A COMPONENT ANALYSIS OF DIVISION OF LEGISLATIVE POWERS OVER MAINTENANCE OF LAW AND ORDER IN NIGERIAN FEDERATION*

Abstract
The power of any government over maintenance of law and order stems from hypothetical social contract theory. Under the terms of social contract the citizens under any government surrender some of their personal liberties in exchange for protection by and from the government. In the relationship between the government and the citizens reciprocity of duties is the watchword. In the Nigerian constitutional arrangements the respective governments namely the federal and state governments under section 5 (1) and 5 (2) of the Constitution of the Federal Republic of Nigeria (CFRN) are respectively given executive powers that extends to maintenance of law and order. It is the province of this paper to examine this shared power over maintenance of law and order in Nigerian federation. The objective is to determine whether there is a balance in exercise thereof that accords with the tenets of the Federalism implicit in the achievement of balance in power divisions in a federal system of government. It is discovered that the chief instrument of maintenance of law and order in the nature of police and the attendant legislative control is not decentralized. Nigeria therefore, in the main operates a uniformed centralized police force leaving no room for State police. This paper queries this character of Nigerian federal set up as defeating the purposes of social contract at the state and local level by disallowing the state to have executive and legislative control over policing at this level. The paper therefore recommends for the establishment of state police in Nigeria like most other federal states to make room for dual federalism.

Keywords: Legislative Powers, Law and Order, Division, Maintenance, Nigerian Federation

1. Introduction

Maintenance of law and order is an inseparable component part of every government. It is a duty reinforced or better put captured under social contract theory. Under the terms of the social contract it could rightly be said that governments have power to have citizens 'forced to be free'[1]. Prior to exercise of this coercive power government must first of all be put in place: under a constitutional arrangement. In this instance the U.S Supreme Court's statement is apt:

> Primarily, governments exist for the maintenance of social order. Hence it is that the obligation of the government to protect life, liberty and property against the conduct of the indifferent, the careless and the evil-minded may be regarded as lying at the very foundation off the social compact.[2]

In the relationship between the government and the citizen reciprocity of duties is the watchword. In this sense:

> The collective body (the government) is committed to the good of the individual (citizen). Each individual is in turn committed to the good of the whole (the governed). Given this reciprocal agreement individual cannot be given the liberty to deciding whether it is in their own duties to the sovereign while at the same time enjoying the benefits and protection of citizenship. *They must be made to conform to the general will* **(**Emphasis Supplied).[3]

In terms of constitutional empowerment for maintenance of law and order in Nigeria, it is discernable that it amounts to maintenance of public order and public safety. This duty of government in Nigeria is shared by both the Federal government and the governments of the federating units in exercise of their respective executive powers. In the first place by virtue of s. 5(1) and s. 5(2) of CFRN 1999 (as Amended), the executive authorities of the federal and State governments respectively extends to maintenance of the Constitution. Legislative wise the Federal and State governments under concurrent authority are empowered to make laws with respect to public order.[4] Additionally, such powers are derivable 'by implication from the establishment of the Constitution for the continued existence of the Constitution is a condition for the exercise of all the powers contained therein'.[5] In this

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[1] Celeste Friend, 'Social Contract Theory', *the Internet Encyclopaedia of Philosophy*, http//www.iep.utm.edu.com accessed on March. 8th, 2022.The emphasized words put in another way can be said that it is an inherent power in the government to have citizens 'forced to be free' under the terms of social contract. But before these coercive powers can be exercised the government must first be organized and thereafter regulation follows. The regulation here relates to governments power over maintenance of law and order. The government we have in mind under the terms of social contract or put differently under the terms of Constitution are the federal and State governments as well as other forms of government organization at the local level created by State government.

[2] *City of Chicago v. Sturges* [1911] 222 U.S 313.

[3] *Ibid*., 498.

[4] S. 11(1) and (2). CFRN 1999 as Amended.

[5] B. O. Nwabueze, *The Presidential Constitution of Nigeria* (C. Hurst & Company, 1982) 77.

wise maintenance of the Constitution becomes the pivot under which every aspect of maintenance of law and order will revolve.

2. Maintenance of the Constitution

It seems plausible that maintenance of the Constitution is analogous to maintenance of public safety. In tandem with this position *Nwabueze* posits as follows:

> The function of guarding the safety of the community (i.e. take in its social connotation as a collection of people) is really part of the maintenance of the Constitution since the Constitution is the charter of governments, and the government in turn presupposes a community of people over whom governmental powers are exercised. The maintenance of the Constitution implies therefore the power to guard not only the safety of the government but also that of the people.[6]

The Constitution is the instrument that brought to live the arms of government and their attendant powers. It behoves these powers of government to be exercised in the first place under the Constitution and in protection of it. In this sense, it can be read that every legislation for the maintenance of the constitution is an exercise of legitimate power. A lucid example is decipherable from the provisions of defence power under item 17 of the Exclusive Legislative List touching on legislation for the protection of the Constitution against overthrow by external forces as well as by internal subversive and treasonable acts.[7] In its proper construct maintenance of Constitution is the same as the power of preservation, protection and defence of the Constitution as opposed to acts of giving effect to the Constitution *simpliciter*. In essence what is preserved, protected and defended is the Constitution in its nature as a living organism not written tablets hewed out of a stone or 'abstract concepts on parchment'.[8] In this sense, maintenance of Constitution of which a government 'with full amplitude of instrumentalities, powers and rights is created for the administration and management of public affairs', of necessity translates to the power to protect the government its agencies, functionaries and property[9] as well.

It is pertinent to note that the maintenance of the Constitution though concurrent to both Federal and State governments comes with a rider; that such concurrency is circumscribed to a large extent. Invariably, this extent and its purports, though discussable and debatable it suffices to just cognise that in matters touching on defence of the nation, will be viewed to be the exclusive preserve of the federal government. This point is strengthened by the fact that Nigeria as a country is pronounced as one 'indivisible and indissoluble sovereign State'.[10] Under the Constitution, thus its protection as a sovereign nation rest on the doorstep of the federal government to the exclusion of the States. The constitutional pronouncement of Nigeria as an 'indivisible and indissoluble sovereign entity' suggests the idea of States within this entity called Nigeria is an aberration. Nevertheless in the same breath after pronouncement above under s. 2(1) the Constitution in s. 2(2) went ahead to state that 'Nigeria shall be a federation consisting of States and a Federal Capital Territory'. Whatever becomes the result when the two provisions are juxtaposed is open to divergent jurisprudential standpoints. It is safe in this present enquiry to assume that under international law, it is only Nigeria as a Nation State that is seen and accorded a legal entity in strict sense of it as a crux of being a federation and as opposed to a confederal set up. Having made this observation, it stands to reason that even the States within the entity called Nigeria can be a basis for the protection in question against its subversive or acts termed treasonable actions. This is so as the executive powers of the State vested in the governor even though extend 'to the execution and maintenance of the Federal Constitution'. Nevertheless the States' exercise of executive powers must not be so exercised as to (a) impede or prejudice the exercise of the executive powers of the federal government in Nigeria s. 5(2). Implicit in the federal power of the maintenance of Constitution against subversive acts is the corollary power to check any States' contravention of prohibition aforesaid by use of force.

It is not only within the federal power to check by executive action an impediment to exercise of its executive authority by any State or acts endangering its continuance but also by a fitting federal legislation. A special provision was available in the Republican Constitution, empowering the federal legislature to enact laws outside the legislative list to an extent necessary to secure compliance with prohibiting actions of the regions/States termed subversive or treasonable.[11] This grant of power may not have found express expression in the 1999 Constitution but its implication is still eloquent by virtue of general power of National Assembly to make laws with respect to the maintenance and securing of public safety under s. (11) and also under its exclusively, expressed defence power under item 17 of the Exclusive List. Clearly, the federal power of maintenance of the Constitution is a

[6]*ibid* 80.
[7]*ibid.,*
[8]*ibid.,*
[9]*ibid.,*
[10]S. 2 (1) CFRN 1999 (as amended).
[11]See S. 71, CFRN (the defunct) 1963.

correlative power of giving effect to dual prolonged nature of the Federal Republic of Nigeria. S. 1(1 & 2) of the Constitution pronounces Nigeria as one indivisible polity as well as a federation consisting of States and a Federal Capital Territory. Invariably, the protection in question is the protection of both Federal and State governments as parts of one 'indivisible polity against acts of sub version as well as treasonable acts'. It should be understood that government in proper sense of the word will be a government with governmental powers in terms of legislative, executive and judicial powers. Having recognized that within the indivisible entity called Nigeria there is a constitutional place for State government by adoption of a federal arrangement, it follows that the operations, rights in maintaining public order and community safety equally subsists in States.

3. Public Order/Community Safety

Maintenance of the Constitution implies as well in part to the guarding of the safety of the community. By community the referral is in the main to not only people in their entirety but to people in a local community i.e - local governments within a State. The paramount thing is that such number of persons must be significant to justify being referred to as public. The rationale for the imputation that maintenance of the Constitution in some respect is analogous to guarding against the safety of the community finds expression in the rationalisation of Nwabueze that:

> [S]ince the Constitution is a charter of government, and government in turn presupposes a community of people over whom governmental powers are to be exercised. The maintenance of the Constitution implies therefore power to guard not only the safety of the government but also that of the people.[12]

The authority for the power to preserve the safety of the people is a derivative of power to make law with respect to maintenance of public safety and public order s. 11(1) and (2) of CFRN 1999. It may equally be added that implied power to protect the Constitution may be accommodated as well those express powers relating to protection of government s. 5 and defence power in the exclusive list. Taken together they provide the source of power by which government may be armed in maintenance of the Constitution and in guarding against public safety. Danger to safety of community may result from human actions activities such as public meetings, assemblies as well as other activities which may cause breach of the peace such as riots affrays; cult war, communal war, acts of destruction of lives and property. Equally natural forces can as well pose danger to safety of the community. Such natural occurrences like flooding, wildfire, drought, desertification, landslides etcetera. The consequence of such natural disasters may be displacement of people, pressures on limited available accommodation, problem of resettlement and exposure of the affected persons to risks such as rape, acts of brigandage, and attack by hoodlums. At least, we are still living witnesses to the massive displacements of communities by activities of persons suspected to be *Boko Haram* and Herdsmen and of most recent the bandits and unknown gunmen are now holding way. All such activities and disasters that affect public safety are primarily the concern of both Federal and State governments. However, the issue of conflict and the prevalence of federal power over State power in both legislative and executive fields still subsists in this situation. In this wise, the inconsistent State law will remain inoperative to the extent of its inconsistency with the federal law. To illustrate the exercise of this power by government, reliance may be placed on the Public Order Act to refuse the granting of a license for public activities that requires it were such activity is viewed as likely to cause a breach of peace.[13] As well, the general power to control public meetings, assemblies or processions in the interest of the public is a power resident in the Police.[14] In this instance, in relation to a proposed public meeting, assembly or procession it has power to impose on the organizers any conditions necessary for the preservation of public order.[15] There is a corollary power to halt public activity though lawful but by twist of circumstances breach of peace results. In this power there is a link with common law upon which it can draw legitimacy. As observed:

> There seems to be a power in the police at common law to dispense any public meeting or procession if, although the meeting or procession was lawful in its inception, a breach of the peace results, or if they reasonably believe that its continuance would occasion a breach of peace, and that, short of stopping and dispensing the meeting or procession, there is no other way of checking the threatened breach of peace.[16]

In the light of the power over maintenance of law and order certain acts are criminalized on special occasions.[17]

[12]Nwabueze (n 5) 80.
[13]S. 1(1) of Public Order Act, 1979 requires a license for public meetings, assemblies or procession in any public road or place of public resort.
[14]*ibid.*, S. 4(1).
[15]*ibid.*,
[16]Nwabueze (n 5) 82.
[17]Such acts include violations of lawfully imposed curfew see Curfew Act of 1966; and organizations trained to usurp the functions of police force, or armed forces.

4. Emergency Situation

In clear terms, the constitutional definition of State of emergency in Nigerian federation or any part thereof is offered in s. 305(3) as the period when:

a. The federation is at war
b. The federation is in imminent danger of invasion or involvement in a State of war;
c. There is actual breakdown of public order and public safety in the Federation or any part thereof to such extent as to require extraordinary measures to restore peace and security;
d. There is a clear and present danger of an actual breakdown of public order and public safety in the federation or any part thereof requiring extraordinary measures to avert such danger;
e. There in as occurrence or imminent danger, or the occurrence of any disaster or natural calamity, affecting the community or a section of the community in the Federation;
f. Three is any other public danger which clearly constitutes a threat to the existence of the Federation; or
g. The President receives a request to do so in accordance with the provision of subs. [4] of this section.

The exercise of the power to declare a State of emergency is the exclusive preserve of the Federal government. A State of emergency that affects the whole country can be declared at the Federal level without more. However, if such proclamation affects part of the country like a State(s), then procedurally the starting point will be a request from the governor of the affected State(s) with the approval of a resolution supported by two-thirds majority of the house(s) of the State(s).[18] There is a shift from the conception of emergency under the terms declared by the 1999 Constitution and under the 1963 Constitution. This dissimilarity is in its (1999 Constitution) inability to share the conception of emergency as in 1963 Constitution to allow emergency power to wear the toga of being:

> The most potent power possessed by the Federal legislative, because the emergency power under the Constitution could be used to advantage of the federal government as to the disadvantage of a State government in substituting federal rule for a State government if the latter becomes recalcitrant.[19]

The text under which the 1963 Constitution flourished is termed subjective as opposed to its being objective.[20] To drive home these messages under the 1963 Constitution,[21] the existence of a State of emergency is a matter exclusive to the parliament. Hence, when there was a complete breakdown of law and order in Western Region of Nigeria in 1965, the federal in its wisdom did not declare State of emergency. Earlier in 1962, a fracas on the floor of the Western House of Assembly was considered enough for the federal government to declare a State of emergency whereby the regional government was taken over by the Federal government. The imputation of bias, ill motive, improper exercise of discretion and among their concomitants cannot vitiate an exercise of emergency powers under the terms of 1963 Constitution. Thus, pronouncing on the validity of the Emergency Powers Act 1962, Ademola, C.J.F in *Williams v. Majekodunmi[22] (N0. 3)*[23] stated that the existence or non-existence of a state of emergency is within the bounds of parliament and for the courts to decide. This is still so notwithstanding that *prima facie,* that such declaration of the state of emergency by parliament is for partisan considerations.

In similar fashion Supreme Court then declared in *Adegbenro v. A.G of the Federation and Ors*[24]thus: 'It is unnecessary for us to rule on the submission that parliament acted *Malafide* in making a declaration of a State of public emergency… since it is impossible to say in the present case that there was ground to justify a declaration'. The court's reasoning in the cases above stemmed from the provisions of 1963 Constitution[25] inter-alia:

> Parliament may at any time make such as for Nigeria or any part thereof with respect to matters not included in the legislative list as may appear to parliament to be necessary or expedient for the purpose of maintaining or securing peace, order and good government during any period of emergency

2. Any provision of law enacted in pursuance of this section shall have effect only during the period of emergency:-

[18]S. 265(4) CFRN 1999.
[19]P. A. Oluyede, *Constitutional Law in Nigeria* (Evans Brothers Ltd. 1992) 2.
[20]*ibid.,*
[21]S. 70.
[22] [1962], ALL NLR 413:
[23][1962] N.S.C.C 268 in considering the meaning of measures reasonably justifiable in an emergency the federal supreme court held that the Regulation made pursuant to the Emergency Powers Act, 1961 was not reasonably justified as against the appellant, who was ordered by virtue of the regulation to be restricted to the compass of three miles from quarter 193 Abeokuta, Western Nigeria during the period of Emergency proclaimed in the Western Region in May, 1962.
[24] [1962] WNLR 150 at 160S. 70(1).
[25]S. 70 (1).

> Provided that the termination of a period of emergency shall not affect the operation of such provision of law during that period, the validity of any action taken there under during that period, any penalty or punishment incurred in respect of any contravention thereof or failure to comply therewith during that period or any proceeding or remedy in respect of any such penalty or punishment.
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> 3. In this section 'period of emergency' means any period during which
> a) The Federation is at war
> b) There is in force a resolution passed by each House of Parliament declaring that State of public emergency exists; or
> c) There is in force a resolution of each House of Parliament supported by vote of not less than two-thirds of all the members of the House declaring that democratic institutions in Nigeria are threatened by subversion.
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> 4. A resolution passed by a House of Parliament for the purposes of this section shall remain in force for twelve months or such shorter period as may be specified therein: 'Provided that any such resolution may be revoked at any time or may be extended from time to time for a further period not exceeding twelve months by resolution passed in like manner'.

The subsequent Constitutions namely the 1979 and 1999 Constitutions made provisions improving subjective stand points for declaration of State of Emergency to objective basis. This new situation has in effect: '[L]essened the burden of our courts on the question whether there was sufficient basis for declaration of a state of public emergency. The true test for the court is actual breakdown of public order and public safety.'[26] In the present dispensation, it is the president who could by proclamation declare a state of public emergency[27] subject to the overriding control of the National Assembly. In the National Assembly is vested the power to disallow such a state of affair- emergency declared as well as judicial review of such actions.[28] In the period of emergency, the National Assembly can pass laws which derogates from ss. 37 to 41 of the constitution providing such rights as rights to private and family life to right to peaceful assembly and association; freedom of movement among others. The right to life can as well be denied and justified in a situation of emergency when it results from act of war.[29]

The point has been made at the beginning that both Federal and State governments have concurrent power to maintain public order and public security. It must be added that in situation of emergency, the power of the Federal assumes an enhanced predominance over the State in regulation of rights. By no stretch of imagination or canons of interpretation will a State legislature be allowed to take measures derogating from rights touching on rights to life and personal liberty during an emergency situation? *Nwabueze* put it this way 'no legislative; both Federal and State can, during an emergency authorize derogations from the right to dignity of the human person and the right to fair hearing'.[30] In as much as emergency situation impacts on defence, public safety, public order, even public morality and public health, there is justification in the enhanced interference by both the Federal and State governments with such rights. Though such rights are fundamental in nature; the maintenance of public order, peace and safety are considered as the most paramount concern of any government than individual rights.

5. The Police Force

The power over maintenance of law and order and preservation of national security are two inseparable attributes of government in any political society. This power is not experienced in a vacuum there is always a visible presence of government in its coercive regulation represented by men in uniform. The scheme of maintenance of law and order in Nigerian civil societies the police becomes the paramount consideration as well as the first port of call. The police known as Nigerian Police Force is established by the Constitution as an entity for the entire Nigeria but its organization and administration are the exclusive right of the National Assembly to make prescription in those directions. In the zenith echelon of administrative/organizational ladder of the police force

[26]Oluyede (n 19) 124.

[27]Under S. 305(4) of CFRN 1999 such declaration is made applicable within the boundaries of a State pursuant to a request by the Governor of the State with the sanction of a resolution supported by two-thirds majority of the House of Assembly. By S. 305(5) the president has the power to so declare the State of emergency under s. 305(4) without the pre-requisite or the request from the State in question via the governor and resolution of the State house. However this exercise of power is exercised under a subjective consideration of the president that Governor of the State has failed within a reasonable time to make a request to the president to issue a declaration of a State of emergency in the particular State.

[28]The power of the National assembly to disallow such a State of emergency is so potent that it can be exercise by in-action. For example under s. 305(6)b if the proclamation of State of emergency made by the president is not approved by the national assembly within two days when it is session or within 10 days when it is not in session after publication, such proclamation becomes ineffective, invalid and void.

[29]S. 45(2).

[30]Nwabueze, (n 5) 69.

sits the Inspector General of the Police. The police is the principal instrument for maintenance of law and order established for the whole country as an indivisible federal entity in terms of power and control. The centralized hierarchical structure of the police notwithstanding in each State there is a contingency of the police force under the authority of a commissioner of Police. The chain of command of the Nigerian Police Force is not structured to give the States as independent Police force subject to the overriding Federal power. This is not the case in relation to the nascent Police force starting from the civilian dispensation in 1979 and even with the extant 1999 Constitution (as amended).

Clearly, there was a semblance of what may be termed a co-operative relation, legally sanctioned under the 1963 Constitution. There under the Federal and State/regional governments were active participants in matters of policing. In the appointment of a Commissioner of Police for instance, the consultation with the Regional Premier was a duty imposed by the Constitution but such is not the case under the 1999 Constitution or the previous 1979 Constitution. As well, the establishment of State police is clearly prohibited by the Constitution[31] under the present dispensation. The prohibition of State police notwithstanding there is a measure of control enjoyed by the State as a government over the unitary structured police force. It is not in doubt that police is tasked with the power:

> For the detection and prevention of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and due enforcement of all laws and regulation with which they are directly charged, and shall perform such military duties within or without Nigeria as may be required of them by or under the authority of this or any other Acts.[32]

To give effect to the above duties, there are wide powers that enable police to conduct criminal prosecutions,[33] to arrest persons even without warrant in defined circumstances[34], serve court-summons[35], release on bail persons arrested without warrant[36], as well as detain and search suspected persons.[37] In relations to criminal proceedings, prosecution, the exercise of prerogative of mercy and the maintenance of public safety and public order, there are noticeable government in particular State governments control over the police. The Constitution vested in the Attorney-General of the Federation for Federal offences or State Attorney General for State offences the power to institute, undertake criminal proceedings against any person before any court of law in Nigeria, to take over and continue any such proceedings instituted by any other authority or person or to discontinue them at any stage before judgment.[38] By this empowerment, though the police is centralized as stated and constitutionally provided, the State can control criminal prosecution undertaken by the police. Added to this is the power of pardon vested in the President of the federation or Governor of a state whose potency is far reaching in the sense that such power can be activated without a formal conviction, sentencing or even a charge being brought to even against presumed offender.[39] It is pertinent to note that as well that the President[40] or Governor[41] in question with respect to maintenance and securing of public order is vested with power to give directions to the Inspector General and State Police Commissioner respectively. However, in case of directions given by the governor there is a rider implicit in the commissioner of police's constitutional powers to seek further directions from above- the president or an authorized minister of the government of the federation. In normal circumstances, Commissioners of Police act upon directions from governors without formal recourse to the president's own directions for every direction as a matter of routine practice.

The paramount point to observe in relation to maintenance of public safety and public order is that it is of little or no consequence that the law that operates against a danger threatening public safety is Federal or State. It does not determine who will give direction. In other words, which ever law that operates, the President or the Governor can give directions in question. Thus, under maintenance of public safety or order there is a shift in emphasis on ideals of federalism. The point must however be made that maintenance of public safety and order is different from control of enforcement of laws. In the latter case, the president though enjoys the ultimate control over the police such control cannot extend to enforcement of State laws by the police. The same applies to the State

[31]S. 214 CFRN 1999.
[32]S. 4 Police Act Cap 359, LFN. 1990.
[33]S. 19. *ibid.*
[34]S. 5: 20 and 21. *ibid.*
[35]S. 22. *ibid.*
[36]S. 23. *ibid.*
[37]S 24. *ibid.*
[38]Section 172(1) of CFRN for Attorney General of Federation and the State respectively.
[39]Both s. 175 and S. 212 of the CFRN 1999 (as amended) relates in the categories of persons that may enjoy the exercise of prerogative of mercy leading to pardon by president or governor respectively referred to any person' with … any offence'. This implies that there need not be criminal proceedings in place. A connection or link top an offence at the threshold of investigation may even suffice and subjectively be deemed to meet the requirement of concern.
[40]S. 215 (3) CFRN 1999 (as amended).
[41]S. 213 (4) *ibid.*

Governors whose control and direction to police relates as it were to functions of the police conferred or governed by State law. For the mere fact that the governors enjoy some measure of control over the police however subjective to the overriding power of the president belies the statement the Supreme Court Justices posited in *Att. Gen of Ogun State v. Att. Gen of the Federation*[42] in terms of 'The ultimate control of the police under the Constitution is under one apex and that is the president[43] or that the 'Ultimate authority'[44] or 'Final Control'[45] respectively is left with the president.

The reasoning of the Supreme Court Justices may not reasonable lack merits given the various qualifications on president's control over police especially the vesting of Supreme command in the Inspector General of Police. This line of thinking fizzles out if consideration is further placed on the fact the Inspector General of Police is under the President of the federation who appoints him in the first place. It will however be safer to assume that the ultimate authority or final control of the police lies with the president with some qualifications. Nwabueze assumes the first qualification to be with respect to the 'use of the police for the maintenance of public safety and public order'.[46] Added to this is the fact that the President being the Chief Executive of the Federation has the corollary power or authority to execute the laws of the National Assembly prescribing how police is not only to be organized but also to be administered. This ultimate controlling power of the president over police extends to the State in relation to maintenance of public safety and order. As *Justice Araka* then Chief Judge of Anambra State puts it: 'The governor of each State subject to the overriding control of the president is responsible for the maintenance and securing of public safety and public order in the State'.[47]

The High Court of Lagos per *Taylor C.J.* in *Ademuluyi v. Brigadier R.A Adebayo*[48] had to decide the issue of whether one State in the Federation of Nigeria could by Edict deal with the properties of a person resident or domiciled in that State where such properties lie in another States. The brief facts about the case were that the plaintiff was the registered owner of certain properties situate within the Lagos state, on the 28th March, 1968, the public officers and other persons (for future of Assets) order 1968 came into force in the Western State of Nigeria, and its effect was the forfeiture of the plaintiffs assets situate in the Lagos State. It was the contention of the counsel for the plaintiff Chief Rotimi Williams that before the first defendant the then military Governor of Western State (Region) can validly make order forfeiting the properties of a public officer into whose assets an enquiry is held, the prior consent of the Head of National military Government must first be obtained under s. 5(3) of Decree No. 51 of 1966. It was conceded that this prior consent was never obtained. Counsel for the Defendants – Mr. Olowofoyeku contended that in as much as Decree No. 51 of 1966 came into effect as from the 28th June, 1966, it was a decree coming within the provision of s. 69, and is therefore to have effect as the Edict of the military Government of the Western State.

It was the findings of the court that matters pertaining to enquiries into the assets of public officers were matters included in both Exclusive and Concurrent legislative lists. To this, the court reasoned that it was a subject matter of Decree No. 51 of 1966 though made after the 16th January, 1966 and as such, not caught by the provision of s. 69 (3A) of Decree No. 8 of 1967. This was borne out by the various Edicts published in the Western State Gazette purporting to have been passed in 1968 and made under 'The Public Officers' (Investigation of Assets) Decree 1966 (No. 51). In this sense it was very much a law in Western State as indeed in the whole of the Federation. The High Court of Lagos State then held.

> It is enshrined in our Constitution and in Decree No. 1 of 1966 that no Regional law or Edict shall override the provisions of the Federal legislature or a decree. The High court of Lagos State, like any other court of the Federation, is bound by the Decrees of the Federal Military Government and any Edict of the Regional State Government which are in conflict with those Decrees or any provisions of the Constitution must be disregarded. The first Defendant cannot purport by an edict to divest the Head of the Federal military Government of the power vested in him that his previous consent must first be sought before an order can be made forfeiting the properties of a public officer. This consent was not obtained. Consequently it is declared that the plaintiff was and remains the owner of the properties in dispute and the plaintiff granted an injunction restraining the Defendants from taking possession of the said properties within the jurisdiction of the Lagos State.

[42]*ibid.*, (1982).
[43]Per Justice Eso *ibid.*,
[44]Per justice Udo Udoma, *ibid.*,
[45]Per Justice Falayi-Williams, *ibid.*,
[46]Nwabueze (n 5) 144.
[47]*State v. Commissioner of Police*, Mr. Bishop Exitene, Ex Parte Governor of Anambra State, unreported suit No E/65M/81 of 29/5/82, *ibid.*,
[48][1968] 2 ALL N.L.R. 272.

6. Maintenance of Order: The American Experience

Under the United States Constitution, a supreme status is accorded the federal government; the States government on the other hand is sovereign. States sovereignty enables it to delegate its sovereignty to one of the three standard forms of governmental organization namely a county, a municipality or sub government entities – special districts which may all exercise public powers to regulate.[49] The maintenance of law and order by regulation and enforcement is a large complex enterprise in United States. The complexity or rather the ambiguous governmental role of maintenance of order stems from the problem of interpretation of what conduct is right or wrong. No doubt maintenance of order entails the prevention of disorder, put differently, the prevention of behaviour that is in violation of law. In doing this, the question that may crop up touches not just on the proper interpretation of the right conducts, but as well on the assignment of blame. It is the police that confront the public in these uncertain circumstances. Examples of these uncertain circumstances include, 'Bedroom fights, domestic quarrels, loud music and barking of the dogs'.[50] The discretion of police gives them the power to arrest or not to arrest. The values or situations of the police officer may dictate to the police officer whether to handle the situation or enforce the law. In specific terms in law enforcement when law is violated, it falls on the door steps of the police charged with specific law enforcement responsibilities to do the needful.

The peculiar nature of American federalism gives room for a fragmented[51] nature of policing or law enforcement. In this case there is no formal centralized system for coordinating or regulating all the different agencies. The result of the fragmentation is that it 'produces tremendous variety'[52] at every major level of government namely: city, county, State and federal levels police services are provided[53]. Equally agencies at each level are imbued with different roles and responsibilities each having still outstanding variety. It is noted that six largest police departments – New York City, Chicago, Los Angeles, Philadelphia, Houston and Detroit are very different from the 9,594 police departments with fewer than 25 officers[54]. There are shared characteristics of all police departments, nevertheless as correctly observed on country Sheriff it 'represents a historically different mode of policing that needs to be distinguished more clearly from municipal policing'.[55]

7. Conclusion

Having found that Nigeria operates a centralised police system it is our further observation that this constitutional provision was mid-wifed under the watch of the military government which were in power sequel to 1979 constitution and 1999 constitution. Thus both constitutions became law by promulgation as a Decree. By the character of military of being hierarchical it is our further observation that the presence of the military in Nigeria political landscape left Nigerians with military fashioned Democracy and tinkered centrist federal structure. This leaves the gaps that question and mock Nigerians Federalist stricture as a defective federal state. The coercive force available in the state and local governments in U.S.A for maintaining the authority and enforcing its laws goes to the root of existence of government and presenting a better model. In places where there is absence of such coercive force under the full sovereign control of the states seem to be an anomaly in Nigeria. The only organized coercive force in Nigeria is under the sole of the federal government in terms of power to appoint and remove head and commander (Inspector General of Police) is a negation of federal principle of autonomy of the federating units – properly described by Nwabueze: 'A government not backed by such coercive force is a contradiction in 'ideas'[56]. It is therefore, recommended that Nigerian states be allowed to exercise power over maintenance of law and order in a manner applicable in U.S.A by constitutional decentralization of policing even up to local levels

[49]*Ibid*., (n 1) 499.

[50]R. J. Waldron & Others, *The Criminal Justice System: An Introduction. (3rd ed., Boston: Houghton Mifflin company, 1984) 171.*

[51]The feature of American polling seems to imbibe the tradition of local political control. Thus resting the primary protection with local governments: cities and counties largely as a tradition, or bequeathed by English colonial master – the vestiges of which was not swept away by American Revolution of 1777. See Elinor Ostrom, Roger Parks and Gordon P Whitaker, *Patterns of Metropolitan Polling* (Cambridge, M.A Ballinger, 1978).

[52] S. Walker & C. M Katz, *Police in America: An Introduction* (5th ed.) (New York: McGraw Hill, 2005) 61.

[53]Apart from the federal, State and local agencies in the large and complex enterprise of law enforcement in United States there is a private security industry in the mix that employs millions.

[54]See also *Bureau of Justice Statistics, Local Police Departments*, 2000 (Washington DC: Government Printing Office, 2003).

[55]D.N Falcone and L.D Wells, 'The County Sheriff as a Distinctive Policing Modality*',* in *American Journal of Police XIV , No. 314* (1995) 123 – 124.

[56] B. O. Nwabueze, *Constitutional Democracy in Africa* Vol. 1 (Ibadan: Spectrum Limited, 2003) 86.