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## AMENDMENTS OF THE NIGERIAN CONSTITUTION

Here is no universally accepted definition of the word federalism; the concept of federalism has received broad scholarly attention. To this end, each scholar defines it according to their perception. Thus, the meaning of federalism is surrounded by what Dare called “state of uncertainty and vagueness”. Peter Ordeshook and Olga Slivetsova are of the opinion that “the meaning of federalism is yet to escape the state of uncertainty”. This explains why each scholar approaches the study based on individual background and inclination.

Early writers on the concept of federalism such as Jean Bodin, Olto, Cosmanus among others, viewed federalism as a voluntary form of political union of independent authorities. The union either temporary or permanent, was based on the need for special common purposes like defense, trade, communications and other reasons that would benefit the parties involved. Contemporary writers on the concept of federalism such as Livingstone, Macmahon, and Riker among others viewed federalism as a mutual interaction between and direct contact with, at least two levels of government. These scholars take their root from the 1787 American constitution. The definition of federalism by these scholars rest on the fundamental principle that, federalism is a form of governmental and institutional structure, deliberately designed by political “architects”, to cope with the twin but difficult task of maintaining unity while also preserving diversity.

The most cogent, clearly expressed and the most acceptable definition is that of K.C Wheare. All other formulation from other scholars like Livingstone, Macmahon, and Riker are variations of his work. In his book he talked about “federal principle” i.e. the method of dividing powers so that general and regional governments are each, within a sphere, co-ordinate and independent of one another. Thus, Whereproposition posits that the federal principle essentially entails a legal division of powers and functions among levels of government with a written constitution guaranteeing and reflecting the division. Where formulation of federalism is been drawn correctly from the United States of America which is regarded by him as the archetype of federal government. Since other formulation of federalism from other scholars are variations of his work, the basic tenets or elements of federalism according to K.C Wheare will be use as a templates to determines Nigerian federalism and the extent to which Nigeria has fulfilled the basic tenets of federalism.

The basic tenets according to him are:

- There must be at least two levels of governments and there must be constitutional division of powers among the levels of governments.
- Each levels of government must be co-ordinate and independent.
- Each levels of government must be financially independent. He argued that this will afford each levels of government the opportunity of performing their functions without depending or appealing to the others for financial assistance.
- There must be Supreme Court of the independent judiciary. He argued that in terms of power sharing, there is likely to be conflict hence, there must be independent judiciary to resolve the case.
- In terms of the amendment of the constitution, no levels of government should have

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undue power over the amendment process.

The Report presented to the Senate reads ? “Under this head, sections 256, 299, 300, 301 and 302 of the a Constitution were amended to create the Office of an elected Mayor for the FCT with powers to administer the FCT as if it were a State of the Federation(my emphasis) by exercising all the functions presently administered by the Minister of the FCT”.

The proposed amendment in my view will lead Nigeria to unnecessary, avoidable and unintended problems simply because of a misconception or misreading of the provisions of section 299 of the Constitution. For ease of understanding let us consider the provisions of section 299 of the Constitution. It states “The provisions of this Constitution shall apply to the FCT, Abuja as if it were one of the States of the Federation; and accordingly ? a) all the legislative powers, the executive powers and the judicial powers vested in the House of Assembly, the Governor of a State and in the Courts of a State shall, respectively, vest in the NationalAssembly the President of the Federation and in the courts which by virtue of the foregoing provisions are courts established for the FCT, Abuja. b) all the powers referred to in paragraph (a) of this section shall be exercised in accordance with the provisions of this Constitution; and c) The provisions of this Constitution pertaining to the matters aforesaid shall be read with such modifications and adaptations as may be reasonably necessary to bring them into conformity with the provisions of this section” (my emphasis).

When the idea of a new Federal Capital Territory was conceived it was not intended that the Territory would be a State of its own but incrementally the original idea is being twisted and misconceived deliberately or inadvertently to transform the FCT into a state. Section 299 merely set out to explain how the provisions of the Constitution would be applicable to the FCT. It was gratuitous to even introduce the analogy of a State in order to convey the intention as if the readers will not understand simple English. The intendment of the section is clear even without the phrase “as if it were one of the States of the Federation”. The immediate goal of the Senate Committee appears to be to divest the executive powers in the FCT exercised by the President through a Minister and transfer them to an elected Mayor. Sooner or later the Mayor will need a Council of Legislators and power over the judiciary like governors have in order to be treated “as if it were a State”. Inadvertently, the National Assembly which currently exercises legislative powers over the FCT will have to divest themselves of that power and transfer legislative authority to an FCT legislative Council which the Mayor will sooner or later demand with justification.

## **CRITICAL ANALYSIS OF CONTEMPRARY NIGERIA FEDRAL SYSTEM**

Let us consider the contribution of the most consummate student of federalism Nigeria has ever known-Chief Obafemi Awolowo (see ‘Thoughts on Nigerian constitution’, pp. 48-49). “From our study of the constitutional evolution of all the countries of the world, two things stand out clearly and prominently. First in any country where there are divergences of language and of nationality- particularly of language- a unitary constitution is always a source of bitterness and hostility on the part of linguistic or national minority groups. On the other hand, as soon as a federal constitution is introduced in which each linguistic or national group is recognized and accorded regional autonomy, any bitterness and hostility against the constitutional arrangement must disappear. Secondly, a federal constitution is usually a more or less dead letter in any country which lacks any of the factors conducive to federalism.” From the facts and analysis

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quoted from Chief Obafemi Awolowo book, the two following principles can be deduced:1. If a country is bilingual or multi-lingual like Nigeria, the constitution must be federal, and the constituent state must be organized on linguistic basis;2. Any experiment with a unitary constitution in a bilingual or multi-lingual or multi-national country must fail, in the long run.

Let us now place it to Nigeria situation and see whether Nigeria has been living up to the federal arrangement designed by K.C Wheare and Obafemi Awolowo. It is surprising that Nigeria only operates federal system on paper. The federal structures have never existed in Nigeria society. The reasons are not far fetch; First, the federal government, ever since the intervention of the military in government has always assumed superiority over the state government, because military federalism had been more common than civilian federalism, this model made the federal government the “master in relation to the dependent” state

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