts on the Nigerian Constitution*, (Oxford University Press: Ibadan, 1966), p.162.

⁶ O.I. Odumosu, *The Nigerian Constitution: History and Development*, (Sweet & Maxwell, London: London, 1963), p.5.

city-states, townships, and villages, most of which had already attained some level of political and cultural sophistication by the time the first set of Europeans arrived.⁷

In his well-researched monograph on pre and post-colonial history of Africa, eminent historian, Professor Banji Akintoye, revealed that several politically independent African empires and kingdoms had, in fact, been in existence long before the advent of colonialism.⁸ For instance, the ‘Kanem-Bornu’ and ‘Old Oyo-empires’ had, for centuries, existed in what is now known as Northern and Southern Nigeria respectively.⁹ Apart from these, old kingdoms such as the ‘Sokoto Caliphate,’ was already well established in what is now North-Western Nigeria before colonialism took root in Nigeria.¹⁰ There were also the numerous city-states of the Niger-Delta, comparable in size, population and social organisation to the ancient Greek city states. The pre-colonial histories of these empires, kingdoms, and city-states, according to Akintoye, were characterised by different, distinct, and significantly developed social, political, and economic traditions.¹¹

⁷ See the pronouncement of the Supreme Court of Nigeria on this point in *AG of the Federation v. AG of Abia State and 35 Ors* [2002] vol. 16 WRN 1-132 at p.68. According to the Court, “until the advent of the British colonial rule in what is now known as the Federal Republic of Nigeria (Nigeria for short), there existed at various times sovereign states known as emirates, kingdoms, and empires made up of groups in Nigeria. Each was independent of the other with its mode of government indigenous to it. At one time or another, these sovereign states were either making wars with each other or making alliances on equal terms. The position existed throughout the land now known as Nigeria.” See also O.I Odumosu, *supra*, note 6; B.O Nwabueze, *Constitutional Law of the Nigerian Republic*, (Butterworths: London, 1964), p.91.

⁸ Akintoye writes that the old Ghana, Mali, Songhai, Mandinka, and Tukolor empires predated the advent of colonialism. See S.A. Akintoye, *Emergent African States- Topics in Twentieth Century African History*, (London Group Ltd: London, 1976), p.3.

⁹ *Ibid at p. 3.*

¹⁰ *Ibid.*

¹¹ *Ibid at p. 15*

Akintoye's account of Nigeria's history tallies with those of several other first rate African scholars and students of African History. For instance, Professor Akinjogbin's vivid portraiture of the Old Oyo Empire and the other kingdoms which together constituted the pre-colonial Yoruba country, shows that these were organised assemblages of peoples, each with an efficient traditional system of government peculiar to it.¹² Similar descriptions have been used by other African and Asian scholars to emphasise the social, cultural and political organisation of many African societies prior to colonial adventurism on the continent.¹³

The accounts of these African and Asian scholars have been buttressed and given credence by western historians and researchers who travelled extensively in Africa in the nineteenth and early twentieth century and who have since documented their observations and findings on Africa's history. Two of such scholars, Margery Perham and Michael Crowder, are particularly noted for their vivid portraiture of the ancient landmarks and peoples of the continent. For instance, Perham wrote about the "political and cultural sophistication" of Northern Nigeria's "ancient Hausa states, with their walled red cities, crowded mosques, literate mullahs, large markets, numerous crafts in metal and leather, far-ranging traders, and skilled production of a wide variety

¹² I.A. Akinjogbin, "The Oyo Empire in the 18th Century" (1966) 3(3) *Journal of the Historical Society of Nigeria*, 451.

¹³ For instance, see Professor Akin Mabogunje's detailed description of the peoples, tribes, kingdoms, and empires of pre-colonial West Africa in A.Mabogunje, "The Land and Peoples of West Africa" in J.F.Ajayi & M. Crowder eds., *History of West Africa*, vol 1., (Longman Group Limited: London 1976), pp 15-29; See also Nehemia Levtzion, "The Early States of the Western Sudan to 1500" in J.F Ade Ajayi & Michael Crowder eds., *Ibid*, pp 114-149. Other accounts of pre-colonial societies in Africa are fully set out in. F Ade Ajayi & Michael Crowder (ed), *History of West Africa*, ed 1., (Longman Group Limited: London, 1976), pp.1-601.

of crops.”¹⁴ Drawing on the writings of 18th century European explorers of Africa,¹⁵ Perham adds that the Hausa states were famous for “their organised trade and wide contacts, their custom of supplying housing, food, and escort to travelers, and their capacity to breed individuals of high character and intelligence.”¹⁶

Perham’s views are echoed in Michael Crowder’s 1962 classic, *The Story of Nigeria*. According to Crowder, who spent several years teaching African history in Nigerian Universities, pre-colonial Nigeria had:

a number of great kingdoms that had evolved complex systems of government independent of contact with Europe. Within its frontiers were the great kingdom of Kanem-Borno, with a known history of more than a thousand years; the Sokoto Caliphate which for nearly a hundred years before its conquest by Britain had ruled most of the savannah of northern Nigeria; the kingdoms of Ife and Benin, whose art had become recognised as amongst the most accomplished in the world; the Yoruba empire of Oyo, which had once been the most powerful of the states of the Guinea coast; and the city-states of the Niger Delta, which had grown partly in response to European demands for slaves and later palm-oil; the largely politically decentralised Igbo-speaking peoples of the south-east, who had produced the famous Igbo-Ukwu bronzes and terracottas; and the small tribes of the Plateau, some of whom are descendants of the people who created the famous Nok terracottas.¹⁷

¹⁴ M. Perham, *Lugard, The Years of Authority*, (Collins Clear-Type Press: London and Glasgow, 1960), pp 33-34.

¹⁵ They include the Scottish explorers, Walter Oudney and Hugh Clapperton; Cornish explorer, Richard Lander; English explorer, Dixon Denham and German Explorer, Heinrich Barth. Perham specifically cited ‘D. Denham, H. Clapperton and W. Oudney, *Travels and Discoveries in North and Central Africa in 1822, 1823, and 1824* (1831), vol. iv. See M. Perham, *ibid*.

¹⁶ *Ibid*, p.33.

¹⁷ M. Crowder, *The Story of Nigeria*, (Faber and Faber: London, 1978), p.11; See similar comments in T. Buttner, “The Economic and Social Character of Pre-Colonial States in Tropical Africa” (1970) 5(2) *Journal of the Historical Society of Nigeria*, 275-289. According to Buttner, prior to the advent of colonialism, “many peoples of Tropical Africa (varying in locality) attained a relatively high standard of development which, by every measure, compared favourably with that of other peoples....In the course of several thousand years of its history, Tropical Africa knew important state formations with a high level of cultural attainment which overcame the Neolithic phase as early as the first millennium of our era and which exercised an impact on and determined the subsequent social development of the peoples of Africa.”

It is thus clear, from the foregoing accounts of African and western historians, who have done extensive and detailed research on African history, that discernible political and social organisation on the continent did not start with the arrival of Europeans. Social, cultural, and political sophistication of the peoples of Africa, in fact, predated the continent's contact with Europe.

The foregoing survey of historical accounts of pre-colonial Africa is necessary to dispel the notion created by some writers and scholars who, in a bid to justify colonialism and its attendant centralisation and monopoly of power in Africa, have argued that Africa was devoid of any form of history prior to European arrival on the continent. Indeed, desperate attempts were made by these scholars to brand pre-colonial Africa as an enclave of barbarians and primitive beings who were incapable of rational and civilised existence.¹⁸ That was perhaps what Joseph Conrad sought to do with his very controversial book, "*Heart of Darkness*" which portrayed pre-colonial Africa as "pre-historic" and "unearthly."¹⁹

Conrad was not alone in this undisguised racist approach to African history. Georg Hegel in his book, "*Philosophy of History*," described Africa as "unhistorical." Africa, according to Hegel, "is no historical part of the world; it has no movement or development to exhibit. Historical movements in it...belong to the Asiatic or European world."²⁰ But it was the Oxford Historian, Hugh Trevor-Roper who delivered the *coup*

¹⁸ Thea Buttner refers to this as the "colonial-historical mentality and approach." See T. Buttner, *Ibid*.

¹⁹ J. Conrad, *Heart of Darkness and Other Tales, revised edition* (Oxford University Press, 2008), pp 138-139. Professor Chinua Achebe has done a fitting riposte to Conrad in his satirical essay "An Image of Africa: Racism in Conrad's Heart of Darkness" available at <http://kirbyk.net/hod/image.of.africa.html> (accessed 24 September 2024).

²⁰ G.W. F. Hegel, *The Philosophy of History*, (Dover Publications Inc: New York, 1956), p.99.

de grace. In a series of television lectures, he delivered in the early 1960s, Trevor-Roper argued that “perhaps in the future, there will be some African history to teach. But at present there is none, or very little: there is only the history of Europeans in Africa. The rest is largely darkness.... And darkness is not a subject for history.”²¹

We now know that Conrad, Hegel, and Trevor-Roper were advertently or inadvertently mistaken in their understanding of Africa and its history. Evidence compiled by serious researchers and travellers confirm to us that not only were many pre-colonial African societies well organised and politically astute, they, in fact, had their own forms of civilisation.²²

What remains to be said is that the erroneous or deliberate perception of pre-colonial Africa as an enclave of barbarians and savages who were incapable of rational thought and political organisation must have contributed to the administrative approach adopted by the colonialists in Africa from the early part of the nineteenth century to the early part of the twentieth century.²³ As we shall see in the next section, in their bid to provide ‘civilised’ administration to the ‘savages’ and ‘barbarians,’ the colonialists forcefully lumped together many dissimilar ethnic nationalities, many of

²¹ C.L. Innes, *The Cambridge Introduction to Postcolonial Literatures in English*, (Cambridge University Press, 2007), p.7.

²² Professor Akintoye writes that “the view that pre-colonial Africa had no culture, and no history is false. The European officials, scholars and missionaries who popularised this image of Africa were ignoring the evidence of rich African cultures- in political, economic and social organisations, in art, music and manners- which were all over Africa for them to see.”; See Akintoye, *supra*, note at p.15.

²³ According to Professor Kenneth Dike, an eminent Nigerian Historian, it is possible that “in the colonial era African History was deliberately slanted and distorted to justify the European presence on the continent...the assumed lack of African history so widely advertised in the literature.... was to prove that the African has no history and therefore subhuman. Everything was done to use history to bolster imperialism.” See K.O. Dike, “African History Twenty-Five Years Ago and Today” (1980) 10(3) *Journal of the Historical Society of Nigeria*, 14-15.

which already had a history of mutual warfare and antagonism, and imposed on them a single centralised government. This set the foundation for centralised governance, as well as separatist agitations, inter-ethnic rivalry, suspicion and hatred, all of which remain the hall mark of political and social life in Nigeria today.

1.2 Colonial Era: Lugard's Amalgamation and the Seeds of Centralisation

A lot have been written already on the historic 'scramble' for the African continent by the European powers, a process which began in Berlin in 1884/1885 and went on over a period of ten years.²⁴ The 'scramble' culminated in a series of 'take-overs' which, according to Keltie, enabled the "most civilised powers of Europe" to parcel out amongst themselves "the bulk of one barbarous continent."²⁵

Details of the partitioning process have been recorded elsewhere.²⁶ What is important for the purposes of this article is the effect this nineteenth century partitioning of the African continent has had on the peoples and traditional societies of Africa. Nothing highlights the tragic consequences of the partitioning than the words of an official of the then British Government who, in recounting how the Nigeria-Cameroon border was drawn, stated that:

in those days, we just took a blue pencil and a ruler, and we put it down at Calabar, and drew a line to Yola.... I recollect thinking when I was sitting having

²⁴ The most authoritative and detailed of these is perhaps John Scott Keltie's "*The Partition of Africa*" which was first published in 1895; See J.S. Keltie, *The Partition of Africa*, (Cambridge University Press, 1895). See especially pp. 207-281; See also Sir C. Lucas, *The Partition and Colonization of Africa*, (Clarendon Press: Oxford, 1922); J.D. Hargreaves, "Towards a History of the Partition of Africa' (1960) 1(1) *Journal of African History* pp 97-109; D. De Leon, "The Conference at Berlin on the West African Question", (1886) 1(1) *Political Science Quarterly*, 103-139; M. Crowder, *supra*, note 17 at p.150.

²⁵ J. S. Keltie, *supra*, note 24 at p.1.

²⁶ *Ibid* at pp 207-281.

an audience with the Emir [of Yola] , surrounded by his tribe, that it was a very good thing that he did not know that I, with a blue pencil, had drawn a line through his territory.²⁷

Earlier in 1890, Lord Salisbury, former British Prime Minister, had, after an Anglo-French convention convened for the purpose of sharing indigenous African territories among the two super powers, declared that:

we have been engaged in drawing lines upon maps where no man's foot ever trod; we have been giving away mountains and rivers and lakes to each other, only hindered by the small impediment that we never knew exactly where the mountains and rivers and lakes were.²⁸

It was this arbitrary restructuring of the African continent, done without the consent of the societies and peoples whose lives were to be directly affected by the restructuring, that laid the foundation for the culture of unilateralism and the centralisation of state power that appear to have become the hall mark of governance across Africa in general and Nigeria in particular. The partitioning that officially commenced at the Berlin conference of 1884/1885 and was consolidated over the next ten years marked the beginning of several acts of colonial 'appropriations and 'take-overs' that gradually but assuredly robbed many hitherto independent African communities of their autonomy and identity. In the process, strikingly different ethnicities hitherto separated by language, culture, religion, social orientation, and politics were cobbled together under new political arrangements that were bound to

²⁷ This British Official was quoted in J.C. Anene, *The International Boundaries of Nigeria, 1885-1960: The Framework of an Emergent African Nation*, (Harlow: Longmans, 1970), p.3; See also C.J. Dakas, "The Role of International Law in the Colonization of Africa: A Review in Light of Recent Calls for Re-Colonization" (1999) 7(1) *Africa Yearbook of International Law*, 106.

²⁸ Lord Salisbury was quoted in J.C Anene, *ibid*; See also C.J. Dakas, *ibid* at p. 106.

generate inter-ethnic strife. Nobel Laureate, Professor Wole Soyinka put it succinctly when he said:

....at the Berlin Conference, the colonial powers.... met to divvy up their *interests* into states, lumping various peoples and tribes together in some places, or slicing them apart in others like some...tailor who paid no attention to the fabric, color, or pattern of the quilt he was patching together.²⁹

In the case of Nigeria, this lumping together, facilitated by colonial conquests, continued well into the 1890s and early 1900s and culminated in the (in)famous amalgamation of the Northern and Southern territories of Nigeria in 1914. Both territories had been separately administered by Britain before 1914.³⁰

The 1914 amalgamation of Northern and Southern Nigeria is noteworthy for two major reasons. First, like the partitioning of Africa itself, the scheme of amalgamation was designed and implemented solely by the colonial authorities through Sir Frederick Lugard, the colonial Governor of Nigeria. The plan, scheme, and mode of amalgamation were entirely the work of Lugard.³¹ No attempt whatsoever was made to consult or gain the consent of the peoples and territories that formed the object of this amalgamation. The amalgamation was unilaterally conceived, unilaterally designed, and forcefully imposed on the 'natives.' Indeed, "Nigeria," the new name given to the amalgamated territories was coined by Miss Flora Shaw, a Briton who later became the wife of Sir

²⁹ C.J. Dakas, *ibid* at p. 105.

³⁰ For more on the series of colonial conquests and unilateral appropriation of territory that preceded the 1914 amalgamation, see O.I Odumosu, *supra*, note 6 at pp.5-10; See also A.G. Adebayo, *Embattled Federalism- History of Revenue Allocation in Nigeria, 1946-1990*, (Peter Lang Publishing Inc: New York, 1993), pp 13-14.

³¹ F.D Lugard, *Nigeria: Report on Amalgamation of Northern and Southern Nigeria, and Administration, 1912-1919*, (London: H.M.S.O, 1919), p.1-8; See also M. Perham, *supra*, note 14 at p.411.

Lugard, the colonial Governor of Nigeria.³² The unilateral manner in which the amalgamation scheme was conceived and implemented essentially set the tone for the colonial policy of centralisation that followed in later years.

The 1914 amalgamation is also remarkable for cobbling together more than 250 large ethnicities, each of which had its own distinct identity, economic orientation, political traditions, and religious culture. The arbitrariness of the amalgamation, done without any regard for history, ethnicity, and culture, set the stage for the ethnic rivalry, strife, and bigotry which have characterised inter-ethnic relations in Nigeria ever since. In a bid to ensure their individual survival, regain their autonomy, and preserve their identities and dignities, Nigeria's many ethnic groups have remained locked in a spirited but acrimonious struggle for power and ascendancy.

The foregoing account of Nigeria's pre-colonial history up till and including the 1914 amalgamation of the northern and southern territories of what is today called Nigeria, has now established two important facts. First, pre-colonial Nigeria was not an enclave of unsophisticated, socially unorganised, and politically naive barbarians, as some scholars and writers would have us believe. Indeed, as we saw above, the many ethnic nations that were scattered all over the territory now called Nigeria were distinct and independent entities that had attained varying levels of political sophistication prior to the advent of colonialism. The "barbarous pre-colonial continent" narrative is a deception that was mainly employed to justify colonialism and the centralisation of state power it engendered across Africa, a problem that has persisted till date.

³² M. Perham, *ibid* at p. 11.

A second fact established by the discussion thus far is that, like the unilateral partitioning of the African continent by the superpowers in the 19th century, the 1914 amalgamation of the northern and southern territories of the land space now called Nigeria, was unilaterally conceived and implemented by the colonial authorities without any consultation with the peoples of the amalgamated territories. Their opinions were neither sought nor considered important. Such was the unilateralist and centralist nature of the amalgamation.

As we shall see below, this policy of unilateralism and centralism despite the diversity of Nigeria, was to continue throughout the colonial era. Sadly, it has also persisted in the post-colonial era despite the so called “federal” status of the country. The unilateral method used in formulating and adopting successive Nigerian constitutions as well as the centralist division of powers and fiscal resources in these constitutions lend credence to this assertion. In the next few paragraphs, I will briefly examine each of these constitutions and the nature of power and fiscal allocation set out in them.

1.3 Constitutional Developments 1914-1960

If the amalgamation of the Northern and Southern territories to form Nigeria was arbitrarily and unilaterally done, the system of government established by the 1914 colonial constitution further entrenched unilateralism and centralism as instruments of governance. Under that constitution, the Colonial Governor of Nigeria was invested with sweeping powers to exercise executive and legislative powers throughout the length and breadth of the new country, subject only to the authority of the British

Crown.³³ Government Departments such as the “Railways, Military, Audit, Treasury, Posts and Telegraphs, Judicial, Legal and Survey” as well as Customs were directly under the control of the colonial Governor.³⁴ The budgets for these Departments and the revenues derived from them were centrally administered by the Governor.³⁵ The Governor was assisted in his duties by a retinue of colonial officers whose roles were merely advisory as the Governor retained the right to act unilaterally if the occasion demanded it. Such was the magnitude of the Governor’s power over the entire colony under the 1914 constitutional arrangement.

As the administrative and governance structure illustrated above shows, the Nigerian State established pursuant to the 1914 amalgamation of the Northern and Southern territories was essentially a unitary political entity structured to facilitate maximum colonial control over the peoples and societies of Nigeria. The new state was not designed to encourage genuine participation of the people in the governance of their country, neither was it intended to sincerely cater to their interests. In fact, like similar colonial projects elsewhere on the African continent, the creation of Nigeria by the amalgamation of different ethnic groups and nationalities was mainly aimed at furthering the trade and expansionist policies of the colonial authorities.

A new constitution introduced by Sir Hugh Clifford in 1922 did not make any significant difference in Nigeria’s power allocation structure. Apart from the Constitution’s

³³ See B.O Nwabueze, *A Constitutional History of Nigeria*, (London: C.Hurst & Company, 1982), pp 35-39; See also, O.I. Odumosu, *supra*, note 6 at pp. 12-14.

³⁴ Sir U.Udoma, *History and the Law of the Constitution of Nigeria*, (Malthouse Press Limited: Lagos, 1994), p.48.

³⁵ A.G. Adedeji, *supra*, note 30 at p.15; A. Adedeji, *Nigerian Federal Finance- Its Development, Problems and Prospects*, (Hutchinson Educational Ltd, 1969), p.29.

provision for the inclusion of a few Nigerians in the country's centralised legislative council,³⁶ there is perhaps no other discernible difference between the 1914 and 1922 constitutions. As with the 1914 constitution, the 1922 constitution was authored not by the Nigerian people but by the British Parliament. Again, as with the 1914 constitution, the 1922 constitution assigned enormous unilateral powers to the colonial Governor whose discretion in the exercise of these powers was largely unfettered and unquestionable.³⁷

As regards the finances of the country under the 1922 constitution, budgets and revenues remained centrally administered, as before. In fact, Professor Adedeji who has done an extensive review of the fiscal system operated by Nigeria during this period argues that it was an era of 'complete fiscal centralisation.'³⁸ The political and fiscal system in Nigeria retained this centralised character until 1946 when, following strident criticisms of the constitution by Nigerian nationalists,³⁹ the colonial authorities devised a new constitution for Nigeria.⁴⁰

Though the new constitution was an improvement on the 1922 constitution in that a few more Nigerians were elected to the Central Legislature,⁴¹ and Regional Councils⁴²

³⁶ Nigerian (Legislative Council) Order in Council, 1922, s. 4. The Legislative Council replaced the ineffective Nigerian Council which was abolished forthwith. The four elected members were three from Lagos and one from Calabar. This shows that the elected members were in actual fact representing only two of the hundreds of communities in Southern Nigeria. See B.O Nwabueze, *supra*, note 33 at p.40.

³⁷ B.O Nwabueze, *ibid* at pp. 39-41.

³⁸ A.G. Adedeji, *supra*, note 1 at pp. 29-30.

³⁹ Professor Odumosu has documented an account of the nationalist activism which became fervent during this period. See O.I. Odumosu, *supra* note 6 at pp 27-39.

⁴⁰ See the Nigeria (Legislative Council) Order in Council, 1946.

⁴¹ *Ibid*, s. 8(1).

⁴² *Ibid*, s. 33(1), 34(1) and 35(1).

were established for each of the three Regions into which Nigeria had by then been divided,⁴³ the nature of the Executive Council remained virtually unchanged. And the colonial Governor was still the head of the Central Legislature. The Regional Councils, consisting mostly of tribal Chiefs, were merely consultative assemblies with no real legislative power of any sort. While these Regional Councils could advise the Governor on any matter concerning the Regions, the Governor was not constitutionally bound to heed their counsel.⁴⁴

Most importantly, although the annual estimates of expenditure for each Region was expected to be presented by the Governor to the Regional Councils for their advice and recommendations, the Governor was not bound by such advice or recommendation, and could, in fact, reject them.⁴⁵ Appropriation of funds for the Regions was thus discretionarily undertaken by the colonial Governor.⁴⁶

In fact, under the 1946 constitutional arrangement, the guiding principles adopted for the allocation of centrally collated revenues to the regions were unilaterally determined by an expatriate Fiscal Commissioner, Sir Sydney Phillipson who was appointed for that purpose by the colonial Governor. Records show that, in undertaking this important task, Phillipson consulted mainly with expatriate colonial officers.⁴⁷

⁴³ Nigeria was divided into Northern, Eastern and Western Regions in 1939.

⁴⁴ See *Nigeria (Legislative Council) Order in Council 1946*, s. 51-53; B.O Nwabueze, *supra*, note 33 at 42-46; O.I Odumosu, *supra*, note 6 at pp.43-48.

⁴⁵ The *Nigeria (Legislative Council) Order in Council, 1946*, s. 52(1), 52(3) and 52(4).

⁴⁶ *Ibid*, s.52(8); O.I. Odumosu, *supra* note 6 at p.46.

⁴⁷ See S. Phillipson, *Administrative and Financial Procedure Under the New Constitution: Financial Relations between the Government of Nigeria and the Native Administrations*, (Government Printer: Lagos, 1946), pp. 1-2.

Nigerians who would be directly affected by the revenue allocation policy were not consulted, neither was their input sought.

In short, like the practice under previous constitutions, decisions on the 1946 fiscal policy were centrally taken and arbitrarily imposed on the entire country. Not surprisingly therefore that the principles recommended by Philipson for the allocation of revenues to the regions, namely ‘even progress’ and ‘derivation,’⁴⁸ were not enthusiastically received by many Nigerian leaders who felt that the application of these principles would significantly undermine the socio-economic interests of their regions. This could have been avoided if the colonial government had availed itself of the views and opinions of Nigerians on the sensitive issue of revenue allocation before designing a new fiscal policy.

The limitations of the 1946 constitution, like the ones before it, did not endear it to Nigerian nationalists who mobilised and campaigned against it vigorously.⁴⁹ The two principal flaws of the constitution, from all indications, included its evident lack of legitimacy, considering its formulation, adoption, and promulgation by the British Parliament without any consultation with the peoples of Nigeria,⁵⁰ and its failure to establish a truly inclusive system of government under which Nigerians could be actively and effectively involved in the management of their own affairs.⁵¹ These flaws, as we

⁴⁸ *Ibid*, p. 20.

⁴⁹ A.G Adebayo, *supra* note 30, p. 22; See also O.I Odumosu, *supra* note 6, p. 71.

⁵⁰ Indeed, this point was vehemently raised by the National Congress of Nigeria and the Cameroons (NCNC), a Nigerian political party at the time. The Party decried “the unilateral way the whole proposals (for the constitution) were prepared without consulting the people and natural rulers of the country...” See M. Crowther, *supra*, note 17 at p. 225; O. Awolowo, *supra*, note 5 at pp. 5-6.

⁵¹ O.I. Odumosu, *supra*, note 6 at pp 48-52; See also N. Azikiwe, ‘A Speech delivered in the Legislative Council at Lagos on August 21, 1948, supporting a motion for increased political

have seen, had, in fact, been the hallmark of Nigeria's legal order up till this time as the 1914 and 1922 constitutions, as shown above, were similarly drafted and promulgated unilaterally by the British Parliament without the input of Nigerians, and power was, in like manner, exclusively concentrated in the hands of the colonial Governor under both constitutions.

Given the controversy that dogged the 1946 Richards constitution, it is not surprising that the colonial authorities subsequently initiated measures aimed at engendering a more liberal political arrangement. The change came with the appointment of Sir John Macpherson as colonial Governor of Nigeria in 1948 following the departure of Sir Arthur Richards. Macpherson eventually introduced a new constitution in 1951. Unlike the unilateralism that characterised the formulation of previous constitutions, the process that produced the 1951 Macpherson constitution was somewhat inclusive. Consultations were made and meetings were held with Nigerians by the colonial authorities.⁵² But as with subsequent constitutions making processes up till the end of the colonial era, these consultations primarily involved the Nigerian elite which consisted of top politicians from the three largest ethnic groups in the country.⁵³ And, other than its consideration by the Central legislative Council and the Regional Houses of Assembly comprising top politicians, the final text of the constitution was not subjected to a referendum or any

responsibility for Nigeria' in N. Azikiwe, *Zik- A Selection from the Speeches of Nnamdi Azikiwe*, (Cambridge University Press, 1961), pp 106-107; O.Awolowo, *The People's Republic*, (Oxford University Press, 1968), p.36.

⁵² O.I Odumosu, *supra* note 6 at pp. 56-65.

⁵³ *Ibid* at, pp. 73-76.

other form of popular endorsement by the Nigerian people as would be expected of a democratic constitution.

The foregoing notwithstanding, the 1951 constitution did make significant changes to the country's political configuration. For instance, in response to the demands made by leading indigenous politicians across the country for a federal system of government, the 1951 constitution established Regional Houses of Assembly with actual legislative powers over certain matters.⁵⁴ This represents a marked departure from what obtained under the 1946 constitution where the so-called Regional Councils merely acted in advisory capacity. Perhaps, the most important innovation introduced by the 1951 constitution was the predominant inclusion of elected representatives of the various parts of the country in the central and regional governments.⁵⁵ Again this was a significant improvement over the 1946 constitution under which, unelected colonial officials and native authority personnel appointed by the colonial Governor dominated both levels of government.

Despite the huge leap forward made by the 1951 Macpherson constitution, the constitution was not without its fundamental flaws. The most significant of these, apart from those already highlighted above, was the power conferred on the central government by the constitution to, if it deemed it appropriate, block or quash a regional legislation, even if such legislation had been properly passed by the regional legislature.⁵⁶ Indeed, under the 1951 constitution, a regional legislation could only be

⁵⁴ The Nigeria Constitution (Order) in Council 1951, s.91.

⁵⁵ B.O Nwabueze, *supra* note 33 at p. 46; O.I Odumosu, *supra* note 6 at p.65.

⁵⁶ O.I. Odumosu, *supra* note 6 at p. 66; See also The Constitution (Order) in Council 1951, s. 96-97.

duly enacted with the express approval of the central government.⁵⁷ Thus, although it made important concessions to the Regions, the 1951 constitution still retained significant centralist streaks that made it unacceptable as a governance framework for an ethnically diverse country like Nigeria.

Agitations for greater devolution of power to the Regions soon erupted.⁵⁸ The “reactionary nature” of the 1951 Macpherson constitution and the centralist financial arrangements established under it were roundly denounced.⁵⁹ One public figure cynically remarked that “..if the Richards constitution was the same old poison in a different bottle, the Macpherson Constitution is the same old bottle with a different label.”⁶⁰ Such was the disenchantment with the 1951 constitution that some local politicians made a strong case for a confederal arrangement that would see the regions exercise power over practically all matters except defence, external affairs, and customs which would be overseen by a central non-political body.⁶¹

The colonial administration itself came to realise the need for the transfer of more powers to the regions in order to ensure that each region exercised, as much as possible, full control over its own internal affairs without interference from the central

⁵⁷ O.I. Odumosu, *Ibid.*

⁵⁸ See for instance Dr Nnamdi Azikiwe’s speech at the fourth Annual Convention of the National Council of Nigeria and the Cameroons which took place at the Lagos City Auditorium on August 17, 1952, in N. Azikiwe, *supra*, note 51 at pp 83-84. The Northern and Western Region governments also protested what they regarded as the unfairness of the financial arrangements made pursuant to the 1951 constitution. While the North wanted an increase in the block grants allocated to it under that arrangement, the West protested the failure of the central government to fully apply the principle of derivation in the allocation of revenues to the regions. See A.G. Adebayo, *supra* note 39 at pp. 59-62.

⁵⁹ N. Azikiwe, *supra*, note 51 at pp. 112-113.

⁶⁰ *Ibid.*

⁶¹ O.I. Odumosu, *supra* note 6 at pp. 91-92.

government. Sir Oliver Lyttleton, the then Secretary of State for the Colonies captured this sentiment succinctly when he said:

recent events have shown that it is not possible for the three Regions of Nigeria to work together effectively in a federation so closely knit as that provided by the present constitution. Her Majesty's Government in the United Kingdom, while greatly regretting this, consider that the Constitution will have to be redrawn to provide for greater regional autonomy and for the removal of powers of intervention by the Centre in matters which can, without detriment to other Regions, be placed entirely within regional competence...⁶²

The Secretary of State's remarks quoted above show that, by this time, it had become abundantly clear to the colonial authorities that Nigeria could no longer be administered as a unitary state, given its multi-ethnic character and the perpetual struggle among the country's ethnic groups for power, resources, ascendancy and relevance.

A new constitution was introduced in 1954. This constitution, unlike the ones before it, established a truly federal arrangement characterised by significant and substantial regional autonomy.⁶³ For instance, under the 1954 constitution, the regional legislatures were not required to submit legislation duly passed by them to the central government for approval. A regional legislation, under the new dispensation, effectively became law upon its due passage by the relevant regional legislature.⁶⁴ In addition, under the division of powers entrenched in the constitution, matters common to the entire federation were assigned to the central government while powers for effective self-government of the regions were assigned to the regional governments.

⁶² House of Commons Debate, 5th series, 515, 21 May 1953, cols.2263-2264, cited in D.S. Rothchild, *Towards Unity in Africa*, (Washington Public Affairs Press, 1960), p. 159.

⁶³ O.I. Odumosu, *supra*, note 6 at pp. 95-101.

⁶⁴ D.S. Rothchild, *supra*, note 62 at p. 160.

Thus, matters such as “external relations, immigration and emigration, naturalisation of aliens, defence and atomic energy, customs and foreign exchange, banking and public debt, mining, postal services, telephones and telegraphs, and central broadcasting”⁶⁵ were assigned to the central government exclusively. The constitution also specified matters over which both the central and regional governments could concurrently legislate. These included “statistics, labour, insurance, research, water, power, national parks, industrial development, and the establishment of certain professional qualifications.”⁶⁶ Matters not included in the exclusive and concurrent legislative lists above were reserved for the regional governments.⁶⁷

However, although the 1954 Constitution enabled substantial transfer of powers and fiscal resources to the regional governments and significantly increased the participation of Nigerians in the governance of their own country, the central government still retained jurisdiction over the most lucrative taxes, in addition to the power to fix the rates for taxes levied throughout the country even where such taxes were constitutionally reserved for the regions.⁶⁸ In addition, the financial arrangements made pursuant to the 1954 constitution were, in fact, solely recommended by an expatriate, Sir Louis Chick, who was appointed to undertake the task by the British Secretary of State.

Like other Fiscal Commissions before it, there is no evidence to show that the Chick Commission consulted widely with Nigerians from the several ethnic groups in the

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ A.G. Adedeji, *supra*, note 1 at p. 120.

course of his assignment. Not surprisingly therefore, the principle of ‘derivation’ recommended by Chick for the allocation of centrally collected taxes to the regions was not well received by some regional governments which felt that full application of ‘derivation’ as the main factor in the allocation of centrally collected tax revenues would serve to “accentuate regional disparity in wealth and resources,” thus making the rich regions richer and the poor regions poorer, a condition which could foster jealousy and disunity.⁶⁹

The above notwithstanding, it must be acknowledged that the 1954 constitution was a significant improvement on previous constitutions before it. For the first time in the history of Nigeria, the constitution established central and regional governments with autonomous powers. Each level of government could exercise discretion in the exercise of its powers, and none was regarded as subordinate to the other. Most importantly, the autonomy of the regional governments and the assignment of powers over local matters to them ensured that the government was closer to the people, and Nigerians in each region could actively participate in the governance of their affairs.

The drive for full independence from Britain led to further conferences in London in 1957, 1958, and 1960. The result of these conferences was the independence

⁶⁹ A.G. Adedeji, *Ibid.* at p. 81; See also *ibid* at p. 118. Further reviews of the federal financial arrangements were carried out in 1957 and 1964. This review commissions were headed by Sir J. Raisman and Dr K.J Binns respectively. Like the previous fiscal commissions before them, members of these fiscal commissions were mainly expatriates. And they carried out only limited consultations, mostly with government officials. Both commissions essentially recommended the following guiding principles for the allocation of centrally collected tax revenue to the regions: “preservation of continuity in government services; the minimum responsibilities which a government has to meet by virtue of its status as a government; population as a broad indicator of need, since this determines the scale of services each government has to provide; and the balanced development of the federation.” See A.G. Adedeji, *supra*, note 6 at pp.132, 244; A.G. Adebayo, *supra*, note 30 at p.125.

constitution of 1960 which established self-government for Nigeria and further reinforced the powers of self-government and autonomy already granted to the regions under the preceding 1954 constitution.⁷⁰

What must be noted about the conferences, consultations, and discussions that preceded the promulgation of the 1954 and 1960 constitutions, is the quality of participation at the conferences. Like the process that midwifed the 1951 Macpherson constitution, participants at the 1953, 1957, 1958, and 1960 constitutional conferences were majorly drawn from the leadership of the three dominant political parties at the time.⁷¹ And decisions taken at the conferences were not in any way submitted for review and ratification by the generality of Nigerians. Instead, the decisions were incorporated into the new constitutions and promulgated into law by the British Parliament. Essentially, the constitutions produced at the end of these conferences can be regarded as elitist. It was devised by top Nigerian politicians under the supervision of the colonial authorities. Thus, while it is true that the 1954 and 1960 constitutions ignited significant changes in the nature and character of governance in Nigeria, they were not essentially different from the 1914, 1922, 1946, and 1951 constitutions in the elitist approach adopted in their formulation. This is evidenced by the fact that only

⁷⁰ O.I Odumosu, *supra*, note 6 at pp.111-134. It should be pointed out that a new constitution was introduced in 1963 to reflect the republican status of Nigeria. The 1963 constitution was essentially the same as the 1960 constitution in terms of the division of powers among the levels of government. The main difference was the introduction, in the 1963 constitution, of section 84 which vested the executive powers of the federation in the indigenous President of Nigeria, as against section 78 of the 1960 Constitution which vested the same powers in Her Majesty, the Queen of England.

⁷¹ See for instance the list of those that took part in the 1957 constitutional conference in London in *Report by the Nigerian Constitutional Conference Held in London in May and June 1957*, (H.M.S.O: London, 1957); See also D. S.Rothschild, *supra*, note 62 at pp. 159, 165-166.

the leadership of the political class was involved in the constitution making process, and these constitutions were promulgated by the British Parliament instead of the Nigerian Government

This disregard for popular participation in constitution making was to become a recurring decimal in subsequent constitution making processes in Nigeria. Centralisation of the constitution making process has been one of the greatest governance problems in Nigeria ever since. When a constitution making process is not inclusive, the division of powers entrenched in the ensuing constitution cannot be said to truly reflect popular interest, properly so called. And when a constitution does not represent popular interest, its democratic credential is severely attenuated.

1.4 The Military Era: Re-Centralisation of State Power

In the foregoing discussion, Nigeria moved from being a highly centralised state to being a significantly decentralised state after the official introduction of federalism in 1954. From 1960 to 1966, the regional governments wielded significant constitutional powers and were largely autonomous in the exercise of those powers.

However, the gains recorded under the 1954, 1960, and 1963 constitutions, in terms of the assignment of significant powers of self-government to the regions, were abruptly reversed on the 15th of January 1966, when in the early hours of that day, a military coup d'état carried out by a group of young military officers effectively terminated

civil democratic rule in Nigeria.⁷² From then on, and for the next thirty-three years,⁷³ a policy of power-centralisation was ruthlessly and firmly pursued by the military. What played out during the more than three decades of military rule in Nigeria was, in fact, a rehash of the extreme centralist paradigm of the 1914-1945 colonial era.

Governance under successive military administrations was by decree, the constitution having been suspended. The existing regions of the federation were unilaterally divided into smaller states during this period by the military authorities.⁷⁴ Ostensibly, this fragmentation of the former regions into smaller regions (called states) was aimed at bringing the government closer to the people. In reality, however, it would appear that this was a ploy by the military to weaken the other centres of power in the country with a view to keeping the states perpetually subordinate to and dependent on the central government for their survival and sustenance.

The vision of the military, it appears, was to create an omnipotent and monolithic central government from which other levels of governments would take instructions and to which other levels of government would be no more than mere appendages. This became quite clear from the Unification Decree which was promulgated by the military authorities soon after seizing power in 1966. The aim of this Decree was to impose a unitary agenda on the entire country.⁷⁵ Although the Decree was ultimately withdrawn

⁷² The story of the coup d'état and the events leading to it is eloquently discussed in M. Crowder, *supra* note 17, pp. 259-269. See also B.O Nwabueze, *supra* note 33 at pp. 161-162.

⁷³ There was a brief return to civil rule from 1979 to 1983. However, another coup d'état in 1983 overthrew the civilian administration and reinstated military rule until 1999.

⁷⁴ I.A. Ayua and D.C.J. Dakas, "Federal Republic of Nigeria" in J. Kincaid and G. Alan Tarr (eds), *Constitutional Origins, Structure, and Change in Federal Countries*, (McGill-Queens University Press, 2005), p. 253.

⁷⁵ M. Crowder, *supra*, note 17 at p.269.

due to public resistance to it,⁷⁶ it nevertheless revealed to all Nigerians, the centralist mindset of the military.

Thus, although Nigeria continued to be called a federation during the military era, the country had, in reality, become a unitary entity with the so-called ‘states of the federation,’ no more than ‘slavish appendages’ of the central government. Such was the total and complete control exercised by the central military government over the states during this period.⁷⁷

During this era, the allocation of governmental powers became increasingly centralised till practically all powers that had been reserved for the regional governments under the 1960 and 1963 constitutions were transferred to the central military government. The legislative and executive powers of the entire country became the exclusive preserve of the Central Military Government since the federal and regional legislatures that existed under the previous civilian era had ceased to exist under the military.⁷⁸

In addition to the above, fiscal arrangements during the military era were, as could be expected, centralised. In fact, between 1968 and 1977, the military authorities in Nigeria unilaterally reviewed the revenue allocation system four times without setting up any advisory commission, as was done prior to the 1966 coup.⁷⁹ Fiscal policy was

⁷⁶ *Ibid.*

⁷⁷ See Prof. Nwabueze’s discussion of the nature and character of the system of government established during the military in B.O Nwabueze, *supra*, note 33 at pp. 205-232.

⁷⁸ *Ibid.* See also W.O Alli, “The Development of Federalism in Nigeria: A Historical Perspective” in A.T. Gana and S. G. Egwu (eds), *Federalism in Africa* vol.1, (Africa World Press Inc, 2003), pp. 83-84.

⁷⁹ A.O. Philips, “Managing Fiscal Federalism: Revenue Allocation Issues” (1991) 21(4) *Publius* p.104; J. Isawa Elaigwu, “The Challenges of Federalism in Nigeria: An Overview” in J. Isawa Elaigwu (ed), *Fiscal Federalism in Nigeria- Facing the Challenges of the Future*, (Adonis &

centrally determined and centrally dictated such that by 1997, the fiscal system had become absolutely centralised. Commenting on this point in a 1997 paper, eminent Economist, Professor Adedotun Philips stated that:

...The federal (central) government dominates the fiscal system. This arises from the lopsided revenue structure which ensures that an annual average of over 90 percent of overall government revenue is collected by the federal government alone, whilst it accounts for about 75 percent of total expenditure in Nigeria. A vital contributory factor is that prolonged military rulership of Nigeria has virtually destroyed the constitutionally stipulated federal system and substituted a unitary, monolithic structure. Consequently, State and Local Governments are virtually insignificant in the fiscal system. Over the years, till date, budgetary administration has been characterised by....loss of autonomy by State and Local Governments in making expenditure decisions....The federal financial system has been progressively distorted over the years...Thus, upfront appropriation of revenues by the Federal Government has now become an annual practice, resulting in the retention by the Federal Government of a disproportionate share of federally-collected revenue and the undue reduction of revenues which ought to accrue to State and Local Governments.⁸⁰

The above graphic description, by Professor Phillips, of Nigeria's fiscal system during the military era lends credence to the earlier assertion that military rule in Nigeria was, in effect, a return to and continuation of the centralism of the colonial era. Such was the centralisation of financial arrangements under the military during this era that the states of the federation were consistently dependent on the central government for more than 70 percent of their revenue, a situation similar to what obtained during the colonial era.⁸¹

A major problem with the fiscal arrangements designed by successive governments during the colonial and military eras was that the principles and methods devised for

Abbey Publishers Ltd, 2008), p. 22. For a more comprehensive account of the financial arrangements during the military era, see A.G Adebayo, *supra*, note 30 at pp. 123-151.

⁸⁰ A.O. Phillips, "Nigeria's Fiscal Policy, 1998-2010" NISER Monograph Series No 17, 1997 p. 3.

⁸¹ A.G. Adebayo, *Embattled Federalism*, *supra*, note 30 at p. 147.

the horizontal allocation of centrally collected revenues among the Regional Governments, and the vertical allocation of revenue between the Regional and Central Governments were mostly crafted without any significant consultation with the Regional Governments.⁸² Even when fiscal commissions were constituted by the Central Military Government to advise on financial arrangements for the federation, the fiscal commissions mostly consisted of expatriate economists or Nigerian financial experts who often had little or no interaction with the Regions. These commissions were only accountable to the Central Government. It is therefore not surprising that the fiscal policies and revenue allocation principles recommended by these commissions were often condemned and rejected by the Regional Governments and their peoples.⁸³ Disregard and contempt for the culture of public consultation by the Nigerian political elite is one of the major reasons for the widespread public disenchantment with Nigeria's so called federal system today. The tendency of the Government at the centre to unilaterally take important decisions on critical governance issues without exhaustively consulting with the Regional Governments, and the various ethnic nationalities that constitute Nigeria is a major flaw of the current 'federal' arrangement.

From the foregoing, it is evidently clear that the history of Nigeria's so-called federalism is replete with unilateralism, centralism, and undemocratic practices, all of which are inconsistent with and antithetical to the idea of federalism. The autocratic and undemocratic nature of military rule in Nigeria from 1966 to the late 1990s

⁸² *Ibid at*, p.170.

⁸³ *Ibid at* pp. 123-151.

precipitated a long and sustained struggle against dictatorship and a loud clamour for democratic rule throughout the 1980s and 1990s. Ethnic organisations, non-governmental organisations, and individual Nigerians vigorously campaigned against the absolutism of the military and its attendant erosion of democratic values.⁸⁴

In 1999, after decades of pressure from the pro-democracy movement and other civil society organisations, the military authorities hurriedly handed over power to a civilian government. However, in the process of doing this, they also handed over, another elitist constitution that was not debated, adopted or popularly ratified by the Nigerian people. The draft of the constitution was not debated or discussed by any constituent or constitutional assembly, and there was no referendum or any other formal mechanism of popular ratification of the Constitution. In short, there was no forum for the peoples of Nigeria to exercise their constituent power. Contrary to what is contained in the Constitution's preamble, the Constitution was not made by the Nigerian people. It was made by the military and a few civilian acolytes of theirs. The constitution was hurriedly drawn up by a committee unilaterally set up by the military, and promulgated into law by a decree,⁸⁵ thus effectively making the military authorities, and not the peoples of Nigeria, the source of the constitution's authority. Since the peoples of Nigeria, drawn from the constituent units of the federation were not genuinely involved in making the 1999 constitution, the division of powers and

⁸⁴ A detailed account of this struggle, and the nature of the military rule that occasioned it, has been documented by Professor Kunle Amuwo. See Kunle Amuwo, "Transition as Democratic Regression" in K. Amuwo et al (ed)., *Nigeria During the Abacha Years: The Domestic and International Politics of Democratization*, (Institute Francais de Recherche en Afrique: Ibadan, 2001), pp 1-56. Also available online at <http://books.openedition.org/ifra/632> (accessed 25 September 2024).

⁸⁵ Constitution of the Federal Republic of Nigeria (Promulgation) Decree No 24 1999.

resources set out in the constitution cannot be said to reflect the will of the Nigerian people.

Like previous constitutions before it, the 1999 constitution also entrenches an inordinate concentration of powers and fiscal resources in the central government, despite the ethnically diverse character of the Nigerian state.

The unilateral formulation and promulgation of the 1999 Constitution, and the centralised division of powers entrenched in it, despite the glaring diversity of the Nigerian State, is the underpinning cause of the separatist and secessionist agitations that have rocked the country in the last few decades.

2.0 QUO VADIS? - A DECENTRALISED FEDERAL CONSTITUTIONAL FRAMEWORK

To address the problem of centralisation that has plagued the Nigerian State since the colonial era, I will propose, in this article, a two-pronged approach. First, the current 1999 constitution with the centralised power-sharing arrangement set out in it must be completely abrogated. A fresh constitution-making process that is genuinely participatory, inclusive, and deliberative should be put in place. The process should be designed to include a constituent-assembly, and a ratifying referendum in order to ensure that the new Constitution indeed reflects the popular will. In short, the constitution-making process should be genuinely democratic.

The process that produced the 1996 constitution of South Africa exemplifies this approach.⁸⁶ That process, characterised by widespread popular participation and

⁸⁶ C. Murray "A Constitutional Beginning: Making South Africa's Final Constitution" 2001 23(3) *University of Arkansas at Little Rock Law Review*, 816-837. For a more comprehensive account

popular endorsement has been widely adjudged as the most democratic constitution-making process Africa has ever witnessed.⁸⁷ The Nigerian constitution-making process can be designed using a similar method or approach to ensure that citizens from all parts of the country, and groups representing different professional, religious, socio-cultural and political tendencies are fully involved in the process. Popular participation not only imbues the constitution-making process and the constitution itself with legitimacy, but it also helps to compel long-term fidelity to the Constitution.⁸⁸

Second, the new Constitution should entrench a federal framework that genuinely accommodates Nigeria's diversity without compromising its unity. In essence, the Constitution should recognise the multi-ethnic character of the Nigerian State and promote a governance structure that supports autonomy for the constituent units of the federation in matters that are local or regional in nature. This sort of federal system has been practiced in Canada for several years. It is well known that Canada has one of the most decentralised federal systems in the world.⁸⁹ And, while the federal arrangement in that country has not always been perfect, it has undoubtedly helped to manage inter-regional and inter-governmental tensions in the country in the last few decades. Canada, like Nigeria, is a multi-ethnic State with pronounced diversity. The Canadian experience with decentralised federalism has demonstrated that a truly

of public participation in the South African Constitution Making process, see H.Ebrahim, *The Soul of a Nation: Constitution-Making in South Africa*, (Cape Town/Oxford University Press 1998), pp. 239-250.

⁸⁷ Ibid.

⁸⁸ B.O Nwabueze, *Constitutionalism in the Emergent States*, (Fairleigh Dickinson University Press, 1973), pp 25-26; J. Wallis, *Constitution Making During State Building*, (Cambridge University Press, 2014), p. 3.

⁸⁹ R.L. Watts, *supra* note 2 at pp 32-33.

federal system characterised by significant regional or provincial autonomy in matters that are purely internal to the constituent units of the federation is often the best for a multi-ethnic State with deeply entrenched diversity. Nigeria 's federal system should be patterned along this line. The federal framework set out in the new Constitution should embrace regional autonomy without compromising the country's unity.

In summary, the point being emphasised is that Nigeria's problematic federal system can only be rectified by a complete abrogation of the current constitutional arrangement and its replacement with a genuine counter-hegemonic federal constitutional framework, freely and inclusively adopted by the peoples of Nigeria, and characterised by a power sharing arrangement that recognises the country's diversity and multi-ethnic character without undermining its unity. Only such a federal system can contribute to the peace and stability of the country and help to stem the tide of secessionism threatening to tear the country apart.

3.0 CONCLUSION

In this article, Nigeria's constitutional experience since its compulsive creation in 1914, has been examined. In particular, we analysed the nature of the division of powers entrenched in successive constitutions of Nigeria in the last hundred years or so. The discussion revealed that constitutional distribution of powers among the levels of government in Nigeria has had a long and troubling history of centralisation. This policy of centralisation was forged in the crucible of colonialism and nurtured on the altar of military rule. In essence, the centralist nature of the division of constitutional powers in Nigeria today is a colonial *cum* military legacy that has corrupted the very soul of

Nigeria's federalism. It has entrenched and fostered a problematic "federal" framework by institutionalising the hegemony and dominance of the central government.

Throughout Nigeria's checkered history, the centralist nature of power allocation in the country has led to consistent agitations for greater public participation in constitution-making, transfer of powers to the constituent units of the federation, regional fiscal autonomy, and regional control of mineral resources. These agitations indicate that there is increasing popular disenchantment with the country's dysfunctional and illegitimate constitutional architecture.

Any attempt to address these agitations must therefore commence with a radical abrogation of the 1999 constitution along with its centralist federal philosophy, and its replacement with a decentralised federal constitutional framework that is designed by the peoples of Nigeria themselves through a widely inclusive and participatory constitution-making process.