



## Local Government and the Constitution: The Nigerian Experience

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**Abstract.** What is or should be the research relationship between local government and the constitution? How can the research relationship be explored? What should be the investigative parameters and criteria? Put more directly, what form of relationship exists or should exist between local government and the constitution? How can the relationship be investigated? Of more fundamental necessity, is there any justification to investigate the relationship? Consequently, of what relevance is the study of the relationship to scholarship? The questions are crucial to both the understanding of the *theory* and *practice* of federalism and to the specialty, local government studies in Nigeria in particular. Apart from assisting in creating scholarly avenues for a profound study of power interplays in federally organized systems, part of the objectives of the paper is to as well place the Nigerian experience under close scrutiny and perhaps use it to generate issues and problems of comparative research that would in turn impact tremendously on generalization and theory building within the sub-field and specialty. Data sources are secondary and this can be justified by the nature of the research topic and the attendant core/research questions. The mode of analysis is descriptive, qualitative, historical and philosophical.

**Keywords:** Local Government, Constitution, Nigerian Experience.

### 1. Introduction

The study of local government and the constitution, within the context of informed scholarship, should be preceded by asking very important illuminating questions: How should the subject matter of research and academic engagement be rigorously, comprehensively and critically approached? What does the issue of approach hope to draw our attention to? How can the approach be systematically

presented in such a way and manner that all the related issues and problems of scholarship on the subject matter are brought to the fore of critical engagement, scrutiny of examination and balanced discussion and analysis? How can the above questions and issues individually and collectively shape and influence contemporary local government studies?

It is here noted that contemporary Local Government Studies as a disciplinary and academic engagement requires regular fine-tuning of its contents and methods. The issues and problems of research as already established should be placed within the context of a changing world and dynamics. The relationships between it and other disciplines such as Political Science, Law, among others, need therefore be constantly assessed and evaluated so as to be able to ascertain its unique identity among the humanities at large and especially in relation to creating and delineating a focus of study under the changing dynamics necessitated by the combined consequences and effects of globalization and the internationalization of knowledge on the subject matter. The study of local government consequently requires comprehensiveness of approach to be able to accommodate the aforementioned dynamics.

The dynamism, I should further emphasize, has the advantage of injecting into the study an important point capable of reintroducing into local government discourse the issue of relevance and justification, and the extent of the amplification of the existing contents and methods of study when considered from the perspective of the opportunity to reinvent and recreate hitherto established disciplinary engagements. Important to the reinvention and recreation especially from the perspective of the Third World in particular, is the constitution. The constitution unarguably provides the ample

opportunities from the academic perspective of study, to re-conceptualize the knowledge and understanding of local government as already provided for in extant literature (see, Campbell, 1963; Cowan, 1958; Gboyega, 1981; Gboyega, 1983; among others). There is consequently the imperative need especially from the perspective of the political theory of federalism to interrogate the extent to which local government is indeed a third-tier level of government. The justification for the focus exists further in the fact that the constitution is the fundamental legal charter of any country or social organization. As the fundamental legal charter describing and detailing the structural arrangement of the institutions of government and ensuring the realization of the attendant purposes and goals of the State, the constitution, to be able to ensure the proper knowledge and understanding of the workings of government especially in political systems with federal parameters, should be creatively approached in relation to the advancement of scholarship. Part of the knowledge creativity is the idea of the relationship here formulated as the framework of organization of the ongoing research into the subject matter. The understanding of the relationship should unarguably be predicated on the provisions of any constitution in relation to the local government as a tier of government.

The question, at this juncture, can now be asked: What precisely is meant by a third-tier level of government, and to what extent is the description and characterization a valid one? What a third-tier level of government is within the existing classical interpretation and analysis of federalism should not entertain any controversy. But the necessity behind the distinction between federal and federalizing societies especially in relation to the level of federal sophistication compels the need to critically engage the notion of local government as a third-tier level of government. This no doubt helps to advance contemporary local government studies. Engaging and clarifying the controversies enveloping the notion of local government as a third-tier level of government requires integrating it with the Third World political experience using a particular case study. In relation to the study, a proper example of the Third World is Nigeria. Within the experience therefore, Nigeria provides the much-needed opportunity to, using the lenses of contemporaneity, interrogate the embedded academic and intellectual issues involved in the reinvention, redefinition and recreation of the knowledge and understanding of local government as a third-tier level of government.

The above preamble throws up the very important research question: What is to be achieved by using the experience of Nigeria? The Nigerian experience, without running the risk of repetition, not only provides and justifies the basis for the reinvention and recreation of the study of local government, but further helps particularly in the formulation and development of special parameters and indices with which to undertake the reinvention, recreation and redefinition. What consequently are these parameters and indices? Something that is considered again very important and fundamental should precede their mentioning and articulation. The parameters and indices, it is important to note, should be capable of helping in the organization of the study. In other words, especially against the provided goals and objectives, the parameters and indices should provide in technical and epistemological terms, the academic and intellectual framework with which to integrate the many wandered parts of the study as already located in the constitution. What therefore are the theoretical and empirical relationships between local government and the constitution? Within what intellectual outlook should the study of the relationship be based? Put more directly, how are the constitution and local government related? Has the relationship any specific character and or form? What is the basis of the relationship, and how can this be explained? All the questions try to examine the critical issues in the idea of local government, and how the idea in turn fosters development. Beyond this, there is the need to provide the necessary intellectual basis for discussing local government within the broad framework of the constitution, a neglected area of research in local government studies. It is hoped that the discussion here engaged will help to advance the discourse on local government beyond the theoretically and politically mundane matters to issues of critical substance in law and political theory, the supposed foundations of local government thoughts.

The above research engagement as already posed requires further amplification. How, it is here being asked, should the subject matter (local government and the constitution) be approached? This is indeed a very big question. Approaching the answer to the question compels critical interrogation of the relationships between the two from the perspective of clarity of knowledge and understanding. Nigeria, it is here argued, provides fascinating experience, especially given the tardiness of her developmental directions and the uniqueness of her party politics. It is perhaps the only country in the world where a constitution was prepared (the 1989 Constitution), but was never put to use. It is in addition the only

country in the world where violations of constitutional provisions especially in relation to the structure and operations of the local government are taken as normal and therefore not queried with perhaps the possible exception of the elected local government executives of Oyo State (prelude to the May 29, 2007 hand over date) who decided to challenge their dissolution in court by Mr. Adebayo Alao-Akala, the then Executive Governor of Oyo State, Nigeria. The constitution of any country is usually its fundamental legal charter. It is considered as the fundamental legal charter because it defines the framework of government, and goes ahead to specify the structure of governmental operations and processes. As argued by Wheare (1953), it is an essential precondition of the “federal principle”. Multiple as these preconditions are, the striking difference remains the cumbersomeness in its amendment procedures and hence the characterization, rigid and flexible constitutions. The postulation of Wheare leads one to ask the question: Is local government indeed a third-tier level of government so recognized by the constitution? To what extent is this characteristic of federal system, and what is the extent of variation and compliance?

Beyond defining the framework of government, the constitution gives power to every tier of government and goes ahead to provide a limitation as well. To what extent does the Nigerian constitution give political power to local government, and what is the amount of same that is so given? In other words, to what extent does the constitution recognize local government as a tier of government? How is this recognition protected, and by what enabling legal instruments? Answers to these and other questions shall constitute the preoccupation of the paper. Towards this end, the paper is divided into the following parts. Part one presents and discusses the specific context of interrogation and investigation by making important and essential clarifications relevant to comprehending the paper and the contained theses and arguments. Part two focuses on further elaboration of the relationship between local government and the constitution from the perspective of enhanced critical discussion and analysis. Part three extends further the issues raised in the theoretical elaboration within the context of a developmental perspective, while part four critically discusses and analyzes the Nigerian experience of the academic interrogation of local government and the constitution. Part five further situates the Nigerian experience within the epistemological issues in comparative research methodologies on the subject matter. Part six provides the conclusion to the paper.

## 2. Conceptual Clarifications and Context Specification

The keywords: local government, constitution, and the Nigerian experience require urgent clarifications. What really are they, and within what specific contexts are they being made use of in the paper? Their operationalization requires particular appreciations within the context of the ongoing investigation. The above particularly explains the need for the clarifications as here being accomplished.

Local government, native administrative system, local government administration, local development administration, local councils, and local council areas, within the context of the political development of Nigeria, acquire almost the same meaning of understanding to the extent that extant literature fail to appreciate the technicalities in their distinctions. Though the elective principle remains the distinguishing criterion of explanation and understanding, the fact that this principle is particularly abused in the Nigerian case helps to emphasize the need for the attendant clarifications. This is further strengthened by the fact that the abuse is not only a military phenomenon/attribute, it happens as well under democratically constituted regimes.

Looking at or defining local government from the standard provided by the United Nations Division of Public Administration or as interpreted by scholars in extant literature has the capability of entrenching misinformation and misunderstanding especially within the context of the Nigerian experience. Apart from the point mentioned above in relation to the elective principle, the area of local government in Nigeria suffers from yardsticks that are lacking in dependability and reliability essentially because of the nature of politics, and further as a result of the political development of the Nigerian State necessitated by certain exigencies and the realized need to accelerate development especially at the grassroots level.

Since the 1950s especially following the initiation of the series of reforms that in the end brought about a unified service in the operations of the local government, local government areas keep on acquiring new adjustments and boundary demarcations as a result of states creation in particular. Local government areas, it must be mentioned, are related to their numbers in Nigeria, and each state, especially since 1976, has an average of between Sixteen (16) and Forty Four (44)

respectively. By the 1999 Constitution (as amended), there are Seven Hundred and Seventy Four (774) local government areas in Nigeria legally entitled to the monthly allocation from the Federation Account. Lagos State for instance has Local Community Development Areas (LCDAs) which, by the State Law, enjoy the same status of legal recognition, and being operated and managed administratively by a Local Government Service Commission of the State whose scope of authority covers the entire local government system of the State. While the 1999 Constitution (as amended) put the total number of local governments in the State at Twenty (20), in reality, the State has a total number of Fifty Seven (57). This is the Nigerian experience that the paper tries to capture.

The peculiarity of Nigeria further exists in the fact that states in the country with local community development areas just like Lagos have a way of ensuring revenue sharing between and among the local governments recognized by the constitution and the local community development areas. It should in addition be mentioned that even though the 1999 Constitution (as amended) recognizes the need for development areas, it however, envisages that these development areas should be integrated into, rather than being independent of, the parent local government politically and administratively. These local community development areas, it should be clearly emphasized, are practically distinct politically and administratively, and perform functions prescribed and legislated by the 1999 Constitution (as amended) to the extent that in clear, analytical terms, they are indeed local governments technically speaking and so described and labelled as such in the paper.

Constitution, here conceived, is the body of laws defining the power relations between and among both the organs and tiers of government, and in addition describing and detailing the purposes of government/state. Constitution, when amplified further within the context of the above understanding, is that written source of document imbued with complex processes and procedures of amendment. The definitions, as provided, exclude the arrangement of a political system from a fundamental framework of largely unwritten laws and traditions and simple processes and procedures of amendment. It is only within the context of specification and clarity that the paper should derive its understanding from.

Local government and the constitution, within the context of the Nigerian experience, seek the interrogation of the subject matter from the

assumption of a relationship for the purpose of academic exploration and analysis. The relationship between the two in turn seeks the formulation and development of propositions that are capable of eliminating the inherent ambiguities in the understanding of the subject matter. The place of the local government in the Nigerian constitution i.e. the 1999 Constitution (as amended) deserves special investigation not only to determine the extent to which it is autonomous and independent especially from the state, but more importantly to justify its existence especially from the perspective of its purpose as a tier of government. Given the federal framework of Nigeria, the study, examination and analysis of the place of the local government in the constitution is important and crucial to addressing the challenges and problems of contemporary Nigerian society.

### **3. Local Government and the Constitution in Nigeria: Further Theoretical Substantiation and Exploits**

The academic and intellectual exploration of the subject matter of research, local government and the constitution unarguably requires further amplification. The immediate questions then become: (1) What is the nature of the amplification? and (2) How is this accomplished in the paper? The amplification aims at further formulation and development of relevant academic indices and parameters essential for its comprehension, examination, discussion and analysis. The focus of the amplification hence involves clear-cut specification of the tools of knowledge especially in relation to the realization of the aforementioned goals. The tools of knowledge represent the body of ideas serving the purpose of clarity of understanding with respect to the comprehension of the relationship between local government and the constitution. The amplification further technically requires an in-depth probe into the actual understanding of the relationship approached from the perspective of federalism. In other words, any justification and or elaboration of the relationship between the two require deep and profound study of federalism. This is so because only in relation to federalism can the relationship be properly understood in its logical and empirical contexts. The position, no doubt, seems to neglect the fact that the relationship between local government and the constitution is also a feature of unitary systems as well. However, the standard measurement of the status of the local government as recognized and provided for in the constitution and law can only be adequately and sufficiently tested

within the federal framework of government, it is here submitted.

The reading of federalism from the classical perspective suggests to one that it is all about the sharing and allocation of political powers in such a way that the composite units remain independent and yet coordinate. Surprising enough, the classical understanding of federalism is of limited value to the ongoing analysis. This is because the federalists concerned themselves with power relations between the centre and the states to the detriment of the local government. The local government was least thought of as a tier of arrangement in the original formulation of federalism. It is only consequential today that federal constitutions expect the states to make laws for the structure, organization and operations of the local government like in Nigeria. This is indeed a major limitation to the task of examining the relationship between the local government and the constitution since the initial/pioneering effort was targeted only at defending the states from the likely excesses of the central government as envisaged. The connection and or relationship between local government and the constitution should hence be looked at from three principal angles. These angles are: (a) the extent to which the constitution serves as the source of political power for the local government, or the extent to which we can say that the local government derives its existence (legally and politically) from the constitution, (b) the extent to which the sources of its funding are defined clearly by the constitution, and (c) the extent to which its relationships with other tiers of government is either defined or provided for in the constitution.

**As Source of Political Power:** To what extent does the local government derive its power from the constitution? The Nigerian constitution, the 1999 Constitution (as amended), like other constitutions of the global political systems, both defines and declares the structural and organizational arrangement of government into three as the legislature, executive and judiciary, and as national/federal, state and local. It goes further to divide and allocate political powers, functions, duties and responsibilities as residual, concurrent and exclusive in line with federal parameters and purposely create what it calls the “Federal Executive Bodies”. In what the Constitution describes as “Schedules” and further arranged in “Parts”, it finally provides limits to the powers of the tiers and organs of government and all these contained in the referred to “Schedules” and “Parts”.

Chapter 1, Part II, Section 7 of the 1999 Constitution (as amended) clearly states that: “...the system of

local government by democratically elected local government councils is under this Constitution guaranteed; and accordingly, the Government of every State shall, subject to section 8 of this Constitution, ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such councils”. Notwithstanding the likelihood of peculiarities between and among the states of the Nigerian federation, the Constitution broadly categorizes and labels the functions of the local government as “main” and other functions. The main functions include: (a.) the consideration and the making of recommendations to a State commission on economic planning or any similar body on- (i.) 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 (ii.) proposals made by the said commission or body; (b.) collection of rates, radio and television licences; (c.) establishment and maintenance of cemeteries, burial grounds and homes for the destitute or infirm; (d.) licensing of bicycles, trucks (other than mechanically propelled trucks), canoes, wheel barrows and carts; (e.) establishment, maintenance and regulation of slaughter houses, slaughter slabs, markets, motor parks and public conveniences; (f.) construction and maintenance of roads, streets, street lightings, drains and other public highways, parks, gardens, open spaces, or such public facilities as may be prescribed from time to time by the House of Assembly of a State; (g.) naming of roads and streets and numbering of houses; (h.) provision and maintenance of public conveniences, sewage and refuse disposal; (i.) registration of all births, deaths and marriages; (j.) 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; and (k.) control and regulation of- (i.) out-door advertising and hoarding, (ii.) movement and keeping of pets of all description, (iii.) shops and kiosks, (iv.) restaurants, bakeries and other places for sale of food to the public, (v.) laundries, and (vi.) licensing, regulation and control of the sale of liquor. The other functions as stated in the Constitution include: “...participation of such council in the Government of a State as respects the following matters- (a.) the provision and maintenance of primary, adult and vocational education; (b.) the development of agriculture and natural resources, other than the exploitation of materials; (c.) the provision and maintenance of health services; and (d.) such other functions as may be conferred on a local government council by the House of Assembly of the State”.

**Fund Generation and Taxation:** The revenues and funds available to the local government in Nigeria can be divided into two as internal and external. The external include grants and special allocation from the state, monthly allocation from the Federation Account, ecological funds, etc. The Nigerian 1999 Constitution (as amended) further provides in the same Section 7, Part II, Chapter 1, specific funds for the local government serving as internal revenue sources. These include: “(a.) collection of rates, radio and television licences; (b.) establishment and maintenance of cemeteries, burial grounds and homes for the destitute or infirm; (c.) licensing of bicycles, trucks (other than mechanically propelled trucks), canoes, wheel barrows and carts; (d.) establishment, maintenance and regulation of slaughter houses, slaughter slabs, markets, motor parks and public conveniences; among others”.

**Inter-governmental Relations:** The status of the local government, from the perspective of the ongoing discussion and analysis, has greater relevance of consideration and academic engagement further within the scope of intergovernmental relations provided by the constitution of any country. Local government in Nigeria, notwithstanding the provision of the constitution to the effect that states are to make the laws for their operations, among others, enjoys the status of government in the existing forms of relations within the federal context of intergovernmental relations. Relations: local-local, local-state, local-federal as already exhibited in the matrixes of intergovernmental relations theory of the federal type, have their existence in Nigeria especially in relation to governmental practices. One should note that state-local relation, within the larger context of intergovernmental relations is however the dominant type. Lately, concerns about security matters in the face of armed banditry, kidnapping, terrorism, etc., still within the larger framework of state-state relations embedded in sub-national and regional trappings, have both necessitated and compelled the initiation and institutionalization of local-local relations as an emerging character of contemporary intergovernmental relations and further in the collection of hackney permits and other constitutionally approved rates, again, in the face of COVID-19 pandemic.

The above tools of knowledge and understanding relevant for the intellectual and academic amplification of the formulated indices and parametres with which to undertake critical and comprehensive study of the relationship between local government and the constitution need be further placed within the traditional theory of the organizational and structural arrangement of the

state/government. Why? This is because the theory provides the required knowledge about the subject matter. The organizational and structural arrangements of government/state provide useful information about the time of political/governmental system as they exist globally. The labeling and description of government/state as federal or unitary and their further organizational arrangements into legislature, executive and judiciary help in the appreciation of role of the constitution as the custodian of all interaction and activities with particular regard to how political powers are being exercised. The constitution as the custodian of power relations between and among the tiers of government in federal political systems therefore clearly defines the embedded power relations. The constitution hence provides an important framework for the study of local government in both federal and unitary political systems.

The justifications for the focus on the constitution and using it to undertake a critical study of the local government further exists in the fact that the tools of knowledge and understanding as here formulated and developed benefit from some of the contained ideas. In other words, some of the ideas as contained in the constitution such as the principles of separation of powers, checks and balances, rule of law, among others, in specific and broad terms, provide the intellectual stimuli with which to engage the critical and comprehensive study of the relationship between local government and the constitution. The responsibility of the scrutiny of the position/status of the local government in the Nigerian federal system for instance is unarguably anchored in the guiding principles in which the provisions of the constitution in relation to the scrutiny are based.

The ongoing justifications and rationalizations need be finally situated within the context of the enabling framework of analysis, academic disquisitions and school of thought. The latter is supported by the fact that the research and academic engagement require a perspective of knowledge and understanding as already established in extant literature within the embedded opportunity to address and fill-up the existing gaps. The umbrella framework of analysis is liberalism broadly and expansively interpreted and further amplified using the propertied constituents of democracy and constitutionalism. The latter inevitably leads us to the examination and analysis of the democratic school of thought in relation to the discourse on local government.

The above requires further careful specification. And this is here accomplished from the following

dimensions including: political representation, political education, political participation, and political accountability and transparency. The argument that local government is the hub of democracy stems from the realization that its existence enables the realization of the aforementioned in relation to ensuring the participation, representation and monitoring of governmental affairs by local communities. The proximity of local communities to a governmental arrangement and authority, the understanding and believe that they own it, the representation afforded them within the framework, the attendant struggles and competitions between and among the local communities in relation to the processes and procedures of decision-making with particular regard to all “allocation of values”, the engendered responsibility and responsiveness accompanying the processes and consequences of decision-making and decisions arrived at, the embedded political education with particular regard to institutionalizing and sustaining social mobilization and governmental legitimacy, the necessities for campaigns and preparations for elections critical to the renewal of political mandates, individually and collectively, help both in the establishment and sustenance of democracy and democratic political culture at the local government level. The democratic justification for allowing the existence of local government consequently receives the much needed strength from this summary provided by Gboyega (1987:5): “...local government extends participation to sections of the community that otherwise would not participate in the political process”. The opportunity, one can further argue, provides the much needed training in the art and science of public administration and management. More fundamental and critical to this portion of the section of the paper is, and as brilliantly articulated by Gboyega (1987:6): “...how is all this related to democracy”? He provides the answer: “It has been observed that local government has the potential to educate people in citizenship. It is also a training ground for national leaders, even if the significance of this is minimal. Lastly, it permits citizen-control of public officials and redress of grievances because of the elective element in the selection of councillors”. (Ibid:6)

As argued by Langrod (1953), Moulin (1954), among others, because local government is considered “antithetical to democracy”, perhaps explains the need to anchor its democratic bases and justifications within the framework of the constitution and the adherence to its principle, the principle of constitutionalism i.e. the supremacy of the constitution. Consequently, local government as the

fundamental instrument of allowing and encouraging the involvement of local communities in the management of their affairs compels the need for its accommodation and protection within the patterned and established structural organization and arrangement of government as already defined within the framework of the constitution as the fundamental legal charter of any country. Local government therefore exists not only as an extension of the central governmental authority, but as well as a tier of government with its scope, authority and sphere of competence clearly defined, protected and guaranteed.

#### **4. Local Government and the Constitution in Nigeria: Further Theoretical Substantiation and Exploits**

The Nigerian focus of the research compels further examination, discussion and analysis from the perspective of developmental orientation. What is the latter all about? The starting point will be to state very clearly that a developmental orientation is a kind of mode of analysis that is anchored in history. What consequently are its hallmarks? As mentioned, it focuses on the knowledge and understanding of history approached from the perspective of the contestation of forces between the old and the new. More explicitly, it is a form of analysis that is intended to interrogate the subject matter of local government and the constitution in Nigeria from the perspective of its political development. And this political development is placed within the dominant post-independence constitutions: 1963, 1979 and 1999 (as amended). The point as here made is that the relationship between local government and the constitution is better understood from the angle and perspective of the political development of Nigeria as already anchored in important/landmark legal frameworks and instruments as earlier mentioned. The application and utilization of the perspective hence involves the examination, discussion, scrutiny and analysis of the provisions of the legal enablement carefully and systematically arranged in relation to the subject matter of research and scholarly engagement.

What therefore are the provisions of these constitutions in relation to the local government in Nigeria? More compelling and urgent should however, be the examination and analysis of the political development of Nigeria in relation to the knowledge and understanding of the local government. In other words, important to the body of the ongoing discussion and analysis should be how the history of the political development of Nigeria

provides important information about the understanding and knowledge of the subject matter of local government in the country. This means that the understanding and knowledge of local government in Nigeria require a probe into its history. The history helps to provide the essential knowledge and the required information about today's relationship between local government and the constitution in the country.

Local government/local government administration in the technical sense of analysis when broadly applied to the Nigerian situation came following the Local Government Reform of 1976. This is not to however, say that there was no local government in the country before then. The year, 1976, marked a watershed in the annals of local government. The referred to Reform provided for a unified local government service throughout the country, among others, with particular regard to neat and clear specification of its scope, functions and sundry matters. Important to the paper therefore is the history of the local government in Nigeria.

According to Gboyega (1987:8): "In Nigeria, there have been four epochs in the development of local government and each has been characterized by a distinct set of philosophical beliefs regarding the ultimate purposes of local government". He continues: "These sets of philosophical beliefs, during each epoch, justified and determined the institutional arrangements which were established for the purposes of local government" (Ibid:8). The first epoch lasted between the inception of colonial administration and the rejection of the Native Authority System in the 1950s. The second was the period of local government reforms in 1951 and 1952 respectively in both the then Eastern and Western Regions. The third epoch comprised of the first phase of military rule which lasted between 1966 and 1975. The fourth and final was considered the most significant because: "...it was a return to the era of participatory local government" (Ibid:10). And this lasted between 1976 and 1984 when another coup d'état was staged and led by Generals Buhari and Idiagbon.

The nature of critical scholarship demands the question: How valid are the above epochal descriptions and characterizations of the local government in Nigeria? To what extent have the descriptions and characterizations provided important knowledge useful for the development of generalizations? And lastly, to what extent have the developments that happened after the 1984 coup d'état created solid basis for a reconsideration and

reinvention of the epochal descriptions and characterizations? Epochs, in relation to the advancement of scholarship, stand as a body of ideas with distinct identities formulated to enable the understanding of events within well-defined parameters and standards of accomplishment. The epochal characterizations and descriptions of local government in Nigeria hence provide that avenue of human understanding and knowledge relevant to the appreciation of the subject matter when approached from the perspective of enabling the accumulation of data especially by helping in the enthronement and sustenance of investigations with comparative insights, consequences and effects. Their relevance further exists in the provision of a ready idea and knowledge with which to begin the study and analysis of the Nigerian local government system without resorting to either guesses or theoretical extrapolations. However, important developments and events especially beginning from 1985 with the presidential innovations and the many infractions on the idea of an elected local government system as both provided and guaranteed by the 1999 Constitution (as amended) since the return to the Fourth Republic are strong enough to elongate the epochal characterizations and descriptions beyond the existing level. This particularly attests to the dynamic nature of life and its political components and provides further indications with respect to the limitations of the periodization approach which is what the epochal characterizations and descriptions tend to project, amplify and justify as the reliable basis with which to anchor the knowledge and understanding of local government in Nigeria. A significant limitation, among others, is the overlapping nature of the periods thereby making distinctions between and among them difficult to indicate, stress and emphasize. For example, the period of the rejection of Native Administrative System coincided with the period of the introduction of reforms in the entire periods shortly before the attainment of independence in 1960. The first and second phases therefore suffer from interpenetrations.

The first phase of local government administration in Nigeria came with the imposition of colonial rule and was therefore perfectly described as the Native Administrative System comprising of four interdependent parts which, according to Gboyega (1987:14), included: "(i) the Resident who provided direction and control; (ii) the Native Authority, usually headed by a chief who enjoyed legitimacy under the indigenous political system, often supported by a council of elders; (iii) the Native Treasury; and (iv) the Native Court composed of the representatives of the native administration". These

structures of local administration came under the principle/policy of indirect rule. It was a huge success in the Northern Region of the country with degrees of varied successes in both the Western and Eastern Regions.

The gradual process of the modernization of the Nigerian society made possible through the Christian religion and western education, opened up the opportunities to challenge the colonial authorities and framework of political administration just as the call for de-colonization started to gather momentum within the instrumentalities and frameworks of nationalism and the attendant struggles and agitations. The arrival of the elites upon their graduation from metropolitan universities as professional lawyers, doctors, journalists, academics, among others, stirred the existing arrangement of power relations, and the open challenge to the authorities of the chiefs and other traditional chieftaincy holders. In addition, the formation of political parties by the nationalists influenced and propelled the call for democratization of traditional political set-ups and arrangements that the colonialists met and sustained for the primary objective of colonialism. The challenge and opposition brought about the first reform of the local government in Nigeria which took place in the 1950s, specifically 1951 in Eastern Region, and 1952 in Western Region, following the promulgation of the Local Government Law.

Even though the various colonial Head of administration in the country had their constitutions and same named after them, the provisions of these constitutions were not specifically in relation to the local government. Native Administration, as called, was both regionalized and localized without any integration into the central framework of colonial administration. By 1946, following the introduction of the Richard Constitution which attempted the injection of federal arrangement into the administration of Nigeria and further elaboration of same following the constitutions of Macpherson and Lyttleton, local government was still denied any significant status as a tier of government until the promulgation of the earlier referred to Local Government Law of 1952 in the Western Region of Nigeria for example which only attempted to democratize it.

Following the coup d'état of January 1966, the 1963 Republican Constitution was suspended thus further reducing the chances of the recognition of local government as a tier of government. The third epoch of the local government came into being especially

following the experiences of the Civil War compelled by the need to facilitate the rapid development of the Eastern Region in particular within the launched reconstruction programme of the Federal Military Government. The military regimes of between 1966 and 1975, confronted with the inherited problem of the democratic management of the local government, in 1976, came up with the first ever comprehensive standardization of local government reforms in the political history of Nigeria. Among others, the reforms brought about the idea of a unified local government service and with clear specific functions formulated within the scope of its governmental operations and arrangements. The new status of the local government received the attention of the demilitarization and re-civilianization processes of military disengagement from politics leading to the promulgation of the 1979 Second Republic Constitution. The above analysis completed the fourth epochal phase of local government in Nigeria.

What can we further say about the scholarly focus on the relationship between local government and the constitution broadly speaking, and with particular reference to Nigeria? The question props up important issues and matters of critical intellectual engagements within the ambit of local government studies in particular. What are these issues and matters, and how relevant are they in terms of intellectual and academic focus? The paper's creativity and original contribution to knowledge on the subject matter derives its strength and vitality when these issues and matters are both carefully and methodically identified, and further rigorously and critically examined and analyzed.

Firstly, there is the issue/matter/problem in relation to the organization of the investigation. In other words, how well can the relationship between local government and the constitution be organized to reveal the important areas of concern? The organization should take into consideration the relationships between and among disciplines on the subject matter in such a way that the advantage that is inherent in such inter-disciplinary opportunities helps to both explain and amplify the conceptual interpretation and analysis of the idea of relationship, and further with respect to enhancing the understanding and knowledge of a subject matter imbued with very interesting intellectual and academic significance. In the problem of organization is as well the related issue of the determination of the relevant themes and their further arrangement into sub-themes.

Secondly, the study of the relationship between local government and the constitution in addition requires

settling the issue/problem relating to theoretical approach and its appropriateness and suitability. The question of what theory that is significant for the purpose of aiding the accomplishment of targets as set is very vital. Because theory is significant for the purpose of performing important tasks and responsibilities such as description, explanation and prediction, in relation to the knowledge and understanding of the subject matter, there is the compelling need to determine the suitability and appropriateness of such a theory. Suitability and appropriateness become measures with which to ascertain the relevance of the choice of theory.

Thirdly, the formulation and development of reliable generalizations emanating from the study of the relationship between local government and the constitution obviously depend on the extent of comparative exploits. Comparison helps to reveal the differences and similarities between and among our case studies so that information obtained from the study and investigation can have elements of comprehensiveness and detailed examination and analysis. The accumulation of data over a period further helps in the establishment of a pattern from which dependable generalizations can be formulated and developed.

In addition, there is as well the issue/problem of focus. The issue/problem presents itself in terms of what the study of the relationship should address. Local government and the constitution, as an academic engagement, have relevance of study, examination and analysis only within the satisfaction of the criterion of clear, concise and specific area of the engendered study, examination and analysis. A clear focus of study provides the much needed information about the specificity of the research engagement and pre-occupation thereby helping in the making of distinctions and clarifications between and among the issues demanding our scholarly attention.

Furthermore, the research and academic engagement on the subject matter of the relationship between local government and the constitution should be capable of adequately enhancing public policy prescriptions. The scope of the functions of local government, the relationship between it and the other tiers of government especially in federal political systems, its sources of funding, management structure, responses to exigencies, among others, which are no doubt constitutional matters, require the type of investigation and orientation that should lead to significant reduction in the problems of social life through recommendations that are capable of leading

to the formulation and development of relevant public policies. But the fact that in Nigeria the 1999 Constitution (as amended) stipulates that states are to make laws for the operations of the local government raises great concerns about the autonomy of the local government and therefore constitutes hindrance to the ability of the local government to be able to discharge their constitutional functions most competently.

Finally, the fact that the study of the relationship compels the need for inter-disciplinary collaboration between and among academic areas of engagement demands that the focus of the collaboration should be clearly spelt-out. But this is very problematic. It is problematic in the sense that the study of the local government requires equal emphasis on both the behavioural and institutional components. While the lawyers for instance should be interested in the legality and illegality that are associated with the exercise of powers, the political scientist on the study of the power relations between and among the tiers of government, the historian on the growth, development and consequences of the events as they unfolded over time, the economist on the economics and fiscal aspects of the financial relationships between local government and the other tiers of government as spelt-out in the constitution, among others, yet, there is still the concern about whether or not all these areas can be individually examined without rubbing on others. There is the further concern whether a focus on one should be able to provide the much needed detailed information and comprehensiveness of knowledge useful for the formulation and development of dependable generalizations.

## **5. Local Government and the Constitution: The Nigerian Experience**

How should this sub-section of the paper be approached notwithstanding the contained clarity of focus? This question has become important given the facts that the 1963 First Republican Constitution lacked anything on local government, and the Third Republican Constitution, the 1989 Constitution, was never put to use. The emerging contention is however here resolved by the deliberate choice to rely on both the Second Republican and Fourth Republican Constitutions (1979 and 1999) to undertake the associated analysis.

### **5.1 The 1979 Constitution**

The processes that led to the framing of the 1979 constitution are already well documented by Gboyega (1979). It is however, significant to note

that for the first time in the history of Nigeria, local government (in name and constitutional responsibilities) was embedded in a comprehensive legal documentation in both theory and practice, especially as the theory and practice relate to the “federal principle”. This of course can be traced to the 1976 Local Government Reform, in particular it’s associated “Guidelines”. Local Government is explicitly provided for in Chapter One, Part Two of the 1979 Constitution. Section 7 (1) of the constitution declares unequivocally that: “The system of local government by democratically elected local government councils is under this constitution guaranteed: and accordingly, the Government of every State shall ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of such councils. Sub-sections 1,2,3,4,5 and 6 equally address fundamental issues relating to the creation, area delineation/demarcation, public revenue sharing and the role of the local government in economic development planning, among others. Part One of the First Schedule of the 1979 Constitution did not only mention the number of States in Nigeria, but also the number of local governments per each state of the federation. The ideas were indeed novel.

## 5.2 The 1999 Constitution (as amended)

The 1999 Constitution (as amended), in Section 7, like that of the 1979 Constitution, word for word, recognizes: “The system of local government by democratically elected local government councils..” Other provisions of it in relation to the critical issues/matters of creation, boundary or area delineation/demarcation, role in economic development planning, among others, can as well be traced to the 1979 Constitution, same Section 7, Sub-sections 1, 2,3,4,5 and 6. It is not just enough in the paper, it is here being argued, to undertake a cursory examination of the relationship between local government and the constitution by only looking at the extent to which the 1979 and the 1999 Constitutions either attempted to recognize local government as a tier of government within the Nigerian federal framework, or determine the extent to which the various constitutions give recognition to the need for local government. It is here reasoned, and within the context of informed scholarship, that we should further engage ourselves with the extent of the compliant to the provisions of the two constitutions in relation to the status of local government as a tier of government and by so doing undertake an evaluation and analysis of its existence within the contemporary framework of federalism in Nigeria.

Accepted that local government was least thought of in the 1963 First Republican Constitution, the 1979 and 1999 Constitutions remain ineffective legal instruments in meeting the 21<sup>st</sup> century needs and challenges of the local government in Nigeria. What is provided for in the 1999 Constitution (as amended) is a: “...system of local government by democratically elected local government councils...”. But the question can be asked: To what extent is the Nigerian local governments a *system*, and to what extent too is it governed by “*democratically elected local government councils...*”? The two questions in one require elaborate details. The idea of “system”, here conceived, is based on the Estonian understanding of “political system” and the Parsonian understanding of “social system”. But from the restricted view of administrative coinage which serves immediate use here, the Nigerian local government is far from being a system of coordinating parts. It is rather totally disjointed, disorganized and faulty. It is however important to recall that the 1976 Local Government Reforms, fired by the exemplary leadership character of General Murtala Ramat Mohammed, attempted for the first time to provide an integrated framework of local government system in Nigeria. The corruption of the civilian government of the Shehu Shagari Administration and that of the successive military administrations destroyed the very foundation of the philosophy that informed the 1976 reorganization. While the 1999 Constitution (as amended) empowers Electoral Commissions at the State level to organize elections into the local government councils, this can only be done if the Independent National Electoral Commission (INEC), a national/federal executive body, supplies the State’s Electoral Commission with the List of Registered Voters. This practically means that elections into the local government councils can only take place at the behest of the Federal Government as the Independent National Electoral Commission is only independent in name. With the legitimacy crisis that the flawed 2007 General Elections placed on President Umar Musa Yar’adua Administration for example, the caretaker committees that were in existence then could not be immediately replaced by democratically elected local government councils. In some states of Nigeria then and up till now, caricatures and resemblances of democratic arrangements were (and still are) crafted without the electorates having significant inputs into these arrangements as elections were allegedly rigged and the outcomes of judicial interpretations with respect to their legalities remain contradictory.

Significantly too, the provision of the Constitution which says that ten percent of internally generated

revenue of the states should be made available to the local government only exists in theory. The practice is that the states (through the Joint Account which they maintain with the local governments, an account whose creation is also supported by law) continue to allegedly siphon most of the revenues that otherwise should have accrued to the local governments, partly due to the stinking corruption, and partly due to the overbearing influence of the Governors. At this juncture, it has become important to now ask: Of what relevance is the discourse on the relationship between local government and the constitution to the whole body of knowledge, and more importantly, to political theory? The political theory on the subject matter particularly relates to the ideal/appropriate number of local government. What therefore should be the ideal number of local government in Nigeria? The question though embedded in normative construct however, requires the injection of some elements of empiricism to make it useful and relevant to the ongoing discourse. The empiricism, one should note further, requires some formulated scientific parameters including: viability, population, area/size, level of social sophistication, among others. Viability as an economic and financial indicator seeks to measure the readiness/capability of the local government to be able to meet its constitutional obligations and duties from internally generated revenue without any assistance coming from both the states and the federal government. Population indicates the number of residents sufficient enough to occupy a local government territory. Area/size measures the extent of geographical coverage relevant to meet the status of a local government. And finally, level of social sophistication in terms of the possession of the needed civic awareness and public consciousness, role differentiation, level of education, degree of urbanization/socio-economic activities, participation in politics, etc., that readily make for community involvement in governmental affairs.

#### **6. The Nigerian Experience: Implications for Comparative Research**

The Nigerian experience of the relationship between local government and the constitution obviously has serious implications for comparative research and study. It has, among others, created the basis in which some formulations can be made with respect to the study of cross-national experiences. The fact that the constitution, among others, determines the framework and structure of government means that any comparative study/investigation should begin to look for the similarities and dissimilarities in the workings of constitutions, in particular in the

relationship between the constitution and local government. The implication which the Nigerian experience poses for comparative research can be better appreciated if we first seek to know the conclusions that were arrived at from our study of the Nigerian experience.

The Nigerian experience presents a bad omen for the “federal principle” all over the world, in particular, the federal societies of the Third World. The running, existence and operations of the local government seem to depend largely on the behest of the executive, especially the Governor with or without the State legislature. In place of “elected local government councils”, a constitutional requirement and or provision are new coinages such as “sole administratorship”, “transition committees”, “caretaker committees”, etc. while the constitution and the various laws provide for tenure of three years for local government elected councils, it is either that this is aborted all of the sudden, or that they are replaced with “transition or caretaker committees”, whichever pleases the political calculation of the Governor or Executive Governor as sometimes called. From the Nigerian experience, local government systematically fits into the permutation of electoral process nationally. For instance, the self-acclaimed biggest party in Africa, the People’s Democratic Party (PDP), decided in 2007 that election into the local government councils should be held only after the party would have had its national convention. It might be one of the tactics to address the legitimacy crisis that was faced by the then President Umar Yar’adua following the flawed 2007 General Elections as himself admitted to.

The second conclusion of the Nigerian study of the relationship between local government and the constitution is that local government is far from being a tier of government in the strict legal terminology. Until when for instance President Umar Yar’adua ordered that the withheld local government funds of Lagos State be immediately released, his predecessor, President Olusegun Obasanjo, in spite of the Supreme Court ruling on the subject, kept hold on the funds for politically related reasons. What is clear from this Nigerian experience is that party differences exert recognizable limitation on the legal status of the local government. Related to this is the fact that where lack of separation exists between government and the ruling party, governmental processes and procedures are compromised to the detriment of due process and constitutional provisions. It is worth recalling here that out of the five State Governors that took the federal government to court over the creation of additional local

governments at different times before the 2007 General Elections, only ex-Governor Bola Tinubu of Lagos State fought it to the last as the other Governors had to “chicken out”, obviously because of the overwhelming power of ex-President Olusegun Obasanjo, either as ex-General or Leader of the People’s Democratic Party (PDP).

The question remains: How can the Nigerian experience provide reliable basis for comparative research? In other words, how can the relationship between local government and the constitution provide basis and opportunity for comparative research? Before we shall attempt to provide answers, it is pertinent to emphasize that the relationship between local government and the constitution is not restricted to a federal political environment alone. But what is the most important to stress is that the relationship between local government and the constitution is better studied in environments whose constitutions are both written and rigid. As these remain significant features of federal political systems, the conclusion is most likely that federal systems are very appropriate for the study. Important therefore as the Nigerian experience is, the degree of its reliability and dependability for comparative research is however, constrained by the “uniqueness” and peculiarities of the Nigerian environment. Nigeria is perhaps the only country in the world where constitutional provisions are violated and everybody pretends to be unaware or goes to sleep. Second, Nigeria is characterized by uncertainties and inconsistencies. Some still continue to question the mode/manner of the framing/the coming into existence of the 1999 Constitution (as amended). All these factors tend to limit the opportunity of using the Nigerian case study for the purpose of comparative research. Just as in the specialized field of comparative politics where competing paradigms flood the process of comparative research and investigation, the Nigerian experience, notwithstanding the above identified and discussed limitations, still provides directions to cross-national research especially in the area of conceptual formulation. Concepts such as “function”, “actor”, “environment”, “input and output”, “stability”, “pattern maintenance”, etc., which already serve the purpose of comparative research in political science can as well be used to either investigate the Nigerian or global experiences. Specifically, we might seek to determine or know the equivalences of “function”, “actor”, etc., of the Nigerian local government system in other political systems of the world.

The Nigerian experience can therefore offer reliable basis and or framework for comparative research.

The focus of the comparative research can be placed on questions such as: What should be the relationship, in both theory and practice, between local government and the constitution? Should the constitution necessarily specify a dependent relationship? What specific form and character should the relationship take? Should the relationship be limited to power of establishment, creation and or control, or should be relationship be as defined in the sources of revenue available to each tier of government as specified in the constitution? What consequences and policy implications do the questions above pose either for sustainable democracy or institution-building? The questions though regionally framed, but can however still be extended to other political systems with the view to determining where differences and or variations exist, and what implications arising there from. These, no doubt, constitute the nuclei of comparative research methodology of the social science genre.

## 7. Conclusion

The paper has set for itself the task of examining the relationship between local government and the constitution within the Nigerian experience of the theory and practice of federalism. The constitution ever remains a legal framework defining the structure of any government and the relationship between and among the agencies of government, among others. The Nigerian experience is very appalling as the local government is yet to enjoy the status of a tier of government judged by the continuing violation of the constitution which requires that local government should be democratically administered and managed. However, the Nigerian experience provides scholarly opportunities for researching into an obviously neglected area in social science study and analysis. A focus on this area of neglect will no doubt help to rebuild and reframe the thought on local government, in particular its relationships with other tiers of government.

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