

CHAPTER ONE INTRODUCTION

1.1 Background of Study

Most countries of the world are culturally diverse, and Africa is not an exception as all the countries in the continent are adjudged to be multicultural. The adventure into pluralism of religious, linguistic and ethno-cultural diversities in Africa owes its origin to colonial conquest from early 19th century. Thus, Kymlicka argues that “the world’s independent states contain over 600 living language groups and 500 ethnic groups”¹. Thus, Kymlicka argues further:

Many other western democracies are also multinational, either because they are forcefully incorporated indigenous populations (e.g. Finland, New Zealand), or because they were formed by the more or less voluntary federation of two or more European cultures (e.g. Belgium and Switzerland). In fact, many countries throughout the world are multinational, in the sense that their boundaries were drawn to include the territory occupied by pre-existing, and often previously self-governing, cultures.²

Nevertheless, before the forced co-existence, the geographical area called Nigeria was inhabited by autonomously independent ethno-cultural nationalities with their differences but unique political, social, economic and religious worldviews. This involuntary union has made Nigeria an extra-ordinary diversified country with consequent extra-ordinary complexities. Thus, Edo alludes to the fact that, “Nigeria is a complex and plural society with over 350 ethnic groups whose components and social aggregates remain sharply divided.”³ These complexities are a reflection of the avalanche of ethno-cultural and religious groups co-habiting the territory and the intricacies of interaction among them. “This diversity”, Kymlicka argues,

W. Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (New York: Oxford University Press, 1995), p.1.

²*Ibid.* p. 13

³ T. Edoh, “The Upsurge of Ethno-Religious Sentiments and the Future of Democracy in Nigeria”, *Nigeria journal of Political and Administrative Studies*, 1 (1999), p. 87

...gives rise to a series of important and potentially divisive questions. Minorities and majorities increasingly clash over such issues as: language rights, regional autonomy, political representation, education curriculum, land claims, immigration and nationalisation policy, even national symbols such as the choice of national anthem or public holidays⁴

The failure in the management of the diversity issue has resulted to mutual exclusion and suspicion punctuated by wars of each against all. Also, Ezeabasili's unpublished thesis discovers that

...ethnic and religious differences are part of the recurring issues in the Nigeria's body politics. These ethno-cultural and religious rivalries have permeated and are still permeating the Nigeria landscape since the colonial period, and up till the present time, there seems to be no imminent solution in sight to the accompanying conflicts of ethnic rivalry and religious intolerance. The majority and minority ethnic groups treat each other with suspicion and different religions worldwide clash with each other at slightest provocation.⁵

As a result, liberal democratic institutions found this country as a very difficult place to flourish as any attempts to create egalitarian existence are strongly undermined by violent nationalist conflicts.

Many scholars of Nigeria, Africa and non-Africa descents have blamed the African predicament on lack of good and effective leadership with the common parlance that 'the problem of Africa is lack of leadership.' Kymlicka, in his studies, sees African predicaments emanating from quite different perspective by arguing that African problem is her inability to manage her complex diversity. In his works⁶, Kymlicka argues authoritatively that improper management of African diversity (that is, for not granting vulnerable ethno-national minorities some specific or differentiated rights to ensure the sustainability of their cultural particularities in the cultural market-place) is really the reason for African predicaments.

⁴ W. Kymlicka, p. 1

⁵ Chukwuemeka Ezeabasili, *Will Kymlicka Multicultural Citizenship and Democratic Practice in Nigeria: A Philosophical Evaluation* (Unpublished Master Thesis, Nnamdi Azikiwe University, 2013), p. 1.

⁶W. Kymlicka, 1989, 1995, 1999

Kymlicka believes that most countries of the world, like Nigeria, has involuntary union when he argues that

The incorporation of different nations into a single state may be involuntary, as occurs when one cultural community is invaded and conquered by another, or is ceded from one imperial power to another, or when its homeland is overrun by colonizing settlers. But the formation of a multination state may arise voluntarily, when different cultures agree to form a federation for mutual benefit.⁷

Thus, in his effort to resolve problems inherent in most democratic multicultural societies, Kymlicka formulated three differentiated or minority rights.⁸ One of the minority rights vital in this dissertation is self-government rights. It was made solely to resolve the issue of forceful incorporation of indigenous population of a given multination state. Thus, he argues, “in most multination states, the component nations are inclined to demand some form of political autonomy or territorial jurisdiction, so as to ensure the full and free development of their cultures and best interests of their people. At the extreme, nations may wish to secede if they think that their self-determination is impossible within the larger state.”⁹ Arguing further, he says that

One mechanism for recognising claims of self-government is federalism which divides powers between the central government and regional subunits (provinces, states, cantons). Where national minorities are regionally concentrated, the boundaries of federal subunits can be drawn so that the national minority forms a majority in one of the subunits. Under these circumstances, federalism can provide extensive self-government for a national minority, guaranteeing its ability to make decisions in certain areas without being outvoted by the larger society.¹⁰

Therefore, it becomes obvious that Nigerian problems like: political instability, economic recession, cleavages along ethnic, religious, linguistic and cultural lines, marginalisation of

⁷ W. Kymlicka, p. 11

⁸ *Ibid.* p. 26, according to Kymlicka, there are at least three forms of group-specific (differentiated) rights: (1) self-government rights; (2) polyethnic rights; and (3) special representative rights.

⁹ *Ibid.* p. 27

¹⁰ *Ibid.* pp. 27-28

all kinds, bigotry, bribery and corruption, mediocrity and favouritism, insecurity (terrorism and insurgency), lop-sidedness in political appointments; and poor leadership quality in present crops of Nigerian leaders are the effects of improper or inadequate management of Nigeria enormous diversities, which inversely threaten her nascent and fledgling democratic rule. Cognizance of the fact that Nigeria existence as single polity is an involuntary or forcefully incorporated one, there is need for total restructuring of the Nigerian 1999 Federal Constitution, to reflect true democratic federal system that must bear the blueprints and signatures of all the major and minor ethno-cultural and linguistic groups. This radical restructuring requires renegotiation of Nigerian corporate existence amongst all the ethno-national groups; and the necessity can never be overemphasized because of the lasting peace it engenders on her nascent and fledgling democracy. Here, the work of Kenneth C. Wheare on Federalism¹¹ becomes relevant since it serves as a reference point in furtherance of Nigerian federal institutional and structural change through constitutional amendments. Thus, this dissertation analytically investigates Kenneth C. Wheare's concept of Federalism and Nigeria Federal System of Government in the light of the Nigeria constitutional change.

1.2 Statement of Problem

The 1914 amalgamation of the northern and southern protectorates gives birth to Nigeria as a political entity. The British colonialists sowed the seed of federalism in the Nigeria's socio-political soil because of the apparent ethno-nationally and territorially delineated cleavages and historical legacy of division among ethnic groups abounding in Nigeria. Thus, Nigeria is deemed as one of those African countries that operate a federal system of government

¹¹ K. C. Wheare, *Federal Government*, (4th Edition) (New York: Oxford University Press, 1964). This work is based on the principle that makes Wheare a classical writer. His federal principle is based on the method of dividing powers so that the general and regional government are each, within sphere, coordinate and independent (p. 11). That is one way of organising multiplicity within unity.

alongside the western world. But it must be said here that, while the system benefits most countries such as United States, Australia, Switzerland, Belgium, Canada, New Zealand, Ethiopia, India, etc. with multi-cultural nature, the reverse is the case for Nigeria, considering the high levels of political instability, ethnic rivalry and conflicts, and religious clashes predominantly between Hausa/Fulani and Igbo, or between Moslem predominant North and Christian main South.

Why is the federal system of government not viable in multicultural Nigeria unlike rest of the Western federations? The reason is obvious. Nigeria is operating a federal system in awkward manner, and this has made frictions and clashes possible. This quasi-federalism inversely poses great threat to Nigerian political development. The restructuring of Nigeria's Constitution that took place between 1914 to 1954 by different British governors that presided over Nigerian state; and the efforts of Nigeria's founding fathers evidenced in 1st, 2nd, 3rd and 4th republic constitutional amendments, testify to the obvious of the intricate existential threats the 1914 amalgamation and unitary government evidenced in 1999 Constitution, have posed to the future political stability of Nigeria. They were desirous of a system of government that would neutralise the political threats by accommodating the divergence of interests of the various ethno-national groups. This desire eventually found expression in the federal system of government as a diversity management technique. Thus, Awolowo, lending his voice in support of this, cautioned that: "From our study of the constitutional evolution of all the countries of the world, two things stand out clearly and prominently. Firstly, 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. Secondly, as soon as a federal constitution is introduced in which each linguistic and national group is recognised

and accorded regional autonomy, any bitterness and hostility against the constitutional arrangement must disappear...”¹²

But it must be noted that with the advent of the 1979, and then 1999 constitutions, there has been tremendous and profound change or radical departure in the practice of true federalism. This has called into question by different scholars of different origins and descents as to whether Nigeria is practicing a true federal system of government, because of the way power is concentrated in the centre in her constitution. The fact remains that in the aftermath of military rule, Nigeria’s new civilian, democratic federal system is highly centralised while being fragmented subnationally. Thus, there are clarion calls for complete overhaul of the political system through constitutional amendments that will not only recognise the identities, but bear the blueprints; and reflect the interests, needs and aspirations of all the ethno-national groups who are stakeholders of the Nigerian federation. This dissertation makes a case for constitutional reform and is staking K. C. Wheare’s concept of Federalism out as a means of achieving a constitutional amendment towards forming a formidable and true federal system of government.

1.3 Purpose of Study

In a society where there exist indigenous and autonomous ethno-cultural nationalities, the yearning for stability and survival has made man to evolve several methods and (political) systems aimed at arriving or making the society economically and socio-politically tolerant and egalitarian; where the needs, interests, emotions, psyches, aspirations, particularities and peculiarities of the different ethno-national groups are preserved and sustained for more egalitarian existence. Man has found federalism as a philosophical and principled method, and federation as a system of government that can guarantee him an egalitarian existence in a

¹² O. Awolowo, *Path to Nigeria Federalism* (Ibadan: Oxford University Press, 1966), pp. 48-49

diversified society. Federalism, which is diversity management technique, holds that the ideal organisation of human affairs is best reflected in the collaboration of diversity through unity. But the bone of contention is that Nigeria, which is a multicultural society, is operating unitary government in the guise of federal government as it is reflected in the Nigeria 1999 Federal Constitution. A constitution that was neither constituted by, nor articulated the desires, aspirations, needs, particularities, peculiarities, psychics of, independent, indigenous and pre-existed people of different linguistic, cultural, ethnic, and religious groups of Nigeria. It was rather constituted by a group of military dictators, outcomes of which is several steps in regression in all spheres of her existence.

Therefore, the aim of this paper is to advance the need for constitutional amendment of Nigeria's false and skewed federal constitution that has grounded the wheel of nation building and development; neglected the preservation of particularities and peculiarities of ethno-national minorities; resulted into instability and unsustainable democratic rule; and constituted serious threats to her corporate and egalitarian existence. What is the need for advancing constitutional amendment of Nigerian Constitution? To empower the federating units of the critical mass of ethnic nationalities with self-governing powers; this will not only guarantee their self-determination rights, but also ensure that they are in control of their destiny and internal affairs. In the light of the amendment, K. C. Wheare's concept of federalism becomes very relevant.

1.4 Scope of Study

This work is delimited to K. C. Wheare's work on *Federal Government*, and how it can be used to advance the important amendment of Nigerian over-centralised federal constitution to what really reflects true federal principle of division of powers and functions to different ethno-national groups who are equal stakeholders in Nigerian project; while preserving their autonomy as they operate unhindered in a sphere.

This dissertation will as well make references to other works of Kenneth C. Wheare; works on multiculturalism especially, Will Kymlicka¹³, and the works of other federal theorists like William Livingston¹⁴, William Riker¹⁵, Preston King¹⁶ and Others. Regardless, the major source of this study remains *Federal Government* of Kenneth C. Wheare, which will guide this paper towards advancing better ways of making Nigerian federal system viable.

1.5 Methodology

This dissertation employs analytic method. Analysis as a method of philosophy is based on the idea that philosophical problem can be resolved through an analysis of their terms; therefore, analysis is the method of breaking down a complex topic or substance into smaller parts to gain better understanding of it. Federalism, as an ideological and philosophical issue, comprises key concepts like division (or separation) of power, democracy, representation, independence, general government, regional governments, constitutionalism and legalism, autonomy, amendment (reform or change), unitarism, con-federalism, multiculturalism, territorialism, bicameralism, fiscalism, etc. The method of conceptual analysis tends to approach such a problem by breaking down the key concepts pertaining to the problem and seeing how they solve Nigeria's federalism challenges. This method is made effective through library research wherein the work of K. C. Wheare; subsequently, journals, periodicals, newspapers, monograph, secondary sources that deal with federalism and Nigerian federal system of government will be studied.

¹³ W. Kymlicka, *Liberalism, Community and Culture* (Oxford: Clarendon Press, 1989); *Finding Our Way: Rethinking Ethnocultural Relations in Canada* (New York: Oxford University Press, 1999); and *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995).

¹⁴ W. S. Livingston, *Federalism and Constitutional Change* (Oxford: Clarendon Press, 1956); and *Federalism in the Commonwealth* (London: Cassell and Company Ltd, 1963).

¹⁵ W. H. Riker, *Federalism: Origin, Operation and Significance* (Boston and Toronto: Little, Brown and Company, 1964).

¹⁶ P. King, *Federalism and Federation* (Maryland, USA: The Johns Hopkins University Press, 1982)

Nevertheless, internet materials are one of the major sources for materials that cannot be sought from the hard copies.

1.6 Significance of Study

Federalism, as a diversity management technique, is a political principle that sees to the division of powers and functions between two equal and independent governments. It is a principle that recognises every cultural or linguistic group for self-government rights. Nigeria System of Government as written and codified in present 1999 Federal Constitution neither contain nor live up to federal principles expectations. Thus, the significance of this work will be seen from the prism of possible development of the federal concept in the minds of statesmen, government officials, politicians, policy makers and indeed to every well-meaning citizen of Nigeria, on whom the burden rests of solving the more particular problem of the future constitution of Nigeria. Therefore, the import of this study also is to offer important insight and meaningful guidelines to decision makers on how to make the constitutional amendment possible. This becomes beneficial as a result that it will advance egalitarian existence of more than 350 ethnic nationalities of Nigerian federation.

1.7 Definition of Terms

Analysis as an important method of this study has been given a considerable consideration in the methodology, a subchapter of this dissertation, and defining it here becomes unnecessary. Therefore, federalism, and its related terms (unitarism and con-federalism) will be briefly defined in this subchapter for proper understanding and better appreciation of this dissertation. **What is Federalism?**

Federalism can be described as a system of government in which the indicators of social, political and economic development are pursued by a co-ordinated effort of both central and other constituent units of government. Simply put, it is the pursuit of development by the

central and other integrated independent units of government. Even though this definition contrasts with other popular definitions of the term, the idea of existence of central as well as other equally independent units of government is general to all definitions of the concept of federalism.¹⁷

The concept “Federalism” is a doctrine denoting a state of affairs in a country in which there are two or more levels of government, each of which has its own spheres of governmental legislative jurisdiction.¹⁸ Therefore, it refers to a state of affairs in a country whereby the exercise of governmental legislative powers is shared through constitutional legal provisions, among different levels of co-ordinate governments.¹⁹ Thus, according to Kenneth C. Wheare, the most prominent classical and all time federalist theorist, federalism or federal principle, as he puts it, denotes; “The method of dividing (governmental legislative) powers so that general (central) and regional (component) governments are each within a sphere, coordinate and independent.”²⁰ From the above definition, federalism possesses this important attribute: the existence of dual or multiple levels of governments each of which exercises some governmental legislative powers allocated to them by a constitution which is supreme and the source of life of all coordinate governments in that country.²¹

Before the distinction should be made between federalism and other terms, distinction should first be made between federalism and federation. Thus, certain scholars and political

¹⁷ M. L. Ogu, “Federalism as an Essential Contested Concept: A Discuss,” *Nigeria world*, (Jan. 30, 2011). Retrieved from <https://nigeriaworld.com/articles/2011/jan/301.html>

¹⁸ H. G. A. Ofoeze, “Comparative Federalism” *An Unpublished Lecture Note on GPD 348*, (Abia, Nigeria: University Uturu, 1996), pp. 1-3, as cited in H. G. A. Ofoeze, *Federalism: A Comparative Perspective*, (Enugu: John Jacob’s Classic Publisher Ltd., 1999), p. 1

¹⁹ *Ibid.* p. 2

²⁰ K. C. Wheare, *Federal Government* (New York: Oxford University Press, 1964) p. 11 as cited in H. G. A. Ofoeze, *Federalism: A Comparative Perspective*, p. 2

²¹ H. G. A. Ofoeze, *Federalism: A Comparative Perspective*, (Enugu: John Jacob’s Classic Publisher Ltd., 1999), p. 2

scientists, according to Burgess,²² have argued that a distinction should be made between the term ‘federalism’ which they see more as an ideology, and “federation”, which they describe as a system of government, despite the fact that he accepts that federalism cannot be a free-standing ideology. Unlike liberalism and socialism, Ogu believes that federalism should be taken to mean a recommendation and sometimes, as active promotion of support for federation.²³

Defining federalism as an ideology, Burgess (1993) argues, “Federalism is ideological in the sense that it can take the form of an overtly prescriptive guide to action. Federalism is philosophical to the extent that it is a normative judgement on the ideal organisation of human relation and conducts.”²⁴ Corroborating Burgess, Graham Smith (1995: 4) also argues that “Federalism can be considered as an ideology which holds that the ideal organisation of human affairs is best reflected in the collaboration of diversity through unity.”²⁵ Ojo subscribes to the views of Forsyth when he asserted that

Federalism is an explicit ideological, and/or philosophical positions in the same vein as other great ‘isms’ of political theory such as socialism, liberalism, conservatism, nationalism, legalism, etc. Federalism is ideological in the sense that it can take form of one overtly prescriptive guide to action and it’s philosophical to the extent that it’s a normative judgement regarding the ideal organisation of human relations and conduct.²⁶

Moving away from ideological sphere, some very popular practical definitions of federalism or federation by scholars are considered hence. Daniel Elazar defined federalism as “a system of political organisation uniting separate states or other units in such a way as to allow each

²² M. Burgess, “The Political Uses of Federalism”, pp. 3-13, in M.L. Ogu, “Federalism as an Essential Contested Concept: A Discuss,”. p. 1

²³ M. L. Ogu, “Federalism as an Essential Contested Concept: A Discuss,”. p. 1

²⁴ M. Burgess, “The Political Uses of Federalism,” p. 3, as cited in M. L. Ogu, “Federalism as an Essential Contested Concept: A Discuss,” p.1

²⁵ M. L. Ogu, p. 1

²⁶ E. M. Ojo, *Unpublished Lecture Material on Comparative Federal Systems*, as cited in M. L. Ogu, “Federalism as an Essential Contested Concept: A Discuss,”. p. 1

to remain a political entity. A federal system which differs from other methods of organising states is being based on a contractual agreement by separate government to share power amongst themselves.”²⁷ Federalism is also seen as an effective political and constitutional design useful for managing complex governmental problems associated with ethnicity and cultural diversity. Thus, Lenshie and Yenda see federalism as political framework to manage the dynamics associated with multiculturalism.”²⁸

One cannot however define federalism without running into these two concepts – unitarism and con-federalism. For proper understanding of the concept of federalism, these terms shall be briefly defined.

Unitarism or Unitary System of Government

The definition of federalism as a method of dividing political or legislative powers between two levels of independent and co-ordinate governments establishes a striking and conspicuous distinction between federalism and unitarism. Unitarism or unitary system of government is defined as a sovereign state governed as a single entity without division of power. The central government is supreme, and the administrative divisions exercise only power that the central government has delegated to them. according to Hague and Harrop, unitary government can be defined as that “...sovereign which lies exclusively with the central government; subnational authorities, whether regional or local, may make policy as well as implement it, but they do so by permission of the centre.”²⁹ Therefore, the contrast lies in power and function division. In federal government, power is shared between federal

²⁷ D. J. Elazar, *Federal Systems of the World: A Handbook of Federal, Confederal and Autonomous Arrangements*, (Essex: Longman, 1994)

²⁸ N. E. Lenshie and H. B. Yenda, “Is There any True Federalism? Revisiting the ‘True Federalism’ Debate in Nigeria,” *Research on Humanities and Social Sciences*, Vol. 5, No. 15, (2015), p. 55

²⁹ R. Hague, and M. Harrop, *Comparative Government and Politics: Introduction*, (Palgrave Hampshire, 2001), p. 208

or central government and regional governments, neither level of government can encroach upon the powers of the other,³⁰ and any political system that puts this idea into practice is called a federation. Meanwhile, in unitary government, power is not shared, but delegated or given, and law and policy can be made by peripheral or regional governments but with the permission of the central government. Kenneth C. Wheare calls this association a **devolution** and the principle of its organisation or association as **‘the devolution principle’**; that is, the principle in which the regional governments are made subordinate to the general government.³¹

Con-federalism or Confederation

Meanwhile, confederation is the government in which the ultimate political authority resides in the states or regional governments, and the central government acts as their delegates. In this model, the central government may not even have the power to enact laws directly affecting individual citizens of regional states. In Confederation, the powers of the central government are not exercised directly over the individual citizens. Hence, general government exercises their powers indirectly to the people through the states or provinces. Kenneth C. Wheare sees confederation as a form of political association between states in which the general government is dependent upon the regional government. This form of association has often been described as a **“confederation”** and the principle of its organisation he calls **“confederate principle.”**³²

³⁰ H. Heywood, *Political Theory: An Introduction* (MacMillan Press Ltd, London, 1999), p. 114

³¹ K. C. Wheare, *Federal Government*, p. 33

³² *Ibid.* p. 32

CHAPTER TWO LITERATURE REVIEW

Nigeria corporate existence is in a precarious situation because of its likely propensity to disintegration. This is as a result of structural defects inherent in the incompatible unitary political structure betrothed to her multicultural nature in the name of federal constitution. This dissertation is proposing Kenneth C. Wheare's work on *Federal Government* as a principled guide to Nigerian constitutional amendment to reflect what is universally acclaimed and agreed to as true federalism. This chapter briefly reviews the literatures of some important federalists, multiculturalists and political philosophers in two different ways – in principle and in praxis. In principle, being reviewing the works of those who did the summary review of Kenneth C. Wheare's work on *Federal Government*; and in praxis, being reviewing the works of those that review Nigerian Federal System of Government. Therefore, this dissertation starts with the former.

K. K. Dennis, in his article "The Federal System of Government: Federal Government by K. C. Wheare" in *Journal of Comparative Legislation and International Law* sees Wheare's work as the critical analysis of what federalists agree to as the true federal principle. It is a very impressive work to all students of comparative politics. If not anything, for the very significance of the work on the possible development of the federal concept in the mind of those, statesmen and others, on whom the burden rests of solving the more particular problem of the future constitution of India (or any federal system of government in Asia or Africa).³³

The essential point in the division of powers under a truly federal government is, Denis maintains, that whatever the actual method of division may be and wherever the residue of powers may lie, neither central government nor regional government should, either under the

³³ K. K. Denis, "The Federal System of Government of K. C. Wheare", *Journal of Comparative Legislation and International Law*, Vol. 28, No. 3/4 (1946), p. 139. Retrieved 02/09/2013, from <http://www.jstor/stable/754669>

constitution itself or in practice, be in any degree subordinate to the other, each being truly independent in its own sphere.³⁴

If federation is to be established, the constituent units must already have produced for themselves stable governments with experience of performing their functions and with their roots in the people, as any regional government not so established will find it difficult to survive against the strength of a central government. It is a factor, however, which must be nicely balanced, for any undue attachment of the people to their own established government will always be a possible source of weakness in a federation, more particularly so when, as may well happen, the regional boundaries coincide with those of race, language or religion. The factor on which he lays great emphasis, as ensuring the capacity of states to form a federal union and at the same time to maintain their independence therein, namely, the sufficiency of economic resources and the proper allocation of those resources, ... but unless the regional governments can do the same from their own independent sources, they will either be unable to perform their functions or be able to perform them only at the price of financial dependence on the centre – which means in the end subordination.³⁵

As to the future prospect of federation, it is noted that there has been a marked tendency for central governments to grow stronger.... It has been suggested, in the light of this, that federal government must ultimately prove to be no more than a stage toward unitary government.

H. R. G. Greaves, in his article “Federal Government by K. C. Wheare” in *Journal of International Affairs*, claims that it is a clear and valuable comparative study of the working out of the federal principle in the constitutions of the United States, Switzerland, Canada, and Australia. What he deems necessary for the federal principle is not merely that the general

³⁴*Ibidem*

³⁵*Ibidem*

government, like regional government should operate directly upon the people, but, further that each government should be limited to its own sphere and, within that sphere, should be independent of the other.³⁶ Federation, for the author, is one way of organizing multiplicity within unity. He was against the notion that federalism is weak and obsolescent government; rather he argues that federalism corresponds with the continuing need for regional diversity.

C. B. Robson, in his article “Federal Government by K. C. Wheare”, in *The Journal of Politics*, describes it as the study of modern federal government on “comparative lines”. He argues that Wheare confines his study to the United States, Canada, Australia and Switzerland, which are the only modern states he regards as the predominantly federal. He, however, doubts if Wheare’s readers will agree with the rigidity of the definition of the “federal principle” which is the basis of his classification, namely that it is “the method of dividing powers so that the general and regional governments are each, within a sphere, coordinates and independent.”³⁷ Even the four states that Wheare listed as federals, he argues, do not in every respect meet the criteria which the federal principle requires.

Applying this standard, the author is aided by Wheare’s distinction between a “federal constitution” and “federal government”, which are the terms he uses to designate the difference between the formal written constitution and the actual practice of government. This distinction also enables him to disregard as federal system several, notably those of certain Latin American countries, which have at times operated as unitary governments under formally federal constitutions; and the constitutions of soviet Union and Germany, both under

³⁶ K. C. Wheare, *Federal Government*, (New York: Oxford University Press, 1946), p. 15, as cited in H. R. G. Greaves, Federal Government by K. C. Wheare (Review), *International Affairs*, Vol. 22, No. 4, p 551.

³⁷ K. C. Wheare, *Federal Government*, (New York and London: Oxford University Press, 1946) p. 11, as cited in C. B. Robson, Federal government by K. C. Wheare, *The Journal of Politics*, Vol. 9, No. 3, p. 454.

the old imperial and the Weimar constitution due to the extensive powers, especially fiscal powers, confided to the central government in each instance as well as to the existence of a single state disproportionately larger than the others.

On the organisation of the federal governments, Wheare, Robson argues, deduces that a system of separation of power is particularly conducive to the successful operation of federal system; and like United States, the Supreme Court bears the power of final interpreter of the supreme clause.

The main body of the Wheare's study, he argues, is devoted to discussion of the functioning of the federal government in the field of public finance, control of economic affairs, social services, foreign relation and war.

George C. S. Benson, in his article, "Federal Government by K. C. Wheare" in *American Sociological Review*, argues that Wheare claims that in war time all four federations have been able to adapt their constitutional structure as needed. The constitutional amendments have not been needed for this adaptation except in Switzerland where amendments are easily secured. Adaptation to economic crises has been more difficult than war time needs, especially in Canada where judicial review of federal questions by Privy Council has resulted in great rigidity of the federal system. It is paradoxical that Canada whose constitution apparently gives most power to the central government in practice has been forced to retain more power in the province.³⁸

The author was of the opinion that many observers have concluded that federalism is a temporary arrangement, a staging point on the road to unification. However, he disagrees

³⁸ K. C. Wheare, *Federal Government*, (New York: Oxford University Press, 1946), p. 278, as cited in G. C. S Benson, *Federal Government by K. C. Wheare* (Review), *American Sociological Review*, Vol. 12, No. 6 (Dec. 1947), p. 73

with them based on Wheare's conclusion drawn from the basis of his studies that a succession of wars and economic crises, or both would inevitably unify any federal system.³⁹

The author concludes that though this book (Federal Government) is not a great study that even Wheare termed it a "short survey". But he doubts that a serious student of federal operations, in government and other fields, can afford to overlook it.

William Anderson, in his article "Federal Government by K. C. Wheare", in *The American Political Science Review*, sees Kenneth C. Wheare's *Federal Government* as a comparative study of present day federal government. According to Anderson, Wheare limits his study to Australia, Canada, Switzerland and the United States. Excluded as merely quasi-federal or unitary, for example, Argentina, Brazil, Mexico, South Africa, and U. S. S. R. Certainly, the four nations which Wheare deals with have many similarities in government structure that set them off from other nations.

Anderson, however, had issue with the phraseologies of Wheare's definition of federalism by saying that it is open to objection. By the federal principle, he says, "I mean the method of dividing powers so that the general and regional governments are each within a sphere, coordinate and independent."⁴⁰ This definition is preceded by a discussion that treats the United States as an "Association of States", in which the national and state governments are described as "independent of each other, coordinate of each other, and co-equally supreme within this sphere."⁴¹ The reviewer believes that "independent," "coordinate," and "co-equal" are all three wrong words, or at least in need of serious qualification. To justify these words: "independent", "coordinate", and "co-equal", Wheare has in effect adopted "dual federalism"

³⁹*Ibidem*

⁴⁰ K. C. Wheare, *Federal Government*, (London, New York, Toronto: Oxford University Press, 1946) p. 11, as cited in W. Anderson, Federal Government by K. C. Wheare, *The American Political Science Review*, Vol. 40, No. 5 (Oct. 1946), p. 995.

⁴¹ K. C. Wheare, *Federal Government*, p.2

as the controlling principle in the union of the United States and has greatly underrated the importance of the supremacy clause.

Following his definition of the “federal principle”, the author believes that Wheare devotes some short chapters to considering what federal government is and is not, “when Federal government is appropriate”, and how, in general, federal government should be organized. Under the later heading, he argues “that the last words in settling disputes about the meaning of the division of powers must not rest either with the general government alone or with regional government alone.”⁴²

He deals briefly but competently with public finance, the control of economic affairs, social services, the control of foreign relations, and the war powers. Several concluding chapters deal with "Federal Government: Rigid or Flexible" and "Federal Government: Tendencies and Prospects.

The endeavour throughout the book to picture the central and the state or provincial governments as operating in separate spheres simply breaks down in the modern era of the social-service state, total wars, and almost total depression.⁴³ Notwithstanding these adverse criticisms, the reviewer believes that all students of modern government will welcome this book as a substantial and important contribution of a high order to the literature of federalism.

James A. Maxwell, in his article “Federal Government by K. C. Wheare in *Journal of Political Economy*, argues that Wheare’s Federal Government provides a short survey of federal government, limited to the United States, Canada, Australia and Switzerland. For him, federalism comes off quite well. Its past performance is judged to be credible and its future prospects hopeful. But he opines that wars and depressions are its enemies as they are

⁴² K. C. Wheare, *Federal Government*, p. 60, as cited in W. Anderson, *Federal Government by K. C. Wheare*, p. 996

⁴³ *Ibidem*

enemies of democratic government. He believes that with the end of war and depression that much of what Wheare has written will “soon be out of date.”⁴⁴ In Australia and Canada the prophecy he believes is being fulfilled because of recent radical revisions (amendments) of the power of taxation.⁴⁵

Looking at the definition of “federal principle”, the Maxwell reiterating Wheare, argues that it is “... method of dividing powers so that the general and regional governments are each, within a sphere, coordinate and independent.”⁴⁶ Applying the definition with the qualification he sees the principle having plausibility; thus, he argues that the limitations upon the powers of the general government compare with what is prevalent in unitary countries are of the essence of federalism. Yet these limitations are not susceptible of simple explanation and the doctrine of separation does not stand precise examination.⁴⁷

He sees federal principle as most awkward in finance, and that it has been violated by most of the federations. He alleges that Wheare was concerned with the issue, and however proposes a remedy, which is the federal grant “guaranteed by the constitution” so that the regional governments are not left to depend upon the good will of the general government.⁴⁸

He concludes by saying that federation is a changing concept, and so also is the principle, or principles, upon which federalism is constructed and maintained.

W. Reed West, in his article, “Federal Government by K. C. Wheare, in *Annals of the American Academy of Political and Social Science*, defines federal principle like Wheare as

⁴⁴ K. C. Wheare, *Federal Government*, (New York: Oxford University Press, 1947) p. Vii, (Preface), as cited in W. J. A. Maxwell, “Federal Government by K. C. Wheare, *Journal of Political Economic*. Vol. 56, No. 3 (1948), p. 275

⁴⁵ W. J. A. Maxwell, “Federal Government by K. C. Wheare, *Journal of Political Economic*. Vol. 56, No. 3 (1948), p. 275

⁴⁶ K. C. Wheare, *Federal Government*, p. 11, as cited in W. J. A. Maxwell, *Federal Government by K. C. Wheare*, p. 275.

⁴⁷ W. J. A. Maxwell, p. 275

⁴⁸ K. C. Wheare, p. 255, W. J. A. Maxwell, *Federal Government by K. C. Wheare*, p. 275

“the method of dividing powers so that the general and regional governments are each, within a sphere, coordinate and independent.”⁴⁹ However, he doubts that United States, Canada, Australia and Switzerland are completely, really and entirely federal, con-federal or unitary. That is, he claims that their constitution may belong in one category and the government in another or a state may contain elements contrary to its primary (federal) character. For instance, United States is typical example of a country with federal character constitutionally, but the original constitution embodies one contrary provision that the senators be chosen by the state legislatures. Canadian constitution is federal for example from the point of view of the distribution of powers, unitary from the point of view of grant of executive powers, but federal again in that the executive powers are in fact used sparingly.⁵⁰ Nevertheless, he maintains that United States, Canada, Australia and Switzerland are existing examples of federal government, although Australia may move toward a quasi-federal type.

He mentions factors that necessitate the desire for different communities to come together to form or adopt a federal constitution as: military insecurity, a desire for independence from foreign powers, a hope of economic advantage, some experience with a poor political association, geographical neighbourhood, and similarity of political institutions, while a factor leading to a desire to remain separated inside a union is previous experience as an independent government, provided that attachment is not too strong. If one of the units is too large, as was Prussia in the German Empire, even a confederation may become unitary. If the units are economically weak, financial (dependent) unification may follow.⁵¹

⁴⁹ K. C. Wheare, *Federal Government*, (New York: Oxford University Press, 1946) p. 278, as cited in W. Reed West, “Federal Government by K. C. Wheare, *Annals of the American Academy of Political and Social Science*. Vol. 248, Nov. 1946, p. 276.

⁵⁰ W. Reed West, “Federal Government by K. C. Wheare, *Annals of the American Academy of Political and Social Science*. Vol. 248, Nov. 1946, p. 276.

⁵¹ *Ibidem*

With the above illustration drawn from the four federal governments mentioned above, the reviewer alludes that Wheare goes into questions affecting the supremacy of the constitution, written constitutions, concurrent powers, the separation of powers, the party system, representation in the legislature, monetary and financial powers, jurisdiction over economy, and social problems. Reed West finally argues that Wheare concludes with an analysis of the way in which the federal governments have adapted their constitutions and practices to the need for change, and finds a common tendency towards expansion of central government.

E. A. Obi,⁵² in his article “Issues in the Theoretical Foundations of Federalism” in *Federalism and National Integration in Nigeria*, sees federalism as a political arrangement with serious crises of conceptualisation. As a result, varying definitions of federalism seem to contradict each other. However, Obi argues that most theorists of federalism have in one way or another pose K. C. Wheare’s federal conceptualisation as the paradigm. Thus, Wheare defines federal principle as “a method of dividing powers so that general and regional governments are each, within a sphere, co-ordinate and independent.”⁵³

From the Wheare’s definition of federalism the author deduces the following as the principles of federalism:

1. Division of powers among levels of government;
2. Written constitution showing the division; and
3. Co-ordinate supremacy of the two levels of government with regards to their respective functions;

⁵² E. A. Obi, “Issues in the Theoretical Foundations of Federalism,” in *Federalism and National Integration in Nigeria*, p. 1

⁵³ K. C. Wheare, *The Federal Government*, p. 11, as cited in E. A. Obi, “Issues in the Theoretical Foundations of Federalism,” in *Federalism and National Integration in Nigeria*, p. 1

However, he sees Wheare's conceptualisation as being too legalistic and inflexible, and also being criticised for being a description of American federalism which in many cases, Wheare took as the archetype of federalism.⁵⁴ According to him, Wheare's use of America federation as model is misplaced because he fails to understand that even American federalism is a reflection of the socio-political and historical condition, and has equally witnessed some changes since the Philadelphia convention of 1787, in which according to American Patriots, stated that, "They gathered for the purpose of rendering the Articles of Confederation inadequate to the exigencies of the government and the preservation of the union."⁵⁵

It is therefore apparent from the above statement that since the American federalism was fashioned, bearing in mind the "exigencies of government, it cannot be the ideal as K. C. Wheare felt, since every society ought to fashion its own system to make it "adequate to the exigencies of government." These exigencies we know, must take into consideration, the peculiarities, history and eccentricities of the local conditions of the country fashioning out the constitution. However, the author emphasizes the importance of Wheare's classification, because an irreducible minimum standard inherent in the federal principle ought to be set so that any society that goes beyond that would not be classified as having a federal system. Consequently, he argues that Wheare went ahead in labelling countries which presumably are federal but do not fully conform to this criterion or irreducible minimum standard (of federal principle) as a quasi-federal in order to distinguish them from true federalism.⁵⁶

Wheare's legalistic or juridical approach according to the author places more emphasis on the legal dimensions of federation while ignoring other socio-political factors. As a result, the

⁵⁴ E. A. Obi, p. 2

⁵⁵ *Ibid.* p. 3

⁵⁶ *Ibidem*

situation birthed other conceptualisation of federalism. The author, addressing the shortcomings, went the path of sociological approach. Thus, quoting Livingstone, he states,

The essential nature of federalism is to be sought for, not in the shading of legal and constitutional terminology, but in the forces – economic, social, political, cultural – that have made the outward forms of federalism necessary. The essence of federalism lies not in the constitutional or institutional structure but in the society itself. Federal government is a device by which the federal qualities of the society are articulated and protected.⁵⁷

The utility of Livingston's conceptualisation, according to the author, lies in his belief that federalism is a reflection of the inherent diversities in the society. For him, it is a system fashioned to hold different nations together in a state, while still allowing each of them a degree of autonomy in certain areas. Despite Livingston's efforts in freeing federalism from Wheare's rigidity, he was criticised for the broadness of his formulation, virtually making the whole countries of the world to be classified federal states with the little effort by the mere fact that they are diversified. He was also criticised for ignoring 'juristic aspect' of Wheare's conceptualisation, which was deemed important.

Cognizance of the above conceptual lapses, Obi switched to the path of bargaining approach. Thus, he sees Riker's conceptualisation as filling the loophole; thus, corroborating Riker, he argues that "even in common usage federalism is a juristic concept of sorts, and that fact is retained in our definition by emphasizing the existence of two kinds of governments and their separate ability to make some decisions independently of each other."⁵⁸

In analysing Ricker's contribution to the theory of federalism, Obi corroborating Dare states that Ricker viewed federalism from a static perspective, as a bargain struck by the component units. According to Riker, the author argues that two prerequisites for the bargain are: 1)

⁵⁷ W. S. Livingstone, *Federalism and Constitutional Change*, (USA, Oxford: Clarendon Press, 1956), as cited in E. A. Obi, p. 4

⁵⁸ W. H. Riker, *Federalism: Origin, Operation, Significance*, (Boston USA: Little, Brown and Company, 1964), as cited in E. A. Obi, p. 4

Desire to expand territorial control; and 2) Defence of an external military or diplomatic aggression and aggrandizement.

According to him, these conditions are responsible for why a federal union may be centralized or conversely decentralised (centripetal and centrifugal nature of federalism).

Nevertheless, Wheare's constitutional division of power between levels of government is of utmost important without however neglecting socio-political factors of Livingston. Hence, to take care of both the juridical and socio-political factors, Friedrich posited that:

Federalism seems the most suitable term by which to designate the process of federalising a political community that is to say, the process by which a number of separate political organisations, be they states or any kind of association enter into arrangements for working out solutions, adopting joint policies and making decisions in joint problems or reversely the process through which a hitherto unitary political community as it becomes differentiated into a number of separate and distinct political communities achieving a new-organisation in which the differentiated communities now separately organised become capable of working out separately and on their own, those problems they no longer have in common.⁵⁹

The author, from Friedrich's conceptualisation, argues that he, trying to avoid the pitfalls of the other theorists, fell into a bigger one. According to the author, Friedrich believes that his conceptualisation was as broad and magnanimous as to even incorporate international groups, or association. As a result, Dare sees Friedrich's method as a round-about way to approach a theory by first describing a federal, as any form of co-operation organised on special basis, and then trying to make the definition conditional upon the presence of the below named three factors; such as:

1. An assembly of representatives of units;
 2. An executive establishment of some sort to carry out the decisions of the assembly;
- and

⁵⁹ C. Friedrich, *Federalism: National and International* (USA: Oxford University Pres, 1963) as cited in E. A. Obi, p. 5

3. An arbitral or judicial body interpreting the treaty.

By so doing, he made these three factors the requisites of federalism.

Summarily, scholars are therefore torn between giving a descriptive analysis of what they have observed in some federations and elevating it into a theory and adopting a normative approach meant to set the standards of what federalism should be. But none of the attempts for building a theory and definition of federation are really in vain. Just as Dare puts it succinctly when he said that,

On close examination, it can be observed that no fundamental disagreement exists among the writers in their divergent approaches to the topic. Each approach is a narrow perspective of the broad theme, and non by itself explains the totality of the federal concept on its dynamics.⁶⁰

Nevertheless, the author seems to emphasize here that Kenneth C. Wheare's conceptualisation of federalism seems to stand out as common denominator underlying other conceptualisations of the federal theorists.

K. K. Oriaku,⁶¹ in his article "Federalism, Nigeria and Democracy" in *Federalism and National Integration in Nigeria*, sees federalism as a concept that attempts to give meaning to a form of government in which, rather being concentrated in one body, is decentralised between the central authorities and the component units. Thus, he adopts Blitz definition of federalism when he describes a federal structure as:

One where a number of autonomous regions (states) are united in one sovereign state, with the power of the legislature and executive divided

⁶⁰ L. O. Dare, *Perspective of Federalism in Akinyemi*, Cole and Ofonagoro (eds), *Reading in Federalism* (Lagos, Nigeria: NIIA, 1979), as cited in E. A. Obi, p. 6

⁶¹ K. K. Oriaku, "Federalism, Nigeria and Democracy", in *Federalism and National Integration in Nigeria*, p. 27

between the various governments, and each government autonomous in its own sphere of power acting on the people.⁶²

Oriaku sees the objective of federalism as the sustainability of democracy. Therefore, reiterating Hicks, he argues that the objective of federalism is a form of government for the people by the people – that is, it is inherently democratic. Unlike democracy, totalitarian government is inimical to the existence of federations and principle of federalism.

In his conceptual analysis, Oriaku corroborating Dare argues that the discussion on contemporary federalism generally starts with Kenneth C. Wheare who views federal government as “a constitutional arrangement which divides law making powers and functions between two levels of government.”⁶³ According to the author, Wheare believes that this constitutional form is brought about by circumstances where people are prepared to give up only certain limited powers and wish to retain other limited powers, both sets of powers to be exercised by co-ordinate authority. Therefore, Wheare defines federalism based on three principles: 1) the division of powers amongst the levels of government; 2) written constitution showing the division; and 3) co-ordinate supremacy of the two levels of government with their respective functions.⁶⁴

William Livingston, the author argues, looked beyond narrow confines of legal formulation to the general systemic view. Thus, he saw federalism as, “The product of the interaction of socio-cultural and political factors.” Explaining further, he argues that,

The essential nature of federalism is to be sought for not in the shading of legal and constitutional terminology but in the forces – economic, social, political and cultural – that have made the outward forms of federalism

⁶² Blitz (1965) as cited in K. K. Oriaku, “Federalism, Nigeria and Democracy”, in *Federalism and National Integration in Nigeria*, p. 28

⁶³ K. C. Wheare, *Federal Government*, (New York: Oxford University Press, 1964), p. 11, as cited in K. K. Oriaku, p. 29

⁶⁴ K. K. Oriaku, p. 29

necessary. The essence of federalism lies not in the constitutional or institutional framework but in the society itself....⁶⁵

Based on the conception, the author argues that Livingston distinguishes federalism between a federal constitution, the legal document and federal society.⁶⁶ He sees federal constitution as the arrangement incorporating the federal principles such as division of power, written constitution, check and balance etc. while the federal society, for him, is one with cleavages which are patterned along geographical lines. Thus, for him, federal society is therefore one with a plurality of ethnic groups with different historical, cultural and linguistic backgrounds, but in which each ethnic group occupies a marked and distinct geographical location from the other, for example India and Nigeria.⁶⁷ Federalism for Livingston becomes a device for compromising unity and diversity.

Carl Friedrich was process-oriented as he led his school of thought which stressed process and dynamic instead of a static design. According to the author, he argues that federalism should be seen as a process by which unity and diversity are politically organised, and this process includes like all political phenomena, persons, institutions and ideas.⁶⁸ He agrees to both Wheare's legal or constitutional framework and Livingston's interaction of socio-political and cultural factors. Defining federalism, he argues that,

Federalism seems the most suitable term by which to designate the process of federating a political community, that is to say, the process by which a number of separate political organisations be they state or any kind of associations enter into arrangement for working out solution, adopting joint policies and making decisions in joint problems.⁶⁹

⁶⁵ W. S. Livingston, *Federalism and Constitutional Change*, (Oxford: Clarendon Press, 1956), as cited in K. K. Oriaku, p.29

⁶⁶ K. K. Oriaku, p. 30

⁶⁷ *Ibidem*

⁶⁸ C. Friedrich, *Federalism: National and International* (USA: Oxford University Press, 1963) as cited in K. K. Oriaku, p. 30

⁶⁹ *Ibidem*

From this definition, Friedrich emphasizes that federalism is a process of both aggregation and disaggregation.

Summarily, the concept of federalism in political science literature, is a concept that attempts to give meaning to a form of government in which power, rather than being concentrated in one body, is decentralised between the central authority and the component units that come together out of one or more significant reasons, and to which there exists a constitutional stipulation of the nature, extent and period of exercising the stipulated power to avoid clashes, and a provision for means of compromising when clashes are inevitable.⁷⁰

N. Bagchi, in his article titled “Centre-State Relation in India in the Light of Co-operative Federalism” in *South Asian Journal of Multidisciplinary Studies*, finds Kenneth C. Wheare’s classical definition of federalism very important in expansion of co-operative federalism. In his discussion of the relationship of centre-state government in India federation, Bagchi alleges that federal constitution, as its essence, requires distribution of power between the units of the federation. Arguing further, he says that this ultimately creates a position of inter-relationship between these units. Constitutions of various federal countries have enumerated several patterns for governing the relation between units of federation. These rules which provide for distribution of powers between union and state govern the relation between the union and the states and states inter se; define the area of distribution; and secure by provisions of constitution co-operation between these units.⁷¹

The author advanced two approaches in order to define the term federalism; that is, traditional and modern approaches. Traditionalists place main emphasis on the existence of

⁷⁰ K. K. Oriaku, op. cit. p. 33

⁷¹ N. Bagchi, “Centre-State Relation in India in the Light of Co-operative Federalism”, *South Asian Journal of Multidisciplinary Studies (SAJMS)*, ISSN:2349-7858; SJIF:2.246: Vol. 4 Issue 6, p. 256.

two independent and coordinate authorities enjoying plenary powers within their jurisdictions. Kenneth C. Wheare represents this group by defining federalism as “the method of dividing powers so that the general and regional governments are each within a sphere, co-ordinate and independent.” On the other hand, the modern approach finds recognition and formulation in the writings of scholars like Birch and Vile. They put emphasis on the idea of interdependence. Birch has defined federalism by saying that “federal system of government is one in which there is division of powers between one general and several regional authorities each of which in its own sphere, is co-ordinate with each other.” If this latest definition is compared to that of K. C. Wheare, it would appear that whereas Wheare insists on the independent status of the federating units, in the definition of Birch, there is no such pre-requisite. The modern writers instead talk about “co-operative federalism wherein the relationship between the two seats of governments is one of the mutual co-operation and interdependence, rather than of independence and legal barriers.”⁷²

The author sees the concept – co-operative federalism – as a new federalism⁷³. According to him, it is a concept in which the state, local and federal government share responsibility in the governance of the people. They co-operate in working out details concerning which level of government takes responsibility for particular areas or creating policy in that area. It makes them partners in the exercising of governmental authorities. Corroborating M. P. Jain, he argues that the concept actually helps the federal system, with its divided jurisdiction, to act in union, it minimizes friction and promotes co-operation among the various constituent

⁷² A. Prasad and J. D. A. Desai, *Centre and State Powers Under India Federalism*, (New Delhi: Deep and Deep Publications, 1981, p. 169, in N. Bagchi, “Centre-State Relation in India in the Light of Co-operative Federalism”, p. 259.

⁷³ Definition of Cooperative Federalism: available at www.definition.uslagal.com

governments of the federal union so that they can pull their resources together to achieve certain desired national goals.⁷⁴

Even K. C. Wheare's concept of federalism not only involves division of power between governments who are independent, but also that the two governments with co-ordinate authorities can co-operate with each other within their respective spheres, as indicated by the constitution.⁷⁵ K. C. Wheare argues that the two independent governments directly serve the people; buttressing Bagchi that they should not function as water-tight compartment in matters which concerns the nation as a whole; thus, the two governments must think and act together in a scheme of co-operation.

Kenneth C. Wheare rightly virtualizes that if each government confines completely to itself, many matters will be less efficiently treated because the experience of other states will be neglected. Co-operative federalism is modern approach to federalism wherein the relationship between the two sets of government is one of mutual co-operation and inter-dependent. It entails a multi-dimensional, positive relationship of shared action among the centre and federating units. Modern approach, moreover, gives emphasis on process (on action) rather than on structure. Furthermore, it is need-based; it projects or endeavours to project the will of the people.⁷⁶

In Conclusion, the first section of the literature review is the review of the works of those who reviewed K. C. Wheare's *Federal Government*; therefore, drawing from it important themes or theories that stand as important tenet of true federal system of government. These theories are: division of power; dual levels of government; independent and co-ordinate existence of each level of government; independent and authorities of legislature and

⁷⁴ Indian Constitutional Law by Prof. M. P. Jain, 6th Ed. 2010, published by Lexis Nexis, p. 172, as cited in N. Bagchi, "Centre-State Relation in India in the Light of Co-operative Federalism", p. 266.

⁷⁵ K. C. Wheare, *Federal Government*, p. 2

⁷⁶ N. Bagchi, "Centre-State Relation in India in the Light of Co-operative Federalism. p. 266

judiciary; supremacy of constitution etc. These theories shall be used to advance the working of Nigerian Federal System of government

The second section of this literature review is a very practical one. Here this study reviews the works of those that reviewed Nigerian federal system of government.

Ebegbulem, in his article in *International Journal of Humanities and Social Science* titled: “Federalism and the Politics of Resource control in Nigeria: A Critical Analysis of the Niger Delta crisis” finds K. C. Wheare’s (1953) work very relevant. He believes that the discussion of contemporary federalism seems to have started with Kenneth C. Wheare, who sees federalism as a constitutional arrangement which divides the law making powers and functions between two levels of government in such a way that each within its respective spheres of jurisdiction and competence is independent and coordinate.⁷⁷ According to Wheare, he argues that this constitutional reform is brought about by circumstances where people are prepared to give up only certain limited powers and wish to retain other limited powers to be exercised by coordinated authorities. Wheare adds that coordinate supremacy of all the levels of government with regard to their respective functions remain a cardinal principle of federation. Thus, federalism has emerged as a particular kind of functional arrangement between states for living and working together nationally while presenting a measure of separate identity.⁷⁸

⁷⁷ K. C. Wheare, *Federal Government*, (New York: Oxford University Press, 1946), p. 11, as cited in J. C. Egbulem, “Federalism and The Politics of Resource Control in Nigeria: A Critical Analysis of the Niger Delta Crisis”, *International Journal of Humanities and Social Science*, Vol. 1, No. 12, (sept. 2011), p. 219

⁷⁸ J. C. Egbulem, “Federalism and The Politics of Resource Control in Nigeria: A Critical Analysis of the Niger Delta Crisis”, *International Journal of Humanities and Social Science*, Vol. 1, No. 12, (sept. 2011), p. 219

In a federal system, the author believes that it is imperative that the constituent states/regions have considerable coverage in organizing the forms of government and the procedures of governance. The constituent governments have come to rely on financial support from the central government; thus, negating the principle of financial independence of the state governments as identified by Wheare. In this respect, Wheare states:

.... Finally, if government authorities in a federation are to be really coordinate with each other in actual practice as well as in law it is essential that there should be available to each of them under its own unfettered control financial resources sufficient for the performance of the functions assigned to it under the constitution... it follows therefore that both state and federal authorities in a federation must be given the power in the constitution to have access and control of its sufficient resources.⁷⁹

The author argues that Wheare's definitions and assertions draw us closer to the nature of Nigeria's federation which seems not to tally with such definitions and analysis of true federalism. From Wheare's (1946) definitions and analyses, it could be deduced that in any true federalism, the regions or states have the constitutional rights to control their resources without much interference from the central government.⁸⁰

Juxtaposing this analysis with the case of Nigeria's Niger Delta region's despicable situation as it concerns resource control, you will see that Nigerian kind of federal system has led to the neglect and marginalization of Niger Delta region in the Nigerian socio-economic space, where the bulk of the country's wealth is produced through the exploration and exploitation of crude oil, which is the colossus of Nigeria economic base. In an ideal federation, the author argues that just as in the United States, Canada, Switzerland and Australia, the states are semi-autonomous, virtually independent of the centre. The states should have absolute control of the resources found in their area, but pay royalty to the central government.⁸¹ The

⁷⁹ K. C. Wheare, *Federal Government*, p. 106, as cited in J. C. Ebegbulem, "Federal and the Politics of Resource Control in Nigeria...", p. 220.

⁸⁰ J. C. Ebegbulem, *loc. cit.* p. 220

⁸¹ *Ibid.* p. 221

protagonist of true federalism, according to the author, argues that if the regions of the first republic had control of the agricultural production produced in their areas, and got as high as 50 percentage derivation from whatever accrued to the federation account as revenue, why then should the case differ when it comes to the Niger Delta region. The people of Niger Delta find it inexplicable and therefore unacceptable that this time the practice of resource control was jettisoned, while derivation was drastically reduced;⁸² therefore, despite many decades of oil production and hundreds of billions of dollars of oil revenue, the inhabitants are still poor and wretched, while their land is destroyed.

The author sees fiscal federalism and proper revenue allocation in Nigeria as a way forward; thus, he argues, “Currently, Nigeria operates a federal system of government with a federal government, 36 states and FCT and 774 local governments. In such a multilevel arrangement, fiscal responsibilities are vested (and shared amongst) in the central, state and local governments.”⁸³ The author then made recommendation of: (1) division of powers among levels of government; (2) coordinate supremacy of each level of government; (3) Financial autonomy of each level of government.⁸⁴

In his article titled: “Federalism in Nigeria: The Past, Current Peril and Future Hope,” in *Journal of Policy and Development Studies*, Aderonke Moyekodunmi argues that contemporary federalism seems to have started with Kenneth C. Wheare, who saw federalism as a constitutional arrangement which divides the law-making powers and functions between two levels of government in such a way that each within its respective sphere of jurisdiction

⁸²*Ibidem*

⁸³*Ibid.* p. 223

⁸⁴*Ibidem.*

and competence, is independent and coordinate.⁸⁵ For him, Kenneth Wheare provides classical definitions of federal government when he defines it as a system of government in which sovereign is divided between the central and states governments. Corroborating Wheare, he says that this form of governments, central and states/regions governments are co-ordinate in the sense that neither level of government is subordinate to the other in legal authority. Still on the definition, the author says that Wheare concludes by saying that in that system of government, each level of government should be limited to its own sphere and, within that sphere, should be independent of the other. This system of government can therefore be contrasted with a unitary system in which the component units are legally subordinate to the central government.⁸⁶

The Aderonke sees Wheare's concept of federal government as an ideal for many African states when he argues that,

...a federal system of government often arises from the desire of the people to form a union without necessarily losing their identities. This, federalism seems to provide an attractive system of government especially in the context of ethnic pluralism found in many African states.⁸⁷

Due to her diversity issues, the author sees Wheare's concept of federalism relevant and necessary for managing the country's ethnic diversity as reflected in the adage "Unity in Diversity".

Nigeria, the author argues, being the most ethnically diverse country of the world, is a creation of the British colonial master. The issue, he continues, is that Nigeria federalism was not arrived at through social contract or plebiscite. It was a model agreed to by a handful of

⁸⁵ K. C. Wheare, *Federal Government*, (New York: Oxford University Press, 1953), p. 11, as cited in A. Majekodunmi, "Federalism in Nigeria: The Past, Current Peril and Future Hopes", *Journal of Policy and Development Studies*, Vol. 9, No. 2 (Feb., 2015), p. 108.

⁸⁶ K. C. Wheare (1967), as cited in A. Majekodunmi, "Federalism in Nigeria..." (1915), p. 108

⁸⁷ A. Majekodunmi, "Federalism in Nigeria: The Past, Current Peril and Future Hopes", *Journal of Policy and Development Studies*, Vol. 9, No. 2 (Feb., 2015), p. 108.

political leaders at the Pre-Independence London Constitutional Conference.⁸⁸ Thus, the choice of federalism as the preferred system of government for Nigeria was not accidental. The eventual transformation of Nigeria into a federal state started in 1954 as a result of the 1953 Lyttleton's constitutional conference.⁸⁹

This constitution gives birth to three separate territories or regions as Lagos, southern and Northern protectorates; and as in a federal structure adequate autonomy was given to each levels of government to enable it perform its responsibility, without frustration. As a device for the containment of intra-societal pluralism, federalism offers good prospect for achieving political stability of especially heterogeneous societies.⁹⁰

Like all federal system, Nigeria federalism since its adoption in 1954 has been operated in both fiscal and political contexts. Fiscal context consists of the mode of exploration and distribution of resources while the political context relates to putting in place appropriate structure that would facilitate the self-realization of component units. One basic fact is that the operation of federalism in both contexts must be designed in such a way as to avoid marked inequality among the component units in power and resource matrix. Just as Wheare alleges the financial subordination of units or marked inequality between them in terms of wealth, population and landmass constitute potential destabilizing factors in federations and may make an end of federalism.⁹¹

The current state of federalism in Nigeria is simply a total neglect of its extra-ordinary diversities, which constitutes one of its extra-ordinary complexities. The author listed these as the reasons why federalism seem impracticable in Nigeria: 1) Nigerian federalism was not

⁸⁸ *Ibid.* p. 110

⁸⁹ *Ibidem*

⁹⁰ *Ibidem*

⁹¹ K. C. Wheare, *Federal Government*, (New York: Oxford University Press, 1963), also in E. C. Awa, *Issues in Federalism*, (Benin City: Ethiope Publishing Corporation, 1976), as cited in A. Majekodunmi, "Federalism in Nigeria: The Past, Current Peril and Future Hopes", *Journal of Policy and Development Studies*, Vol. 9, No. 2 (Feb., 2015), p. 111.

arrived at through social contract or plebiscite, rather through agreement of handful of political leaders; 2) federalism (as postulated in Nigeria's 1999 constitution) is very sick, unbalanced and lopsided system especially in terms of the over-centralization of power; 3) national integration has remained an illusion even since its institution after independence; 4) ethnicity has been elevated by some people to the level of religion, and so, Nigeria has remained a state rather than a nation; and 5) pronounced injustice in the Nigeria federalism.⁹²

The Aderonke notes that in this very current state of Nigeria federalism Wheare's principle of federalism can no longer hold, because in federal polity, there is an inevitable division of power between the central and component units. But Nigerian federal government has usurped the powers of regional/state governments which if not properly addressed could lead to various forms of crises which are bound to crop up.

Future hope of Nigeria federalism, according to Aderonke, lies not just in application of Wheare's principle of federalism or the practice of true federalism, but on a kind of federalism (as a political philosophy) which aims to create intrinsic or inherent political, social and economic asymmetry vis-à-vis ethnic heterogeneity. For him, to have a situation of masters and servants, or a situation of graduated citizenship is a negation of the true federalism. Thus, he supports the idea of restructuring the present constitution to address some weakness inherent in Nigeria federal system to march Wheare's principle or concept of federalism. For him, this constitutional reform should be done through ethnical inclusive national dialogue which should bring together key Nigeria actors and international community in a synergy for democratic consolidation in Nigeria.⁹³ Unlike previous pacts, which were intra-elite, the new pact should be broad-base so that people can identify with it

⁹² A. Majekodunmi, "Federalism in Nigeria: The Past, Current Peril and Future Hope." p. 112

⁹³ *Ibid.* p. 116

as theirs. This project would produce in Nigerians the spirit of consensus and commitment present in the Americans in 1787 when their union was forged.⁹⁴

Arguing further on the future hope of Nigeria federalism, the author says that in restructuring Nigeria Federalism, thought must be given to the idea of basing it on ethnic nationalities. As a framework for a renewed federalism in Nigeria, he proposes the construction of homogeneous federating units for the top 10 most populous ethnic nationalities that have contiguous territories, and a maximum of 15 multi-ethnic federating unites (states) for the other ethnic groups. As illustration, the author says that there will be homogeneous ethnic-based states for the Hausa, Igbo, Ijaw, Kanuri, Yoruba, etc. while others will constitute a maximum of 15 multi-ethnic states (federating units). Ethnic nationality in a heterogeneous state will constitute an autonomous region with due constitutional jurisdictions.⁹⁵ Corroborating Uhunmwangho and Ekpu, the author argues that an autonomous region shall have concurrent jurisdiction with the heterogeneous state over national resources (mineral, oil, gas, etc.) found in its territory, but shall exercise exclusive jurisdiction over primary education, culture, language and traditional institution. Depending on its capacity, an autonomous region may also establish its own autonomous regional police force. If autonomous region cannot have its police force, it could contract the state police for its policing duties. A charter of Rights and Freedom protecting minority rights will anchor this renewed federalism.⁹⁶ Through this, all traces of unitary system of government should be removed from Nigeria's form of federalism and allow the states the degree of freedom and autonomy consistent with federal principle which K. C. Wheare propounds.

⁹⁴*Ibidem*

⁹⁵*Ibidem*

⁹⁶ S. O. Uhunmwangho, and C. E. Ekpu, "Federalism: Problems and Prospects of Power Distribution in Nigeria", *Journal of Sustainable Development in Africa*, Vol. 13, No. 5, 2011, as cited in A. Majekodunmi, "Federalism in Nigeria...", p. 116.

In his article titled: “Restructuring Nigeria: A Call to Practice True Federalism,” Theodore Olumekor highlights the importance of restructuring skewed Nigerian constitution to reflect true federalism. He started by defining restructuring as rearrangement or reformation. While defining federalism, he borrows Wheare’s principle of federalism because of its classical nature; thus, he defines federalism as “the method of dividing powers so that general and regional governments are each within a sphere, co-ordinate and independent of one another.”⁹⁷ Therefore, according to him, Wheare’s proposition posits that the federal principle essentially entails a legal division of powers and function, which is exemplified in federalism practiced by the United States of America.

In summary, the author projects the basic features of Wheare’s concept of federalism as:

- Presence of 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 coordinate and independent.
- Each levels of government must be financially independent.

These features would afford each level of government the opportunity of performing their functions without depending or appealing on others for financial assistance.

The federating states (states and community governments) maintain autonomy over the most basic issues that affect their people, which include security, education, resource control, taxes, infrastructural development, elections, judiciary, health care etc. the federal government responsibility is usually limited to just foreign affairs, monetary policy,

⁹⁷ K. C. Wheare, *Federal Government*, (New York: Oxford University Press, 1964), p. 10, as cited in T. Olumekor, *Restructuring Nigeria: A Call to Practice True Federalism*, (Unpublished document, 2017), retrieved from <https://greymile.wordpress.com/2017/09/21/restructuring-nigeria-a-call-to-practice-true-federalism>

immigration, customs and military affairs. All powers not expressly given to the federal government by the constitution is reserved for the state government.⁹⁸

He argues that countries that truly satisfy these basic conditions in practice and not just in principle or theory is said to be a federal state; which comes with certain principles that guarantee sustainability of economic and political inclusive institutions.

Juxtaposing Wheare's concept of federalism with Nigeria system of federal government comparatively, the author concludes that Nigerian federalism operates only in papers. Thus, he argues that a true federal structure presently is not operated in Nigerian space, the reason being that the federal government has assumed superiority over the state government ever since the intervention of the military. Nigeria practises unitary system of government where the constitution promotes over-centralized authority in the sense that nothing substantial can happen without the sanction of the president. Just unlike Wheare's federal principle, the central government does sustain the state by giving them monthly allocation. As a result, Nigeria economy as of today suffers greatly for it, as it is evidence in most states inability to pay their workers' salaries nor embark on any meaningful projects.

The Olumekor believes that true federalism just like the one expounded by Wheare can make Nigeria entity and its integral parts more efficient, productive, functional and egalitarian. He believes that the true federalism can be achieved through real restructuring of Nigeria constitution to reflect true federalism, and giving power back to the federating states. Hence, the clarion calls for the amendment of Nigeria constitution.

This paper, however, disagrees with the author over the method he adopted to make true practice of federalism in Nigeria possible. In his comparative studies of the four countries whom he exemplified as true federalists, Wheare does not put the amendment of constitution strictly in the hands of the law-makers; rather, the law-makers are part of the whole

⁹⁸*Ibidem*

amendment bodies. Wheare made it crystal clear that the bulk of the amendment lies in the hands of the people or electorates through the process of referendum. Therefore, the on-going constitution amendment by legislature that is skewed to favour a particular region of the country with numerical strength over others bears no moral stand and can never do justice in achieving constitutional amendment that reflect true federal system of government that will be structurally egalitarian as proposed by K. C. Wheare in his work, *Federal Government*.

Odisu Terry Andrew,⁹⁹ in his article “Federalism in Nigeria: A Critique” in *Journal of Political Science and Public Affairs*, alludes that there is contradiction in the practice of federalism in Nigeria. For him, what is obtained in Nigeria as federalism or federal system of government is a disguised unitary system.

As a multi-ethnic state, Odisu believes that federalism should be ideal system of government for Nigeria, and he believes too that federalism was practiced by nationalists who took over the reins of power from imperialists till the military intervention in politics. He however sees the ideal federalism for Nigeria as the one propounded by K. C. Wheare. According to Odisu, Wheare’s federalism is the division of governmental functions between the centre and constituent units such that each units can develop at its own pace.¹⁰⁰ Asan essential of federalism, Odisu argues that neither the centre nor the constituent units are subordinate to each other; the two are coordinate and independent of each other. For him therefore the goal of federalism is to thwart the threat to individually independent but militarily weak states or federating units as well as guaranteeing their collective security. As a framework for the co-existence of unity in diversity, it realises the difference of ethnicity, economy, religion, language and other factors but strives to build unity of the differences.

⁹⁹ T. A. Odisu, “Federalism in Nigeria: A Critique” in *Journal of Political Science and Public Affairs*, Vol. 3, Issue 3, (2015).

¹⁰⁰ K. C. Wheare (1946), p. 11, as cited in Odisu, T. A. (2015), p. 1

But Odisu's argument is that federal structures have never existed in Nigeria society. In short, for Odisu, the Nigeria's experience in terms of how federalism is operated, is radical departure from the theory of federalism as idealised by K. C. Wheare; hence, Nigeria only operates federalism on paper.

Odisu concludes by recommending that Nigeria as a matter of importance and necessity should adhere to the following tenets of federalism:

1. The 36 states be collapsed into six regions and full autonomy granted to them.
2. State police be created to fight crimes in the states.
3. Six premiers be elected to oversee the activities of the state governors.
4. State ministries of education should fix marks for admission into tertiary schools owned by them.
5. Each state to determine the minimum wage it can pay.
6. All resources found in the states to be explored and managed by them and are expected to pay an agreed percentage as tax to the centre. This will make the centre to be unattractive and presidential election not a do or die affair.¹⁰¹

B. E. N. Thom Otuya, in his article titled "strengthening Nigeria's federalism for National Development" in *Mediterranean Journal of Social Science*, sees federalism as a form of government that is often adopted by countries with great diversity in geography, language, culture and religion, that guarantees, like united states, Australia, Canada etc., political and economic stability when properly practiced. But on Nigeria, the author believes that federalism has been unable to fully impact on her actual development, thus since its

¹⁰¹ T. A. Odisu, p. 2

introduction by Lyttleton in 1954, federalism in Nigeria has been bedevilled by myriad of problems. Therefore, in the introductory part of his work, he argues:

Our inability to conform to the principles and tenets of federalism, where each level of government must be coordinate and independent of one another, is having an adverse effect on our nation building, political and economic stability and the determined effort to fight pervasive corruption in Nigeria.¹⁰²

This is as a result of distorted nature of Nigerian federal constitution; consequently, impacting negatively on her national development, political stability and economic growth.

The author opines that Kenneth C. Wheare concept of federalism is a panacea to Nigeria's failed federalism when he argues that,

...there is no significant feature in Nigeria that shows that dual sovereignty principle of two coordinate levels of government in accordance to Kenneth C. Wheare's theory of federalism. This lack of sovereignty of the state governments has hampered them from taking initiatives that will sustain and advance their economies and the welfare of their people.¹⁰³

Thus inability to abide by K. C. Wheare's federal principle has become her greatest undoing.

This is because the states (federating units) in Nigeria depend on federal monthly financial allocation for survival without any independent entrepreneurial adventures.

Looking at the origin and evolution of Nigeria federal system of governments the author concludes that one striking fundamental issue is that states in Nigeria are not created by their ability to sustain themselves and people through her natural and human resources endowments. The economy of the states is not self-sustaining, rather federal allocation of funds is shared to all states to sustain them, thereby making the state governments dependants/subordinators of federal government. Thus,

In Nigeria, states are not created due to their viability, rather due to their ability to collect monies from the federal government. States here are not challenged to develop their economies. They are not competitive rather

¹⁰² B. E. N. Thom Otuya, "Strengthening Nigeria's Federalism for National Development", *Mediterranean Journal of Social Sciences*, Vol. 4, No. 5, July, 2013, p. 27.

¹⁰³ *Ibid.* p. 28

whether they labour or not, at the end of the month, they get federal allocation.¹⁰⁴

The author, however, used K. C. Wheare's principle of federalism as a reference point to establish what is missing in Nigeria's federal system of government. He was able to come up with the following points:¹⁰⁵

1. Each levels of government in Nigeria are not coordinate and independent. The national government controls the resources domiciled in federating units (states), and deprive them rights to own and control their own resources. The state depends on federal governments for survival.
2. Each levels of government are not financial independent. State always look up to federal government for financial assistance
3. The federal or national government are virtually in charge of every function of governmental affairs. There is usurpation of states' functions by the federal government.
4. States are not created based on their viability and ability to sustain themselves. Rather they are created to be sponsored by federal government's allocation of fund on monthly basis.

Otuya believes that true federal system of government is believed to be the best institutional form of government to advance national development and soothe country with renowned diversity. United States of America, Canada, Switzerland and Australia cases have justified its efficiency. Therefore, if the practice of federalism is strengthened in Nigeria, she believes that it will facilitate or precipitate national development. The author believes that Nigeria's federalism can be strengthened when:¹⁰⁶

¹⁰⁴*Ibid.* p. 31

¹⁰⁵*Ibidem*

¹⁰⁶*Ibid.* pp. 32-33

- The states are created due to her ability to sustain themselves.
- All levels of government should be coordinate and independent.
- The state police are created to manage the internal security of the states.
- Each state has absolute control of her wealth and resources
- Nigeria remains secular in both religion, and in language, and English adopted as a lingua franca. Thus, the great need to detribalise Nigeria.
- Strengthening of the Nigeria's constitution to reflect the federal status will go a long way in strengthening her federalism, and enhancing her national development. There is need for constitutional reform as a result of disadvantaged or disfavoured nature of the present constitution to certain ethnic, cultural and linguistic groups in Nigeria's federation.
- Two party systems are imposed maybe because of the need for strong opposition.
- Strengthening the judiciary for independent and effective performance.

The author concludes by recommending that the present constitution be amended to: 1) merge states to the point of enabling them to sustain themselves; 2) all the levels of governments should be coordinate and independent of each other; the concurrent and executive list should limit the powers and functions of the federal government to foreign affairs, defence, import and export duties and currency regulation; 3) the creation of state's police to manage internal security; 4) each state having absolute control over her wealth and resources, and make contributions to the federal government; 5) two party system to be implemented for more viable opposition; and 6) the reduction of tribal and ethnic sentiments and expedite national integration.¹⁰⁷

¹⁰⁷*Ibid.* p. 34

Akindele S. T. and Olaopa O. R., in their article titled: “The Theory and Practice of Federalism as a Structural Mechanism of Governance: How Adequate for Gender Struggle and Representation”, in *Journal of Anthropologist* see federalism as the one of the organisations which has weathered the test of time in most democratic policies of the world. Therefore, it is a common thing to now accord federalism the characteristics of polity building. Hence, corroborating Schmitt, the authors opine that “the benefits of statehood – liberty and autonomy – are gained through... federal (political) arrangement.”¹⁰⁸ This benefit necessitates the widespread acceptance of this political arrangement; thus, Schmitt claims further that, “nearly 40 percentage of the world’s population currently lives within political system which is formally federal.” He continues, federalism is “among the most widespread of the various revolutions which are changing the face of the globe.”¹⁰⁹ The acceptance can be linked to its characteristics to provide opportunity for mutual understanding of the terms of co-habitation by the federating units.¹¹⁰ Therefore, Schmitt argues:

...the federalism has emerged as a means of accommodating the growing desire of the people to preserve or revive the intimacy of small societies, and the growing necessity for larger combination to mobilize the utilization of common resource better.¹¹¹

Conceptually, the author sees federalism as a political system or arrangement erected on two (or more) levels of government. And, these levels of government deal with common and

¹⁰⁸ N. Schmitt, *History of Constitutional Making: European and Australian Experience*. In *Friedrich Ebert Foundation: Constitution and Federation*. (Lagos: Friedrich Ebert Foundation, 1997), chapt. 2, p. 19, as cited in S. T. Akindele and O. R. Olaopa, “The Theory and Practice of Federalism as a Structural of Governance: How Adequate for Gender Struggle and Representation in Nigeria,” *Anthropologist*, Vol. 5, No. 3 (2003), p. 169

¹⁰⁹ *Ibid.* p. 24 as cited in S. T. Akindele and O. R. Olaopa, p. 169

¹¹⁰ G. Wender, *Forward (to) Constitutions and Federalism*, (Lagos: Friedrich Ebert Foundation, 1997), p. vi, as cited in S. T. Akindele and O. R. Olaopa, p. 169

¹¹¹ N. Schmitt, *History of Constitutional Making...* p. 24, as cited in S. T. Akindele and O. R. Olaopa, “The Theory and Practice of Federalism in Nigeria”, p. 169.

territorially diverse issues and policies.¹¹² Thus, corroborating Livingstone, they argued that it is a spectrum because it is not “absolute but a relative term, there is not specific point at which society ceases to be unified and becomes diversified. All countries fall somewhere in the spectrum which springs from a theoretically wholly integrated society at one extreme to theoretically wholly diversified at the other.¹¹³

On the theoretical level, the authors admit the fact that various contending theories have been propounded by scholars in the attempt to analytically bring to clearer perspectives the nitty-gritty of federalism as a structural mechanism for the governance of men within various polities that form part of the physiology of global political community. Of the entire theorists, the authors see K. C. Wheare’s theory as an indispensable point of departure. According to them, the adoption of Wheare’s work as the point of their analytical take-off is anchored on the scholars’ universal acclamation of K. C. Wheare as the reputed father of (modern) federalism. Wheare’s contribution to federalism was based in its entirety in the American 1787 federal model now forms the bedrock of all federal politics.¹¹⁴ His doctrine of federalism, which, while recognising the inevitability of conflicts among the components of the federation or any federation, prescriptively advocates mechanism for constitutionally dealing with such conflicts include the following:

- The division of governmental responsibility between levels of government.
- A written constitution spelling out this division and from which federal and state authorities derive their powers.

¹¹² E. O. Awa, *Issues in Federalism*, (Benin: Ethiope Publishing Company, 1973), as cited in S. T. Akindele and O. R. Olaopa, p. 169

¹¹³ W. S. Livingstone, “A Note on the Nature of Federalism, p. 25, in J. P. Meekison (Ed.), *Canada Federalism: Myth or Reality*, Toronto: Methven (1985), as cited S. T. Akindele and O. R. Olaopa, p. 170

¹¹⁴ S. T. Akindele, “Intergovernmental Relations as a Mechanism for Coping with the Complexities of Federalism, *Ife Social Science Review*, Vol. 12, No. 1&2: 1995b, p. 92, S. T. Akindele and O. R. Olaopa, p. 171.

- Judiciary independent of both levels of government that act as an arbiter in case where there are conflicts over jurisdictions enumerated in (1) above.
- Federal arrangement emphasizing co-equal supremacy of the various levels of each in its respective field of operation... the citizens of the federation being concurrently under two authorities and owing loyalties to them.¹¹⁵

In summary, Wheare views federalism as a form of government which embodies “the federal principles”.¹¹⁶ However, the workability of these principles is contingent on the recognition of the dual prerequisites of federalism which according to Wheare stated that:

.... First, the communities of states concerned (i.e. federating units) must desire to be under a single independent government for some purposes.... Secondly, they must desire at the same time to retain or establish independent regional government in some matters at least.¹¹⁷

On how federalism as a structural mechanism of governance become adequate for gender equality and representation, the authors identify with Akindele’s “a healthy system of intergovernmental relations (IGR) as a perfecting mechanism in a federal political arrangement like Nigeria.”¹¹⁸ Arguing further they said that “it treats all levels of government in federalism as equals.”¹¹⁹ This mechanism, they said, “allows the greatest freedom of choice particularly at the local level (of the federal political arrangement) while avoiding “beggar-my neighbour decision.”¹²⁰ In fact, according to Akindele (1995b), IGR is an appropriate antidote to the non-realistic nature of K. C. Wheare’s classical theory of

¹¹⁵ K. C. Wheare, *Federal Government*, (London: Oxford University Press, 1964), as cited in S. T. Akindele and O. R. Olaopa, p. 171.

¹¹⁶ R. J. Van Loon, and M. S. Whittington, *The Canadian Public Political System: Environment, Structure and Process*, p. 143, as cited in S. T. Akindele and O. R. Olaopa, p. 171

¹¹⁷ K. C. Wheare, *Federal Government*, pp. 35-36, as cited in S. T. Akindele and O. R. Olaopa, p. 171

¹¹⁸ S. T. Akindele, Intergovernmental Relations as a Mechanism for Coping with the Complexities of Federalism. p. 96, as cited in S. T. Akindele and O. R. Olaopa, p. 173

¹¹⁹ Ibidem

¹²⁰ Ibid. pp. 173-74

federalism vis-à-vis the realities of today's multiplicities of asymmetrical goals, demands and interest within federating political systems.¹²¹

Odion I. P., in his article, "A Critical Assessment of Nigeria Federalism: Path to a True Federal System," sees Nigeria extra-ordinary diversities as resulted to her extra-ordinary complexities. The complexities, for him, are a reflection of the avalanche of ethno-cultural and religious groups co-habiting the territory and the intricacies of interaction among them. He sees the amalgamation of southern and northern protectorate as the origin of pluralism of religion and ethnicity in Nigeria.¹²²

Perhaps in cognizance of the unavoidable threat which diversity portends to future political stability of the emerging multination-state Nigeria, the founding fathers were desirous to establish a system of government that would neutralise the political threat and accommodate the divergent interest of the various ethno-cultural groups. This desire, the author argues, found expression in the federal system of government as a diversity management technique. The 1999 constitution, the author argues, seems to have rubbished the true federal principle and has been practiced in an awkward manner; subsequently, has set the country's nascent democracy in a bad precedence with ethno-cultural and religious conflicts that pervade the social and political system.¹²³

Odion sees the definition of federalism as uncertain because of its universal unacceptability; thus, the scholars' approach to the study is usually based on individual background and inclination. Nevertheless, Odion sees K. C. Wheare's definition as the most cogent, clearly expressed and most acceptable definition. Reiterating Wheare, he defines it as the method of

¹²¹ S. T. Akindele, "Intergovernmental Relations as a Mechanism for Coping with the Complexities of Federalism, p. 92, as cited in S. T. Akindele and O. R. Olaopa, p. 174.

¹²² I. P. Odion, *A Critical Assessment on Nigeria Federalism: A Path to a True Federal System*, (Potiskum, Yobe: Unpublished Paper, 2011), p. 1

¹²³ *Ibidem*

dividing powers so that general and regional governments are each, within a sphere, co-ordinate and independent of one another.¹²⁴ Therefore, the author contends that Wheare's federal principle essentially entails a legal division of powers and functions among levels of government with a written constitution guaranteeing and reflecting the division. The author concludes that Wheare's basic tenet or elements of federalism will be used as a template to determine Nigeria federalism and the extent to which Nigeria has fulfilled it. The basic tenets are listed as follows:

- There must be at least two levels of government and there must be constitutional division of powers among levels of government.
- Each level of government must be co-ordinate and independent.
- Each level of government must be financially independent. He argues that this will afford each level of government the opportunity of performing its functions without depending or appealing to the others for financial assistance.
- There must be Supreme Court of the independent judiciary. He argues that in terms of power sharing, there is likely to be conflict hence, there must be independent judiciary to resolve such case when it arises.
- In terms of the amendment of the constitution, no level of government should have undue power over the amendment process.¹²⁵

He maintains that, once a country is able to satisfy these conditions such country is said to practise federalism.

Odion however found the thought of Chief Obafemi Awolowo in his book:¹²⁶ "*Thought on Nigeria Constitution*", very relevant in his critical analysis of Nigeria's federalism practice.

¹²⁴ K. C. Wheare, *Federal Government*, (London: Oxford University Press, 1964), p. 10, as cited in I. P. Odion, *A Critical Assessment of Nigeria Federalism: A Path to a True Federal system*, p. 1.

¹²⁵ *Ibid.* p. 2

Two of these stand out in his thought: 1) 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; and 2) as soon as a federal constitution is introduced in which each linguistic and national group is recognised and accorded regional autonomy, any bitterness and hostility against the constitutional arrangement must disappear.

Placing these two important contributions of these two prominent scholars in the field of politics side by side with Nigeria's federalism situation, the author was able to come up with the following conclusions:

1. Nigeria model of federalism made the federal government the “master in relation to the dependent state governments”. This goes against the fundamental principles Wheare propounded; the fundamental characteristics of federal system according to Wheare is that neither the central nor the regional governments are subordinate to each other, but rather the two are co-ordinate and independent. Thus, the federal and state governments should be autonomous in its own sphere, but the issue is that autonomy has never existed in Nigerian federalism, and this continues to hamper the political stability in the country.
2. The issue of financial autonomy as propounded by K. C. Wheare has never been achieved between the levels of government in Nigerian model of federalism. Federal government interventions through national financial policies, grant-in-aids among others, increase the power of the federal government and make the federating units subordinate of the federal government.

¹²⁶O. Awolowo, *Path to Nigeria Federalism* (Ibadan: Oxford University Press), pp. 48-49 as cited in I. P. Odion, *A Critical Assessment of Nigeria Federalism: A Path to a True Federal system*, p. 5.

3. Another issue is the bolstering of local government as a third tier of government. The states refused to allow local governments any measure of autonomy.
4. Another issue is resource control. True federal principle states that regions/states should be granted rights to control their wealth and resource and pay loyalty to federal government. Reverse is the case in Nigeria, consequently inter-ethnic crisis and political instability in Nigeria.¹²⁷

As a recommendation, the author sees true federalism as propounded by K. C. Wheare as a way forward. To achieve this true federal system, the author recommends structural change as it may likely usher in an atmosphere of peace, stability, harmony and progress in the polity. He believes that the structural change should be done through *conference of Nigeria Nationalities*.

Abah, N. C., in his article titled “Federalism, Democracy and the National Question in Nigeria,” in *Journal of Research in Business and Management*, argues that both democracy and federalism promote pluralism and dispersal of power which is good for a multi-ethnic society like Nigeria. He sees the concept of federalism not only universally unacceptable but unsettled. However, he believes that what exists in the literature seem to take root in the work of the classical scholar, K. C. Wheare¹²⁸ who defines federal principle as a method of dividing governmental power so that the central government and component governments are each within a sphere co-ordinate and independent. In that work, Wheare also argues:

If the governmental authorities in a federation were to be really co-ordinate with each other, in actual practice as well as in law, it is essential that there should be available to each of them, under its own unfettered control, financial resource sufficient for the performance of the functions assigned to it. It will do no good allotting functions to the federal or to

¹²⁷ I. P. Odion, pp. 6-10.

¹²⁸ K. C. Wheare, *Federalism Government*, (London: Oxford University Press, 1964), p. 10, as cited in N. C. Abah, “Federalism, Democracy, and the National Question in Nigeria,” *Journal of Research in Business and Management*, Vol. 4, Issue 3 (2016), p. 26

state authorities and devising legal safeguards so each should be limited strictly to the performance of its respective functions unless at the same time adequate provision has been made so that each authority can afford to do its job without appealing to the other for financial assistance.¹²⁹

Another classical definition from a classical scholar of constitutionalism which the author found worthy articulating here is that of Ben. O Nwabueze, who defines federalism as:

An arrangement whereby powers within a multinational country are between a federal or central authorities, and a member of regionalised governments in such a way that each unit including the central authorities exists as a government separately and independently, from the others, operating directly on person and properties within its territorial area, with a will of its own and its own apparatus for the conducts of affairs and with an authority in so matters exclusive of all others. In a federation, each government enjoys autonomy, a separate existence and independent of the control of any other government. Each government exist, not as an appendage of another government (e.g. of the federal or central government) but as an autonomous entity in the sense of being able to exercise its own will on the conduct of its affairs free from direction by any government. Thus, the central government on the one hand and the state government on the other hand are autonomous in their respective sphere.¹³⁰

Going by these definitions, the author alludes that Nigeria can barely be classified as a federation, because, over the years, both the states governments and all 774 local government councils totally depended on the central government for their finance and sustenance; and the worst, when many state governments, in addition to their shares of the federation (allocation) account as disbursed by the Federation Account Allocation Committee had required bailout funds to be able to pay part of the salaries of their workers.

This emphasizes the dilemma which federal principle ran into, in which a controversial supreme court judgement cited in Nigerian Weekly Law Report,¹³¹ where it was stated that

¹²⁹ *Ibid.* pp. 10-11

¹³⁰ B. O. Nwabueze, *Federalism in Nigeria Under the Presidential Constitution*, (London: Sweet and Maxwell, 1983) as cited in N. C. Abah, "Federalism, Democracy, and the National Question in Nigeria," *Journal of Research in Business and Management*, Vol. 4, Issue 3 (2016), pp. 26-27

¹³¹ Nigeria Weekly Law Report, 200, as cited in N. C. Abah, "Federalism, Democracy, and the National Question in Nigeria," p. 27

“A federal government will mean what the constitution writers say it means, and this can be procured within the four walls of the constitution and the four walls only.” The author believes that his lordship obviously erred in this historic interpretation of the concept of federalism. In a quick response, according to the author, Nwabueze, who incidentally is also a law professor on constitutionalism, states that his lordship’s rationalisation simply reduces “federalism” or “federal government” to a concept without a specific meaning. It empties it of all contents for it would mean whatever a particular constitution, by its provisions, says it is. That would be absurd. Federalism like any other concept must have some core or basic principle which defines its essence or it does not exist as a constitutional or political concept. Federalism cannot mean just what a draftsman or judge chooses it to mean. It has a permanent core meaning.¹³² Corroborating Livingstone, the author argues that the essence of federalism lies not in the constitutional or institutional structure but in the society itself. Hence, federal government is simply a device by which the federal qualities of a society are articulated and protected.¹³³ According to Dare,¹³⁴ the author argues that a federal society is one with a plurality of ethnic groups with different historical, cultural and linguistic background but in which each ethnic group occupies a marked and distinct geographical location from the others. Federalism therefore, becomes a device for compromising unity and diversity; or according to Jinadu, for maintaining unity while also preserving diversity.¹³⁵ That device is possessed of certain inherent qualities which include:

- A written constitution

¹³² B. O. Nwabueze, *How President Obasanjo Subverted Nigerian Federal System*, (London: Gold Press, 2007), as cited in N. C. Abah, p. 27

¹³³ W. A. Livingstone, *A Note on the Nature of Federalism* in A. B. Akinyemi et al (eds.), *Reading on Federalism* (Lagos: NIIA, 1979) as cited in N. C. Abah, p. 28

¹³⁴ L. O. Dare, *Perspective on Federalism* in A. B. Akinyemi et al (eds.), *Reading on Federalism* (Lagos: Nigerian Institute of International Affairs, 1979), as cited in N. C. Abah, 28

¹³⁵ L. A. Jinadu, *A Note on Theory of Federalism* in A. B. Akinyemi et al (eds.), *Reading on Federalism* (Lagos: NIIA, 1979) as cited in N. C. Abah, p. 28

- Division of powers between different levels of government,
- Equality of status for both levels of government, of which each has direct relationship with the people.
- A bicameral legislature and absolute majority vote at the centre, and
- Independent of Supreme Court or the judiciary.¹³⁶

An important point in the review is the author's articulation of the compatibility of federalism and democracy. Thus, some scholar has doubted it, while some have argued that it can be operated effectively in totalitarian or military regime. The author, however, doubts the compatibility of totalitarianism and democracy, but alleges that federalism and democracy are compatible by arguing that they are implicitly related and mutually complement and are compatible to each other. Corroborating Treisman, he argues that "it would indeed be impossible, to conceive of the successful practice of federalism under a non-democratic system ..., both federalism and democracy promote pluralism and dispersal of governmental powers. From Montesquieu through Madison, up until contemporary times, theorists in federal systems possess many advantages not only for democratic participation and accountability but also for public policy and governmental effectiveness as well as for the representation of territorially based ethnic, cultural and linguistic differences."¹³⁷ Therefore, he argues that federalism facilitates the practice of democracy so also does democracy facilitates the practice of federalism. The very nature of a federal society with its differentiation of groups conduces to democracy because group competition and the probability of coalition formation is the true essence of democracy.¹³⁸ Thus, corroborating Wheare who equals federalism with democracy, the author argues that true federalism can

¹³⁶ N. C. Abah, Loc. cit. p. 28

¹³⁷ D. Treisman, *The Architecture of Government: Rethinking Political Decentralisation* (New York: Cambridge University Press, 2007) as cited in N. C. Abah, p. 29

¹³⁸ N. C. Abah, "Federalism, Democracy, and the National Question in Nigeria," *Journal of Research in Business and Management*, Vol. 4, Issue 3 (2016), p. 30.

exist only where there is democracy, the absence of democracy is, ipso facto, the absence of federalism even if we can observe the constitution and operation of a political system as being federal, for the regional government must be able to affect the policy making activity of the central government. So far as this is done, it is a technique of representation.¹³⁹

Also, as Awa once observed, the author argues that, "...in so far as the political arrangement ensures the self-help, self-development and initiative of the component units, it is a philosophy of opportunity. For this reason, federalism is a process of democratization in which the implicitness of the unifying principle, within the parts subsumes the parts within the whole."¹⁴⁰ Federal government presupposes the desire and an ability to secure the component units against the encroachment by the central government. If the latter is an authoritarian dictatorship, it is difficult to see how the safeguards of the federal structure can be worth much.¹⁴¹ Hence, according to Duchback, the author alleges that "federal and democracy are always found together. Federalism is the territorial dimension of democracy; competition between parties is a condition of federalism."¹⁴²

According to the Abah, the contemporary question facing Nigeria federation is misplacement of priority in terms of what political structure or government that can best suit their

¹³⁹ K. C. Wheare (1946), as cited in N. C. Abah, "Federalism, Democracy, and the National Question in Nigeria," *Journal of Research in Business and Management*, Vol. 4, Issue 3 (2016), p. 30.

¹⁴⁰ E. O. Awa, *Issues in Federalism*, (Benin City: Ethiope Publishers, 1979), as cited in N. C. Abah, "Federalism, Democracy, and the National Question in Nigeria," *Journal of Research in Business and Management*, Vol. 4, Issue 3 (2016), p. 30

¹⁴¹ W. S. Livingston, *Federalism and Constitutional Change*, (Oxford: Clarendon Press, 1956), as cited in N. C. Abah, "Federalism, Democracy, and the National Question in Nigeria," p. 30

¹⁴² Duchback, *Comparative Federalism: The Territorial Dimensions of Politics* (New York: Holt Rinehart and Winston, 1970) as cited in N. C. Abah, "Federalism, Democracy, and the National Question in Nigeria," *Journal of Research in Business and Management*, Vol. 4, Issue 3 (2016), p. 30

multicultural or multi-ethnic nature or composition. Reiterating Chief Awolowo, the author argues that:

... in any country where there are divergences of language and nationality – particularly of language – a unitary constitution is always a source of bitterness and hostility on the part of linguistic or national minority groups....“As soon as a federal constitution is introduced in which each linguistic or national group is recognised and accorded regional autonomy, any bitterness and hostility against the constitutional arrangement will disappear.”¹⁴³

Therefore, democracy and federalism in plural societies provide vent for frustration if negotiated agreement are not ignored. In his contribution to the development of the Relative Deprivation, Frustration – Aggressive theory, the author, corroborating Gurr, reasons that frustrations arising from expectations and denials predispose men to rebellion.¹⁴⁴ The contemporary dimensions of the national question in Nigeria are indicative of the plausibility of Gurr’s conjecture. The Kano Riots of 1953, the 1962-1965 Western Regional Crisis, even the Nigeria civil war and the Maitatisine uprising of 1981 and the “Ogoni 9 disaster of 1995 are now history. But the fundamental underlying forces are similar to those that throw up groups as movement for the Emancipation of Niger Delta, MASSOB, OPC, Boko Haram, (Herdsmen) to mention but few. These violent groups represent the current dimension of the national question in Nigeria. The argument is that as soon as federal constitution which reflect the true federal principle as articulated in K. C. Wheare’s concept of federalism is formulated, recognised and enforced in a multi-nation, lingual and religion, and autonomy granted to national minority groups, the bitterness and hostility that give rise to these violent groups will disappear. Since, according to Gurr, the power sharing arrangements and group

¹⁴³ O. Awolowo, (1966), loc. cit. p. 48, as cited in N. C. Abah, “Federalism, Democracy, and the National Question in Nigeria,” *Journal of Research in Business and Management*, Vol. 4, Issue 3 (2016), p. 30

¹⁴⁴ T. R. Gurr, *Minorities at Risk: A Global View of Ethnopolitical Conflicts* (Washington D. C: US Institute of Peace Press, 1993) as cited in N. C. Abah, “Federalism, Democracy, and the National Question in Nigeria,” *Journal of Research in Business and Management*, Vol. 4, Issue 3 (2016), p. 32

autonomy can be a solution to deep-rooted ethnic conflicts and civil war, while Hetcher also suggested that plural states such as India and Nigeria would probably have not survived without some form of decentralised governance.¹⁴⁵

In conclusion, the second section of the literature review is the review of the works of those that reviewed Nigerian federal system of government in the light of true principles of federalism. One essential thing about the authors is on how importance they all reposed on K. C. Wheare's federal principle in solving Nigerian federal malaise. Most of them also proposed institutional and structural change through constitutional amendment as a way forward.

¹⁴⁵ M. Hetcher, *Containing Nationalism* (New York: Oxford University Press, 2000) as cited in N. C. Abah, "Federalism, Democracy, and the National Question in Nigeria," *Journal of Research in Business and Management*, Vol. 4, Issue 3 (2016), p. 33.

CHAPTER THREE

KENNETH C. WHEARE'S FEDERALISM

3.1 Kenneth. C. Wheare's Life and Time

Sir Kenneth Clinton Wheare (1907-1979), professor of government and constitutionalism, was born on 26th March, 1907 at Warragul, Victoria, eldest of three children of Australia – born parents Eustace Leonard Wheare, groceries' assistant, and his wife Kathleen Frances. The family settled in Melbourne in 1922. Kenneth attended state and high schools at Stanwell and Mary Borough. In 1923 he entered Scotch and ran the debating club. Winning a scholarship to Ormond College, he took first class honours in Greek and philosophy at the University of Melbourne (B.A Hons. 1929)

At Oriel College, Oxford (BA, 1932, M.A, 1935; D. Litt, 1957), he got a first class in philosophy, politics and economics, and was awarded the Cecil Peace Prize. He found Oxford suitable, and after a succession of appointments he became Gladstone professor of government and public administration in 1944. He lost his first wife Stella Allan to divorce after the birth of his first son and she became incurably ill. At the registrar office, Oxford, on 5th January, 1943, he married 26 years old Joan Randel; they had two sons and two daughters.

Wheare first research won him the Beit prize in colonial history. Published as the *Statute of Westminster, 1931* (Oxford, 1933). After 1944, he was much called a constitutional adviser, notably to the National Convention of Newfoundland (1946-47), and to conferences (1951-53) on the central Africa federation. His monographs, "The Statute of Westminster and Dominion Status (5 Editions, 1938-53)," and "The Constitutional Structure of the Commonwealth (1960)," record authoritatively the evolution of the colonised into independent states.

His writings – concise, deceptively simply, apparently innocent of theory but informed by it – ranged over government and administration at all levels, four editions of *Federal Government* (1946-64) confirmed his mastery of that subject.

In 1956, Wheare became rector of Exeter College, an old establishment in need of improvement, which he achieved by reducing the intake, strengthening the fellowship and extending the building. As Oxford's first Australian vice-chancellor (1964-66), he guided the university to adopt some of Frank's reforms.

Wheare had been appointed C. M. G. (1953), and was knighted in 1966. He chaired (1962-69) the Rode's Trust and presided (1967-71) over the British Academy. In 1972 when he retired early as rector of Exeter, he became the chancellor of the University of Liverpool, a role he took seriously, though characteristically delighted to be made honorary admiral of the Isle of Man herring fishery fleet. He was awarded an honorary fellowship of five Oxford Colleges and honorary doctorates from the universities of Cambridge, Exeter, Liverpool and Manchester and Columbia, New York etc.¹⁴⁶

3.2 Kenneth C. Wheare's Description of Federal Principle, Federal Constitution and Federal Government

i. Federal Principle

Wheare in his work *Federal Government* agrees that the inquiry into the working of the federal government begins with the necessity to advance the meaning of the term. The term for him is used loosely in political discussion, but there is a general agreement that the Federal Government is an "association of states, which has been formed for certain common purposes, but in which the member states retain a large measure of their original

¹⁴⁶ www.wikipedia.org/k.c.wheare-autobiography

independence.”¹⁴⁷ Though they found it agreeable, they differ however on the particular form or type of ‘association of states’ which federal government can properly be described.

Wheare argues that modern idea of what federal government is has been determined by the United States of America. Therefore, he alludes that it would seem sensible; therefore, in seeking a legitimate and convenient definition of federal government, to begin by examining the constitution of the United States.¹⁴⁸ And her constitution most importantly deemed as a document which regulates an association of states therefore, the question is: what is the fundamental characteristic of the United States considered as an association of states?

The answer, according to Wheare, seems to be that the constitution¹⁴⁹ of the United States establishes an association of states so organised that powers are divided between a general government which in certain matters – for example, the making of treaties and the coining of money – is independent of the governments of the associated states. On the other hand, state governments which in certain matters are, in their turn, independent of the general government.¹⁵⁰ The implication, therefore, is that general and regional governments both operate directly upon the people; each citizen is subject to two governments.

The words of the constitution, Wheare alludes are sometimes ambiguous, contradictory or vague. But however vague the constitution may be about where the line is to be drawn, it is quite clear on the point that, once granted that a government is acting within its allotted sphere, that government is not subordinate to any other government in the United States. Therefore, in examining American constitution used as a paradigm, one concludes that as a matter of law, the field of government is divided between a general authority and regional

¹⁴⁷ K. C. Wheare, *Federal Government*, (4th ed.) (New York: Oxford University Press, 1964), p. 1

¹⁴⁸ *Ibidem*

¹⁴⁹ Here I mean both the original constitution and amendments

¹⁵⁰ K. C. Wheare, p. 2

authorities which are not subordinating one to another, but co-ordinate with each other.¹⁵¹ Reiterating a modern American historian,¹⁵² Wheare argues that the general government is a government supreme within its sphere, but that sphere is defined and limited. ... The states are co-equally supreme within their spheres; in no legal sense are they subordinate corporations. Thus, the principle of organisation upon which the American association is based is that of division of powers between distinct and co-ordinate governments.

From the foregoing, it is admitted that this principle of organisation is a characteristic of the United States, considered as an association of states. The question is: is it legitimate to claim it as a distinguishing characteristic? Does it mark off the United States from other associations of states which are sometimes classed with it as examples of federal government?

Addressing this question, Wheare said that perhaps the best way to begin an answer to this question is to look at the form of association which the American states had adopted in the years before the constitution of 1787 was drawn up, knowing that the present 1787 constitution was not the first constitution of the United States. Upon their resistance from British colonialists American colonies drew up in 1777 the Article of Confederation of the United States of America.¹⁵³ With an illustration, Wheare distinguishes the 1777 Articles of Confederation from the Constitution of 1787. But one distinguishing characteristic between the two is on the *principle of association* upon which the American association of states was based. According to him therefore, these Articles of 1777 Confederation was based on that of the subordination of the general government to the regional governments. It is illustrated by

¹⁵¹ *Ibid.* p. 2

¹⁵² S. E. Morison, *History of the United States*, vol. 1, p 88, as cited in Wheare, loc. cit. p. 2

¹⁵³ Printed in A. P. Newton, *Federal and Unified Constitution*, and H. S. Commager, *Documents of American History*, as cited in K. C. Wheare, *Federal Government*, p. 4

the degree to which the general government was authorised to operate upon the state governments only and not directly upon the people.

It was decided, after some experiences of this form of association, that it was inadequate. A new form of association, based upon a different principle, was advocated and finally embodied in the constitution of the 1787. Therefore, the difference between the present constitution of the United States and the Article of Confederation lies in the fact that the present constitution replaces the principle of the central government being subordinate to the regional governments and dependent upon them, by the principle of the general and regional government being co-ordinate and independent in their respective spheres.¹⁵⁴ Thus, Wheare argues,

...it seems justifiable to maintain, therefore, that the difference in principle between the form of association embodied in the modern constitution of the United States... it justifies us in placing the United States in a separate category among associations of states. And, further, since the United States is universally regarded as an example of federal government, it justifies us in describing the principle, which distinguishes it so markedly and so significantly, as the FEDERAL PRINCIPLE.¹⁵⁵

Wheare, describing federal principle, argues, “By federal principle I mean the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent.”¹⁵⁶

Although the word federal or federation was used to describe both the system set up by the Articles of Confederation of 1777 and proposed by the constitution of 1787, Wheare argues that the fact is that up to 1787 the word “federal” signified little more than a league of states resting upon the ‘good faith’ of the parties,¹⁵⁷ and it was the natural description of the

¹⁵⁴ K. C. Wheare, pp. 4-5

¹⁵⁵ *Ibid.* p. 9-10

¹⁵⁶ *Ibid.* p. 10

¹⁵⁷ Morison, *History of United States*, vol. 1, p. 87 as cited in Wheare, *Federal Government*, p. 10

Articles of Confederation. Indeed, what the authors of the *Federalist* claimed for the constitution of 1787 was not that it substituted a federation for a league but that it substituted an efficient federation for an inefficient federation. At the same time the new constitution which they supported established a government based, as they themselves asserted, upon a different and a novel principle, the principle of division of powers between general and regional governments each independent within a sphere.¹⁵⁸

Critically, Wheare was aware that his definition of federal principle was not accepted as valid by all the students of the subject. Thus, he argues that some authorities find the essence of federalism in some different principle. For example, he argues that there are those who hold that the federal principle consists in the division of powers in such a way that the powers to be exercised by the general government are specified and the residue is left to the regional governments. That it is not enough that general and regional governments should each be independent in its own sphere; that sphere must be marked out in a particular way. The residuary power, as they are called, must lie with the regional governments. On this view a government is not federal if the powers of the regional governments are specified and the residue is left to the general government. By this test, Wheare sees them alluding that, the constitution of the United States embodies the federal principle because it names certain subjects over which the general legislature has control and it provides that the powers not so delegated to the general government remain with the states.¹⁵⁹ Wheare however sees concentration of the test of federalism as relatively superficial characteristic. For him, the essential point or test of federalism is not that the division of powers is made in such a way that the regional governments are the residuary legatees under the constitution, but that the division is made in such a way that, whoever has the residue, neither general nor regional

¹⁵⁸ Wheare, *Federal Government*, p. 11

¹⁵⁹ *Ibid.* p. 11-12

government is subordinate to the other. Arguing further he says that “It is true that the question where the residue of power is to rest is an important question in framing a federal government. It is likely also that when previously sovereign states federate, they will wish to hand over to the new general government certain specified, limited and enumerated powers only and will wish to keep the rest for themselves.”¹⁶⁰ What Wheare means to say here is that no matter how essential these are to the framing of the federal constitution, they themselves do not make a government federal. Over and above all, the most essential and important guarantee of federal principle is whether the powers of government are divided between co-ordinate, independent authorities or not.

Another important point of federal principle, which this paper termed the ‘third definition’ of the federal principle, is the principle in which both general and regional governments operate directly upon the people. This definition of federal principle distinguishes it from confederation because in a League of Nations or Confederation it is the regional or state governments alone that operate directly upon the people; the general government operates upon the regional governments only.¹⁶¹

ii. Federal Constitution and Federal Government

The federal principle has been defined rigidly in the above, and in trying to consider the definition of federal constitution and federal government, Wheare raises some questions by asking, “If then the principle may be defined along the line set out in preceding chapter, what are we to mean by a federal constitution, and a federal government? Are we to confine the

¹⁶⁰*Ibid.* p. 12

¹⁶¹ Bryce uses this criterion in *Studies in History and Jurisprudence*, Vol. 1, pp. 392, 408-9, J. S. Mill makes reference to it in *Representative Government*, c. XVII, as cited in Wheare, *Federal Government*, p. 13

terms to cases where the federal principle has been applied completely and without exception?”¹⁶² Wheare sees the confinement idea not a sensible thing to do. Thus, he argues, “the constitution of the United States itself, as originally drawn up, contained at least one exception to the federal principle in that the senate was composed of representatives selected by the legislatures of the states. Thus, a part of the general government of the United States was dependent to some extent upon a part of the regional governments. This exception to the federal principle was maintained in law up to 1913. Yet the American constitution from 1787 to 1913 was and must be called a ‘federal constitution’. For the federal principle was predominant in the constitution.... If so, that constitution may be called a ‘federal constitution.’”¹⁶³ Here, Wheare concludes that “It seems essential to define the federal principle rigidly, but to apply the term ‘federal constitution’ more widely.”¹⁶⁴

Wheare sees Switzerland, Australia and Canada as possessing federal constitution, though the fact is that he does not doubt their constitutions containing modification in the strict application of the federal principle, but the modification for him is not predominant to make the constitution to lose federal character. On this he argues, “It may be that the method of ensuring that the general government keeps within its own sphere is not completely effective, but is clear that the principle on which the Swiss (United States, Australia and Canada) is drawn up is that there is a sphere allotted to the general and the regional government respectively and that they are expected to keep within that sphere and that neither, is to have the last word in deciding the extent of that sphere.”¹⁶⁵ Nevertheless, Wheare sees Australian constitution of 1990 as clear example of federal constitution because of its strict compliance to federal principle. He sees Canadian constitution as quasi because there are substantial

¹⁶² K. C. Wheare, *Federal Government*, p. 15

¹⁶³ *Ibidem*

¹⁶⁴ *Ibidem*

¹⁶⁵ *Ibid.* p. 17, the bracket is mine

modifications of the federal principle; thus, he argues “Yet, if we confine ourselves to the strict law of the (Canadian) constitution, it is hard to know whether we should call it a federal constitution with considerable unitary modifications, or a unitary constitution with considerable federal modifications. It will be straining the federal principle too far, I think, to describe it as a federal constitution, without addressing any qualifying phrase. For this reason I prefer to say that Canada has a quasi-federal constitution.”¹⁶⁶ He concludes by arguing that “It seems justifiable to conclude that although the Canadian constitution is quasi-federal in law, it is predominantly federation in practice. Or, although Canada has not a federal constitution, it has a federal government.”¹⁶⁷

Federal government for Wheare is the application or practice of the federal constitution. He however argues that federal constitution is not a sufficient determinant of federal government. Thus, he alludes, “...looking for example of federal government, it is not sufficient to look at constitution.”¹⁶⁸ Arguing further, he says, “A country may have a federal constitution, but in practice it may utilise that constitution in such a way that its government is not federal. Or a country with a non-federal constitution may work it in such a way that it provides an example of federal government.”¹⁶⁹ The experience of Canada has exemplified this. Its constitution is, as a matter of law, not completely federal; it is quasi-federal. But... its system of government, is federal predominantly.¹⁷⁰

The consideration of law and practice leads Wheare to describe Canada as an example of federal government, although its constitution is only quasi-federal. But United States, Switzerland and Australia are regarded by Wheare as example of countries with federal

¹⁶⁶*Ibid.* p. 19

¹⁶⁷*Ibid.* p. 20

¹⁶⁸*Ibidem*

¹⁶⁹*Ibidem*

¹⁷⁰*Ibidem*

constitution and federal government, although he thought Australia of exhibiting tendencies which disposes its constitution and its government to quasi-federalism.¹⁷¹

There are other countries which Wheare used as examples in describing the case of having either federal constitution but no federal government, or quasi-federal constitutions but no federal government, or constitutions and governments which are not federal at all. These countries are: Latin American: Brazil, Argentina, Mexico and Venezuela; Europe: Austria, Germany and USSR; and Asia and Africa: India, Malaya and Nigeria. They were briefly discussed in pages 21 to 32 of Kenneth C. Wheare's *Federal Government*.

3.3 Kenneth C. Wheare's Concept of Confederation

Wheare's concept of quasi-federalism always connotes the principle embodying the subordination of the regional government to the general government. Thus, Wheare asks, "If it is agreed that these governments do not embody the federal principle but are organised on principle which are distinct from the federal principle, it is proper to ask what name should be given to these principle."¹⁷² Thus, Wheare argues that, "...the form of association between states in which the general government is dependent upon the regional government has often been described as a 'confederation' and the principle of its organisation 'the confederate principle.'"¹⁷³

It is true that the term 'confederation' has been used in constitutions which did embody the principle of subordination by the general government to regional governments. Thus, it was used in the Articles of Confederation of 1777, in the Union of Utrecht, in the constitution of Switzerland from earliest times, of Germany from 1815 to 1867, of the Northern German Confederation of 1867 to 1871, and of the German Empire from 1871 to 1918. It was adopted

¹⁷¹*Ibidem*

¹⁷²*Ibid.* p. 32

¹⁷³*Ibidem*

by the seceding states in America in 1861 when they called themselves the confederate states of America, and their use of it might give it authority, for they had deliberately rejected what we had called the federal principle in its favour. Confederation can be likened to the term 'league' or 'alliance' but it would appear that where 'league' or 'alliance' is not sufficient to describe an association, 'confederation' is the only suitable term left. Perhaps, if its use is linked with the principles of the Article of Confederation of 1777 and of the confederate states and German confederation, its meaning may be kept distinct.¹⁷⁴ According to Wheare the other form of association in which the regional governments are subordinate to the general government – is often described as 'devolution' and the principle of its organisation as 'the devolution principle'. The term has been applied to the system in Northern Ireland and in South Africa; and the instrument by which the government of India, under the constitution of 1919, gave legislative powers to provinces in 1921 was called 'devolution rule'.¹⁷⁵

In summary, a government is a federal when the government embodies predominantly a division of powers between general and regional government authorities each of which, in its own sphere, is co-ordinate with each other and independent of them. What really determines federal government is not in constitutions, but in the working of the system. Therefore, there is a distinction between the federal governments and federal constitutions. And the government whose constitution or government is guided by federal principle, though not predominant, is none the less important, is called quasi-federal constitutions or governments. From the analysis of the federal principle, and its application to constitutions and governments, there emerges the conclusion that the countries which provides us with the best examples of the working of federal government are: United States, Switzerland, Canada and

¹⁷⁴*Ibid.* p. 33

¹⁷⁵*Ibidem*

Australia. Now, the important question to ask bothers on the appropriateness of the federal government application. Thus, “When federal government is appropriate?”

3.4 Kenneth C. Wheare and The Prerequisites of Federal Government

Wheare found federal government as a rare system of government because its prerequisites are many. One important prerequisite is that it requires the co-existence of several national characteristics which are not often found together in world, and which should be perceived more distinctly than they often are.¹⁷⁶ Then he asks, “In what circumstance is it appropriate to adopt a system of federal government?” before attempting this question, he deems it appropriate firstly to study the definition we have already for the term federal government itself. Therefore, he describes federal government by saying that,

...it exists when the powers of government for a community are divided substantially according to the principle that there is a single independent authority for the whole area in respect of some matters and that there are independent regional authorities for other matters, each set of authorities being co-ordinate with and not subordinate to other within with its own prescribed sphere.¹⁷⁷

Then he argues that from the consideration of this definition that it is possible to infer the sort of condition which should exist before the federal principle is adopted.

Firstly, the prerequisite is that the communities or states concerned must **desire** to be under a single independent government for some purpose at any rate that is essential unless they are prepared to go as far as this, the question of federal government does not arise. If they are not prepared to submit themselves to an independent government, but desire rather to retain a control over the general authority, then they have not achieved the first prerequisite of federal government. A league, an alliance or a confederation may be appropriate for them, but not

¹⁷⁶*Ibid.* p. 35

¹⁷⁷*Ibidem*

federal government.¹⁷⁸ Some typical examples are: the three communities of Latin America, under Bolivian, the state of great Columbia, soon disintegrated into three separate states of Venezuela, Ecuador and Columbia; and the confederation of the United Provinces of Central America formed in 1823, had become by 1838 five separate states of Guatemala, Salvador, Honduras, Costa Rica, and Nicaragua.¹⁷⁹

Secondly, another prerequisite is the desire to retain or to establish independent regional government. Thus, Wheare argues, “But the desire to be under a single independent government is not enough. They must desire at the same time to retain or to establish independent regional government in some matters at least. Without this desire to be separate in some things, the communities could form a unitary state with some appropriate degree of decentralisation.”¹⁸⁰ The South Africa was the typical example. The colonies desired to be united under a single independent government. But they did not desire to be under independent regional government for some purposes. Thus, Wheare argues finally that, “So far, then, it would seem that federal government is appropriate for a group of states or communities if, at one and the same time, they desire to be united under a single independent general government for some purposes and to be organised under independent regional government for others. Or, to put it shortly, they must desire to be united, but not to be unitary.”¹⁸¹

The argument seems to entail that where these desires exist, then federal government would be appropriate. But Wheare emphasised that much more than desire is needed. Therefore, he argues, “To say that a thing is desired by a group of states is not to say that it is the right thing for them. They must not only desire it; they must also be able to operate it. They must have

¹⁷⁸*Ibid.* pp. 35-36.

¹⁷⁹*Ibid.* p. 36

¹⁸⁰*Ibidem*

¹⁸¹*Ibidem*

the capacities to work the system they desire.”¹⁸² What it entails therefore is that federal government is not appropriate unless the communities concerned have the desire as well as the capacity to form an independent general government and to form independent regional governments. Therefore, the necessity of the capacity and the desire become inevitable.

Some inquiry into the capacities and the desires needs to be done. The first inquiry Wheare did is: What are the factors or circumstances which leads communities to desire union and at the same time to desire separation within the union? And secondly, what produces in them the capacity to form an independent general government and, at the same time, independent regional governments? Knowing the answers to these questions; is the same as knowing when federal government is appropriate.

Wheare argues that communities have been led to desire union from a variety of reasons. But in modern federations some factors seem always to have been present; they are: 1) A sense of military insecurity; 2) need for realisation that only through union could independence be secured; 3) A hope of economic advantage from union; 4) some political association of the communities concerned prior to their federal union either in the loose confederation, as with the American states and the Swiss cantons, or as parts of the same Empire, as with the Canadian and Australian colonies; 5) geographical neighbourhood; and 6) similarity of political institutions – half-dozen factors all operated in the United States, Switzerland, Canada and Australia, to produce a desire for union among the communities concerned.¹⁸³ Thus, Wheare alleges, “Thus, the need for common defence, the desire to be independent, geographical contiguity, the hope of economic advantage (and similarity of socio-political institution) all helped to produce a desire for the union which was a force in leading England

¹⁸²*Ibidem*

¹⁸³*Ibid.* p. 37

and Scotland to form the United Kingdom of Great Britain in 1707,¹⁸⁴ the Italian states to form the kingdom of Italy in the years from 1856-1864,¹⁸⁵ the German states to form, firstly, the North German Confederation of 1864, and secondly, the German Empire of 1871,¹⁸⁶ and the South African Colonies – Transvaal, Orange River, the Cape and Natal – to form the Union of South Africa in 1909.¹⁸⁷ Further, he says, “But it is justifiable to say, I think, that it is unlikely that states will desire union unless these factors - or, most of them, - are present to that extent they may be classed as prerequisites of federal government.”¹⁸⁸ Wheare alleges that there are important factors prerequisite for the desire for a union which are unexpectedly absent. Factors like: commonality of language, race or of religion or of nationality. Thus, he argues,

...commonality of language, of race, of religion or of nationality has been listed as likely essential prerequisites of the desire for union.... Undoubtedly common language and common race assisted to produce the desire for union in the United States, in Australia, in Germany and in Italy.¹⁸⁹

Justifying the absent of the just mentioned factors, Wheare argues that

It is clear that, strong as these forces of language, race, religion and nationality are in producing a desire for union – as the whole history of national movement shows – it has proved possible none the less to produce a desire for union among people who differ in all these important particulars. Community in these matters cannot therefore be described as an essential prerequisite of federal government.¹⁹⁰

¹⁸⁴ See G. M. Trevelyan, *Ramilius and the Union with Scotland*; Dicey and Rait, *Thoughts on the Union of England and Scotland*, as cited in Wheare, *Federal Government*, p. 37

¹⁸⁵ See Bolton King, *A History of Italian Unity* (Vol. 2), and Bolton King and Thomas Okey, *Italy Today*, as cited Wheare, *Federal Government*, p. 37.

¹⁸⁶ See C. Grant Robertson, *Bismarck*, and A. W. Ward, *Germany 1815-1890*, as cited in Wheare, *Federal Government*, p. 37.

¹⁸⁷ See Walker, *Lord de Villiers and his Times*; Walton, *The Inner History of the National Convention of South Africa*; *Cambridge History of the British Empire*, Vol. VIII., and L. M. Thompson, *Unification of South Africa*, as cited in Wheare, *Federal Government*, p. 37

¹⁸⁸ K. C. Wheare, *op. cit.* p. 38

¹⁸⁹ *Ibidem*

¹⁹⁰ *Ibid.* pp. 38-39

“Although they came to desire union in some things, they still desire to remain separate in other.” Having deliberated on the factors which produce in communities the desire to be united, what are the factors which operating at the same time, produce the desire to be separated for other purposes? Wheare discusses these factors as follows:

1. The Previous Experience as Independent States

One factor which is present in all modern federations was that the regions which desired to be separated from the other had all had a previous existence as distinct colonies or states. And each enjoyed a distinct history and a distinct government. Although they came to desire a union in some things, they still desired to remain separate in other.

2. Divergence of Economic Interest

Because of their previous history as independent states, these communities had developed a divergence of economic interests. Thus, Kenneth C. Wheare argues,

...although, as I have mentioned, the hope of economic advantage led them to desire union, divergence of economic interest made them anxious not to surrender more power over economic affairs than was absolutely necessary.... They desired therefore to remain independent for some economic purposes at any rate.¹⁹¹

3. Geographical Factors

Wheare argues that geographical factors also assisted the desire to be separate. In the United States, Canada and Australia it was great distance which was most important. Thus, distance isolated the communities and developed a regional consciousness which made them desire to keep to themselves. However, in Switzerland, he alleges that it was the barrier of mountains which divided up the country into isolated communities. Meanwhile, in West Indies, it was

¹⁹¹*Ibid.* p. 40

the sea that isolated them into federating states. Is it permissible to assert, then, that a previous existence as a distinct governmental unit, economic divergence and a sense of isolation through geographical factors are essential prerequisites of that desire for separation within variables which go to produce federal government. Wheare seems not to accept this conclusion when he argues that there is one factor which could produce the desire for separation among communities otherwise prepared to unite. This factor he termed divergence of nationality.

4. Divergence of Nationality factor

Wheare argues that it is quite conceivable that communities which none the less differed in nationality from each other, would desire separation within union. This factor of difference of nationality did co-operate, of course, with other factors for separation in three of the four cases mentioned – in a moderate degree in the United States, and much more strongly in Switzerland and Canada. In the last two cases it was assisted by differences of language, race and religion. In Switzerland and Canada, the desire for union grew in spite of these differences, but the desire for separation within the union, the desire, that is, for federal union, was directly produced by three differences. And it seems most likely that communities which were ready to unite but which differed in some one or all of these four particulars, might desire the federal form of union.¹⁹²

5. Dissimilarity of Social (Political) Institution

Another factor which might produce the desire for separation is dissimilarity of socio-political institutions. This undoubtedly operated in Canada when Quebec desire to be separated in order that it might safeguard its own peculiar system of civil law.

¹⁹²*Ibid.* p. 41

These four factors are the kind which, given the existence of a desire for union, are likely to produce a desire for federal union. Wheare alludes that it is not possible to pick on any one of them or any one combination of them and say that unless this or these are present, the desire for federal union will not arise. That desire may be produced by any one of them.¹⁹³

Wheare here argues on the importance of good leadership before the desire for union can be possible. Thus, he argues,

And here again, as with the desire for union itself, a great deal will depend on leadership. The factors which could produce a desire for federal union may be there but they may not come to surface; or, if they do, they may be overcome by more effective leadership in favour of the unitary form of union.¹⁹⁴

So far, I have dealt extensive with Wheare narratives on the factors which produce the desire for union combined with the desire for independence within union, which Wheare argues to be one of the prerequisites of federal union. Wheare alludes previously that just desiring is not enough prerequisite, but capacity to work it out. As a result he asks, “Granted the existence of these desires, what conditions are necessary before it is possible to say that the communities which desire the federal form of union have also the capacity to work it?”¹⁹⁵ Answering this question, Wheare claims that, “It goes almost without saying that the desire themselves provide some guarantee of the capacity to form and work the system of government desired.”¹⁹⁶

What it implies is that a desire for federal union among communities is a first and obvious factor, producing in them the capacity to make and work a federal union. And the same is true of a desire to remain as independent governments inside the union. Corroborating John Stuart Mill, Wheare argue that,

¹⁹³*Ibid.* p. 42

¹⁹⁴*Ibidem*

¹⁹⁵*Ibid.* p. 44

¹⁹⁶*Ibidem*

The federation binds them always to fight on the same side; and if they have such feelings towards one another, or such diversity of feeling towards their neighbours, that they would generally prefer to fight on opposite sides, the federal tie is neither likely to be of long duration, nor to be well-observed while it subsists.¹⁹⁷

Wheare takes Switzerland as typical example concerning the way in which the need for common defence produced in communities which differed in language, race and nationality not only the desire but also the capacity to form a federal union.

But, says Wheare, of all the factors which produce the desire for union, the one which at the same time produces the best capacity for union is **similarity of social and particularly political institution**.¹⁹⁸ This factor, argues Wheare, is one of the strongest of the forces which helps states to work together. So strongly is this felt that statements in framing federal constitutions have even insisted that all the units should adopt the same form of government. The four federations used as illustration in his work are either democratic or republican. They are founded on the democratic principles of free election, free criticism and representative institutions. Wheare was of the opinion that what is really essential is not that there will be similarity of political institution, but that this political institution must not be autocratic or dictatorial. Thus, he argues,

For autocracy or dictatorship, either in the general government or in the regional governments, seems certain, sooner or later, to destroy that equality of status and that independence which these governments must enjoy, each in its own sphere, if federal government is to exist at all.¹⁹⁹

Thus, he asks, suppose all the regional governments or a majority of them were dictatorships, what machinery could exist to choose a general government which would be independent of the regional governments? For him, therefore, no free election by the people of the autocratic regions is to be expected.

¹⁹⁷ S. J. Mill, *Representative Government* (Everyman Ed), pp. 366-7, as cited in K. C. Wheare, *Federal Government*, p. 44.

¹⁹⁸ *Ibid.* p. 45

¹⁹⁹ *Ibid.* p. 46

Here, Wheare evaluates the factors that give communities the capacity to remain distinct and separate inside a union. One major factor according to Wheare is *their previous existence as distinct government*. What this implies is that the states joining to form a new general government have at their disposal in their own regions a well-established system of government which will enable them to carry out their functions and maintain their integrity upon the new system. More than that, it relieves the strain imposed upon the new system, by guaranteeing the stability of regional administration and leaving energies free for the one formidable task of establishing the new general government.²⁰⁰ Thus, this factor helps to produce both the capacity to be separate and independent in some things and to be under a general government for others.

Another factor which produces in states the capacity to work a federal union, according to Wheare, is the *growth of this sense of a new nationality* over and above, but not instead of their sense of separate nationality.²⁰¹ For instance, at the making of the United States, of Switzerland and of Canada, there were differences of nationalities as there were: Swiss and German-Swiss; American and Virginian; and Canadian and French-Canadian; but as time went on a common nationality came to impose itself upon the differences.

Another important factor according to Wheare is *size*; therefore, he argues that

...the capacity of states to work a federal union is also greatly influenced by their size.... On the other hand, some divergence in size between the units is almost certain to be present before federal union is desired. It is this divergence which leads the poorer and less populous states to desire federal rather than unitary government for in it they see a safeguard for their independence.²⁰²

It is believed also that this factor is an important one because of its ability to maintain federal system nowadays. For instance, the agricultural states of Western America with their smaller

²⁰⁰*Ibid.* p. 48

²⁰¹*Ibid.* p. 50

²⁰²*Ibidem*

populations find in the federal form of union their safeguard against the wealth and population of the East, and especially New York and California. Corroborating Mill, Wheare argues that, “the essential is that there should not be any one state so much more powerful than the rest as to be capable of vying in strength with many of them combined.”²⁰³

Therefore, the *size* of the units concerned – in wealth, area and population is of prime importance. There must be a reasonable balance which will insure that all the units can maintain their independence within the sphere allotted to them and that no one dominates the others. It must be the task of those who frame and work a federal government to see that no unit shall be too large, and equally important, none too small.²⁰⁴

A discussion of *the relative (financial) resources of the units in a federation* leads to the consideration of a final factor which ensures the capacity of states to form a federal union.

Therefore,

...they must possess sufficient economic resources to support both an independent general government and independent regional government. Hence, it is not enough that the general government should be able to finance itself, it is essential also that the regional government should be able to do likewise.²⁰⁵

If the regional governments do not have sufficient financial resources to support themselves, then no matter whether a federal constitution is drawn up, in practice federal government will not be possible. Soon the regional governments will be unable to perform their functions or they will be able to perform them only at the price of financial dependence upon the general government, that is, at the price of financial unification.²⁰⁶ Rounding up this section, Wheare made a very important point; thus, he argues that

It may be proper that a region which desires independence in a federal union but which lacks resources to make that independence real, after it has

²⁰³*Ibid.* pp. 50-51

²⁰⁴*Ibid.* p. 51

²⁰⁵*Ibidem.*

²⁰⁶*Ibidem*

surrendered certain of its revenues for the maintenance of the general government should be guaranteed certain incomes from the resources of its wealthier neighbour.²⁰⁷

Since Wheare has established what conditions are necessary if states are to have not just mere desires but also more particularly the capacity to form a federal union, it become necessary to ask how it should be organised, so that if those desires and capacities are there, they may be enabled to express themselves effectively in a system of government. Therefore, how federal government should be organised?

3.5 Kenneth C. Wheare and The Organisation of Federal Government

Wheare maintains that federal government is a distinct and peculiar form of government, appropriate to distinct and peculiar circumstance. As a result, there needs to be distinct and peculiar institutions which are essential to a federal government if it is to be federal and if it is to work well. These institutions designed to enable federal government to perform its functions are: the constitution, the court and the law. Others are (division and separation of) power, party system, right of secession and expulsion, and equal representation of region in Upper House – Senate.

1. The Constitution

For Wheare, it is essential if a government is to be federal that it should be regulated by a written constitution and that constitution must be supreme. Thus, Wheare argues, “I think it is more accurate to say that if a government is to be federal, its constitution, whether it is written or unwritten, or partly written and partly unwritten, must be supreme.”²⁰⁸

What this implies, according to him, is that the term of agreement which establishes the general and regional governments and which distributes powers and function between them

²⁰⁷*Ibid.* p. 52

²⁰⁸*Ibid.* p. 53

must be binding upon these general and regional governments. Furthermore, if the general and regional governments are to be co-ordinate with each other, neither must be in a position to override the terms of their agreement about the powers and status which each is to enjoy. So far as this agreement regulates their relations with each other, it must be supreme. And the federal principle requires the supremacy of the constitution.²⁰⁹ On whether the supremacy of federal constitution requires to be written or not, Wheare argues that “it is easy to see how the necessity for a supreme constitution in a federal government leads to the assertion of the necessity for a written constitution also.” For Wheare, the terms of agreement are so important; it is natural that it should be thought essential that they be committed to writing. And in practice all modern federal and quasi-federal constitutions have, as we have seen, been put into writing.

These two institutions – the supreme constitution and the written constitution – are, then, essential institutions to federal government. The supreme constitution is essential if government is to be federal; and the written constitution is essential if federal government is to work well. It is essential in a federal government that if there be a power of amending the constitution, that power, so far at least as concerns those provisions of the constitution which regulate the states and powers of the general and regional governments should not be confided exclusively either to the general government or to the regional governments.²¹⁰

Wheare felt that the amendment of the federal constitution is jurisdiction of both governments and her people. Thus, he argues,

On the amendment of the constitution, it does not matter logically where the power is placed but there can be no doubt that practically it is wise to associate

²⁰⁹*Ibid.* p. 53-54

²¹⁰*Ibid.* p. 55

both the general government and the regions, either their governments or their people (through referendum), in the process.²¹¹

Since a division of power is an essential part of any federal government, since any such division must be expressed in words whether written down or not, and since language is ambiguous (and required interpretations), it is certain that in any federation there will be disputes about the terms of the division of powers. Thus, Wheare submits that from the above claims,

...it follows that the last word in settling disputes about the meaning of the division of power must not rest neither with the general government alone or with the regional governments alone; rather with court which supposes to be independent of the two levels of governments.²¹²

This leads us to the second way federal government should be organised – court and rule of law.

2. Court and Rule of Law

The law court is a federal institution independent of any other institution or any other arms of government whose interpretation of the law and settlement of the constitutional disputes are its primary jurisdiction. Canada, for instance, gave the last word in constitutional disputes, whether concerned with the division of power or not, to a body which completely independent of general and provincial governments – the judicial committee of the Privy Council for over eighty years. At the end of 1949, however, the Canadian parliament passed an act to make the supreme court of Canada the final court of appeal in all Canadian law suits. Now, Wheare argues that the last word in Canadian disputes about the division of power rests with the supreme court of Canada, a body whose members are appointed by the

²¹¹*Ibidem*

²¹²*Ibid.* p. 58

Dominion executive and removable on an address by the two house of the Dominion parliament.²¹³

In Australia, Wheare alleges that some disputes about the meaning of the constitution are decided in the last resort by the judicial committee, but the kind of disputes between commonwealth and the states, or acts to the limit inter se of the constitutional powers of any two or more states can be decided finally by the High Court of Australia, a body whose members, like those of the supreme court of Canada, are appointed by the commonwealth executive and removable on the address from the houses of the commonwealth parliament.²¹⁴

In the United States, similarly, the last words about the meaning of the constitution and consequently of the division of powers is with a body – the supreme court – whose members are appointed by the chief-executive of the United States, the president, with the consent of the upper house of legislature, the senate, and are removable on impeachment by the house of representatives before the senate, in which case a two-third majority of the senators present is necessary.²¹⁵

In Switzerland, the last word does not appear to rest completely with the federal tribunal. In a case of dispute, therefore, the electorate has the power; if it chooses to exercise it, to decide whether a law of the general government is to be valued or not, through the process of referendum.²¹⁶

From the foregoing, it seems that court in the federal structure favours general government to regional government. Thus, Wheare alleges that,

...it seems that in most federal governments the settlement of disputes about the meaning of the division of powers is confided to a body appointed and

²¹³*Ibidem*

²¹⁴*Ibidem*

²¹⁵*Ibid.* pp. 58-59

²¹⁶*Ibid.* p. 59

dismissible by the general government. The result has been that Supreme Court or their equivalents have been accused from time to time of undue partiality to the general government.²¹⁷

However, Wheare sees the over-influence or control of the Supreme Court of federation by the general government as being exaggerated. Thus, he argues that it is true that for Canada and Australia it is possible for the executive of the general government to remove judges of the highest court in the country on an address from the general legislature, but in fact no such action has been taken, nor could it be taken in Australia except for proven misbehaviour or incapacity. For example, he says that in the United States judges of Supreme Court could be removed by the general legislature through the process of impeachment, if they were convicted of treason, bribery or other crimes and misdemeanours. In this process, the House of Representatives impeaches and the senate tries the impeachment. What Wheare is trying to prove here is that, "...in spite of the formal dependence of the supreme courts on the executive and legislature of the general government, they have exhibited a considerable impartiality in the exercise of their function as interpreters of the division of powers."²¹⁸

The point we want to make here is that bias on the part of a supreme court will necessarily mean bad government. The point that is maintained here is that if the Supreme Court is dependent upon the general or regional governments, then the system of government is to that extent not federal.²¹⁹ Though the decisions it gives may fit in well on the case of disputes with public opinion, but they may not fit in so well with the letter of the constitution.

People sometimes imagine why the function of interpreting the meaning of the division of power and of the whole constitution in a federal comes to be performed by the court – that is strange that one branch or arm of the general government – Judiciary – should have the power to decide whether the other branches/arms – legislator and administrative – are

²¹⁷*Ibidem*

²¹⁸*Ibid.* pp. 60-61

²¹⁹*Ibid.* p. 61

keeping with the limits of their power. And there is no explicit statement concerning that it is to be found in the constitution. Wheare argues that the conclusion one draws from reading what was said in the convention is that a majority of the leading men among those who frame the constitution expected the Supreme Court to act in this way. It is not possible to agree that the assumption of this power was usurpation.²²⁰ In support of this, the federalist, Alexander Hamilton classically argues that

The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges as, a fundamental law. It therefore belongs to them to ascertain its meaning, as well as meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two that which has the superior obligation and validity ought to be preferred to the statute, the intention of the people to the intention of the agents.”²²¹

The substance of the matter is that while it is the duty of every institution established under the authority of a constitution and exercising powers granted by a constitution to keep within the limits of these powers. It is the duty of the court, from the nature of their function, to say what these limits are. And that is why court comes to exercise this function in a federal government.²²²

The second important point here is: it must not be assumed that it is essential for federal government that the powers should be entrusted to the courts of the general government. What is essential for federal government is that some impartial body, independent of general and regional governments, should decide upon the meaning of the division of powers. It happens that in the United States and Australia the highest court of the land has had the last word in the matter and that, on the whole, it has proved independent of the rest of the general government. In Canada, an independent court, the judicial committee of the Privy Council, performs the function. But Switzerland shows that federal government and regional

²²⁰*Ibid.* p. 62

²²¹*Ibidem*

²²²*Ibidem*

governments do not inevitably require that the power should be exercised completely by the ordinary courts, or that it should be exercised by lawyers at all. This has made people to think of devising another means of interpreting the division of powers which should remove it from the province of the judges. Thus, articulating popular consciousness, Wheare argues that, “It is thought to be intolerable that the will of the people as expressed through the elected legislature should be thwarted in a supreme court sometimes by a bare majority of one.”²²³

The organisation of the courts themselves has some importance. Bothering on this fact, Wheare advocated that,

...if the federal principle were to be strictly applied one would expect a dual system to be established in a federation, one set of courts to apply and interpret the law of the general government, and another to apply and interpret the law of each state. For instance, United States alone of all the four federations is applying the principle. There is a system of what are called “Federal courts”, ranging from district courts up through a series of circuit courts of Appeals to the supreme court itself, and there is a system of state court terminating in each state in a state supreme court. This parallel system is sometimes spoken of as each set of courts exercised a jurisdiction which was completely exclusive of the other. It seems true to say, therefore, that the method of organising courts in a federal government need not be stereotyped. The principle of a co-ordinate status for the general and regional governments permits of some overlapping of jurisdiction, provided there is always some safeguard such as the power to establish parallel system of courts or a right of appeal from regional courts of double jurisdiction to a supreme court of the general government where matters affecting the law of the general government are concerned.²²⁴

3. Division and Separation of Powers

Division of Powers: On division of power, Wheare proposes to deal with a question which arises from the problem of the division of powers. Thus, he argues that,

...in federal government some matters are placed under the exclusive jurisdiction of an independent general government, and other matters are given to the exclusive jurisdiction of independent regional government. It is most important to decide therefore, whether a federal government should be

²²³*Ibid.* p. 64, in the United States up to 1944, about fifteen decisions adverse to Congress by a majority of one has been given by the supreme court.

²²⁴*Ibid.* p. 68.

organised with a concurrent jurisdiction or not. The simplest way to organise a federal government, it might seem, is either to decide what matters are to be regulated by the general government and to place them under its actual exclusive control, leaving the rest on the actual exclusive control of the regional governments.²²⁵

But Wheare admits that in practise organising federal government in this stance is not usually possible or quite simple as such. Hence, he alleges,

When previously sovereign states decide to federate, it is possible to get them to agree upon a list of subject upon which the general government is to legislate. But they are reluctant to surrender all control immediately over these subjects. For this reason, it is common to demand that some of them should be made concurrent, until the general government chooses to regulate them itself.²²⁶

So much has been said on the division of powers in a federal government. But another question arises in connection with what is usually called ‘**Separation of Powers**’.

It is unfortunate that this term should resemble so closely the term ‘the division of power’, and it is necessary therefore to explain a little what is intended by it. **Separation of power**,

Wheare argues,

...holds that good government is ensured if functions of legislation, administration, and adjudication in a state are not placed in the hands of one body of persons but are distributed to a greater or less degree among distinct or separate bodies of persons. A modified application of it has occurred in the United States where Congress, the courts and the president and his officers, are each separated off from the other and members of one group are forbidden by the constitution to be members of the other. The constitution then proceeds to allocate functions. All legislative powers are vested in Congress; all executive powers in the President; all judicial power in one supreme court and in such inferior courts as congress may from time to time ordain and establish.²²⁷

Yet, there are exceptions to this absolute separation even in the constitution itself. The president is associated with Congress in the exercise of the legislative function by his veto power; the senate is associated with the President in his executive function in that its consent is necessary to his making treaties and to his making certain important appointments. But this

²²⁵*Ibid.* p. 78

²²⁶*Ibidem*

²²⁷*Ibid.* p. 80

partial adoption of the principle of the separation of powers in the United States has led some writers to argue that a separation of powers, to some degree at any rate, is essential to federal government.²²⁸ But Wheare was not of the opinion that if a state is to be federal, that its general government should be organised in accordance with the separation of powers, although it may prove that a federal government works better if it is so organised. Though the federal principle lays down no rules about how the general government itself is to be organised, provided it is organised in such a way that general and regional governments are co-ordinate, each supreme in its own sphere. For the rest it may be said that the separation of powers has a value in assisting the working of federal government in some cases. Its general effect is to weaken the government and a weak government is sometimes considered desirable by the units which form a federal union.

4. Party System

A good party system is a factor in the organisation of the federal government which is of primary importance but which cannot be ensured or provided for in a constitution. Wheare defines it as, “one in which sectional differences of interest and opinion has their opportunity and their due weight but where also an integrated organisation can be created capable of effective political action on a nation wide (sic) scale.”²²⁹

Wheare alludes that sectional differences always threaten to break-up parties in a federal government and to paralyze legislative and executive action. United States and Canada have been fortunate in possessing for most of their history substantially **two-party system** – the Republican and the Democrats in the United States, and Conservatives and Liberals in Canada. There are differences between the parties that one can easily identify what

²²⁸*Ibidem*

²²⁹*Ibid.* p. 82

differentiates one from another.²³⁰ Wheare argues further that even within the party that it has often been true that the differences on policy among members within any one of these parties were greater than the differences between members of the different parties. Wheare claims that,

...these differences inside the American parties has led to the adoption in some states of **the system of primary elections** – whereby each party holds a preliminary election among its own supporters to choose the candidate it will put forward later to oppose a candidate from the other party. In this way an attempt is made to permit freedom of opinion within a party and a unified front against the opposite party.²³¹

Presidency, being the greatest prize of political struggle in United State is elected when the parties each nominate a candidate for the presidency and the people chose one of them by voting from electors pledged to support their particular candidate. Unlike Canada and United States, Australia and Switzerland are multiparty federal government. Wheare, however, emphasizes the important of two-party system when he argues that, “...it may serve to show the importance of a two-party system as an ideal, if not always a possibility, for the working of federal government.”²³²

5. Right to Secession or Expulsion

It has often been asserted that an essential requirement of a federal government is that there should be no rights of secession from the federation on the part of the regional governments.²³³ But for Wheare, what is meant here is that none of these governments have any right acting alone in seceding, or expelling each other, from the federation. Nevertheless, Wheare believes that, “...this (Expulsion or Secession) right is permitted in a situation the

²³⁰*Ibid.* p. 83, the best discussion of the American party system is V. O. Key, *Politics, Parties and Pressure Groups*.

²³¹*Ibidem*

²³²*Ibid.* p. 85.

²³³*Ibid.* p. 86, it was freeman’s view, for example, *History of Federal Government in Greece and Italy*, p. 90, that the right to secede was theoretically inconsistent with federalism, but probably desirable in practice.

general government is subordinate to the regional governments or vice versa and that is an end of federation.”²³⁴

Studying Wheare’s analysis of the four federal constitutions of United States, Canada, Australia and Switzerland, one is left with no doubt that there indeed seems to be no provision for unilateral secession or expulsion found in any modern federal constitution. Among quasi-federal constitutions, that of the U.S.S.R. alone gives to the regions the rights to secede. But Wheare doubts that the (expulsion or secession) right is consistent with the federal principle as a matter of logic. But while the existence of a right to secede unilaterally or a right to expel unilaterally may be quite consistent with federal government, it is not, consistent, as a rule, with good federal government. He argues that there are cases where to grant the right to secede is to ensure that states will never exercise it. But as a rule it weakens the government. Therefore, it will usually be true, he finalises that a unilateral power to secede or to expel makes for bad federal government.²³⁵

6. Equal Representation of Region in Upper House – Senate

Wheare sees equal representation in upper house of representative as a prerequisite in the organisation of federal government that he argues that if it is to be federal it is essential that the government of regions should have equal representation in the upper house of the general legislature.²³⁶ In the United States, Switzerland and Australia this plan is adopted. The states and cantons are represented by two members each in the upper house of the United States and Switzerland; and in the Australia, the states have ten representatives each. In Canada, the

²³⁴*Ibidem*

²³⁵*Ibid.* p. 87

²³⁶*Ibidem*

principle of equal representation was not followed, though some small attempt was made to compensate the less populous provinces.²³⁷

The argument however is that equal representation of the regions in the upper house is not logically essential for a government if it is to be federal, but at the same time it is often essential if federal government is to work well. The reason being that, Wheare states,

...equal representation in the senate gives some sort of security to the smaller states. Therefore, the method of having an upper house recruited on the basis of equal representation for the regions concerned is only one method of safeguarding regional interests. It is, however, advisable to adopt such a system, but federal government does not necessarily work badly without it.²³⁸

From the foregoing, we have seen that there are certain institutions: the supremacy of the constitutions, the necessity for the difficult and rigid amending process, the existence of judiciary review etc., which according to Wheare, are essential to a government if it is to be federal, though these essential institutions inevitably do not guarantee that a federal government will work easily or well. Therefore, my next analysis on Wheare's *Federal Government* is how well federal government works.

4.6 Kenneth C. Wheare and The Operation of Federal Government

1) Federal Government and Public Finance

Finance in federal government is an essential prerequisite, and for this reason, Wheare thought it appropriate to begin his study of the working of federal government by an inquiry into some aspect of its public finance. There are certain problems of public finance which are common to all governments, whether they are federal or not. They are: 1) the form of direct and indirect taxation; 2) the incidence and effects of certain taxes; 3) the extent to which expenditure should be met from revenue and from borrowing; 4) problem of currency control

²³⁷*Ibid.* p. 88

²³⁸*Ibid.* p. 90

and central banking; 5) of sinking funds; 6) of appropriation and audit.²³⁹ Of all these, what is the peculiar federal problem in public finance? As a result, Wheare argues:

The Federal principle requires that the general and regional governments of a country shall be each independent of the other within its sphere, shall be not (sic) subordinate one to another but co-ordinate with each other.²⁴⁰

Now if this principle is to operate not merely as a matter of strict law but also in practice, it follows that, according to Wheare,

...both general and regional governments must each have under its own independent control financial resources sufficient to perform its exclusive functions. Each must be financially co-ordinate with the other.²⁴¹

Quoting some words from the *The Federalist*: Wheare argues that,

...it is, therefore, as necessary that the state governments should be able to command the means of supplying their wants, as that the national government should possess the like faculty in respect to the wants of the union.²⁴²

Wheare sees this assertion as clearly an additional problem in public finance; because, it is not easy to distribute functions, and when once they are distributed, it is even harder to allot resources with any confidence that future experience will show that resources and functions expand and contract together, each adjusting itself harmoniously to the other.²⁴³ Therefore, if then, there is a sphere of financial autonomy in the federations, how extensive is it? Firstly, Wheare argues that there are two matters where the general government have a control which is not merely independent but also exclusive. The general governments in the federations have exclusive control, actual and potential, over currency and coinage. Secondly, it is the usual practice also, in most federal governments, that the general government should be given

²³⁹*Ibid.* p. 93

²⁴⁰*Ibidem*

²⁴¹*Ibidem*

²⁴²*The Federalist*, no. XXXI, p. 149 (Everyman ed.), as cited in Wheare, *Federal Government*, p. 93

²⁴³*Ibid.* p. 94

exclusive control, actually and potentially, over revenue from customs and excise,²⁴⁴ both as to the imposition of duties and disposal of the proceeds.²⁴⁵ The other independent sources it shares with the regional governments. The chief of these are: firstly, receipts from property, commercial undertakings, and monopolies; secondly, grants; thirdly, loans; and finally, taxation. The general government has been given priority over the regional governments on sharing of these financial resources, especially the power to lay taxes and power to collect these taxes. But if federal principle is to be applied, both general and regional governments are on the same footing. These financial sources are discussed extensively by K. C. Wheare²⁴⁶ in pages 96-109

However, here emphasis should be made on the necessity to distinguish the taxing power from other legislative powers. Its nature is different. It is a power to raise means; it is not a power to regulate specific fields. Thus, Wheare argues that it may be used to provide the means by which the commonwealth may carry out the functions which are committed to it in the constitution but however widely it is used, it must not be used so as to deny to the state the like power to provide the means by which they are to carry out the functions which are left to them in the constitution.²⁴⁷

From the illustrations giving by K. C. Wheare, it is apparent that in all four federations the general governments have become incomparably the most powerful financial authorities in their federal system, and the regional governments have been reduced to a restricted, if not subordinate position. The question becomes: how far the general and the regional government

²⁴⁴ In the United States the states are empowered to levy excises and use the power extensively.

²⁴⁵ American Constitution, Art. I (8) and (10); Canadian *Constitution*, S. 91 (2) and (3); Australian Constitution, ss. 51 (i), (ii), (iii), and 90; Swiss Constitution, Arts. 28-32. As cited in Wheare, *Federal Government*, p. 95

²⁴⁶ K.C. Wheare, *Federal government*, pp. 96-109

²⁴⁷ *Ibid.* p. 108

have been able to perform the functions allotted to them upon the basis of division of their financial resources? The short answer Wheare gave goes this way. The general government have been able to acquire sufficient resources under their own control to perform their function but the regional governments have come to rely upon grants from the general government. They have accepted, in varying degree, some measure of financial subordination to the general government.²⁴⁸

2) Federal Government and Control of Economic Affairs

All the federations used as illustration here by Wheare in his work grant to the general government a power to regulate trade and commerce with foreign countries. In Canada and Switzerland, Wheare argues that the power is actually exclusive. In the United States and Australia, the states can impose inspection charges on imports and exports, but this power cannot be exercised without the consent of the general legislature. Thus, Wheare argues, “In United States the provision runs: No state shall, without the consent of Congress, lay any imposts or duties on imports and exports, except what may be absolutely necessary for executing its inspection laws; and no produce of all duties and imposts laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress; No state shall, without the consent of congress, lay any duty to tonnage.”²⁴⁹ In Australia the power to impose duties is even more restricted. These may be passed without receiving the prior consent of the commonwealth parliament, but they are liable to be subsequently annulled by it, and in both cases it is clear that power of the general government to control foreign commerce is exclusive, but potentially exclusive, not actually, as in Canada and Switzerland. So far as the control of external trade and commerce is concerned it seems clear that the general governments in

²⁴⁸*Ibid.* p. 109

²⁴⁹*Ibid.* pp. 120-121

these federal systems have in law full powers although in practice. These powers must be exercised moderately if the unity of the federation is not to be submitted to an excessive strain.

When the control of economic affair turns to inter-state or intra-states, or in other words, when we turn to consider economic life within the boundaries of the federation a more complicated situation is found. Powers in this stance – are divided between the general and regional government in such a way that it is difficult to find any useful principle of comparison between the countries or, more bewildering still, to state with precision just where within any federation, authority over a given topic may be said to lie.²⁵⁰

If we look at the constitution of Switzerland, United States, Canada and Australia, Wheare says, we can find that the general governments in these four federations possess powers of exclusive control, actual or potential, over certain aspect of economic life. Among these are: currency, coinage and legal tender; weights and measures; copyrights and patents; bankruptcy and insolvency; immigration and emigration from and to countries outside the federation and the raising of loans on the credit of the general government. Beyond the list, Wheare alludes that it is difficult to find any important topic in economic affairs which is granted without some qualifications to the general governments in all federation.²⁵¹ Others like bank; this subject is under the exclusive control of the general government in Canada and Switzerland; but divided between the general and regional governments in United States and Australia. Navigation and Shipping is similarly divided. The control of railway is similarly conferred in all four federations. In Canada, Australia and the United States it is divided between general and regional governments, in Switzerland it is in the hand of the general government alone. Civil aviation in Canada and Switzerland is in the control of the general government; in the

²⁵⁰*Ibid.* p. 126

²⁵¹*Ibidem*

United States and Australia it is divided between the general and regional governments. Insurance and marketing are divided between the two sets of authorities in all four systems.

More examples could be given but the main point is established. Apart from certain limited, though important topics, the control of economic affairs in the federal system is not unitary but multiple. It may be true that economic life is one, but in the federal countries this fact is not recognised so far as the allocation of governmental powers is concerned, the legal and political pluralism of the federation is imposed upon the alleged unity of economic affairs.

Finally, if federal government is appropriate to the conditions of a country, it involves necessarily division and duplication of control. It is true that the division should be clear and simple as possible and that it should be capable of adaptation. But so far as economic affairs are concerned, if the federal principle is to operate at all, Wheare argues, some control of economic affairs must remain with the regional governments.²⁵²

3) Federal Government and Social Services

Wheare uses the term here to describe services which deal primarily with the protection and welfare of citizens, and under it he discusses topics as police, education, health, assistance for old age, invalidity, unemployment or accident, workmen's compensation, prisons and the control of alcoholism.

At a first glance, then, it would seem the intention of all these federations was to leave the regulation of social affairs almost entirely to the regional authorities. Just like Canadian federation, Dominion legislature leaves the most important social services to the exclusive control of the provincial legislatures. And all that remained were in the control of the dominion.²⁵³ Under social service, Wheare argues that the relation between general and

²⁵²*Ibid.* p. 142

²⁵³*Ibid.* p. 146

regional governments in the federations has been affected thus by three principal factors: the extension of the general government's power by judicial decision, by constitutional amendment, and by financial participation. But there are one or two other aspects of the relations between general and regional governments in the sphere of social services which are worth mentioning: the legislative and the administrative co-operation.

So far an attempt has been made to explain the respective functions of the general and regional governments in the control of social service legislation, the limit of their powers, the trend visible in the development of their relations, and the relative importance of one authority as against another. It is pertinent to discuss briefly some important social services in turn.

1. **Education:** This is in all federations a matter substantially in the hands of the regional governments and it seems best that it should be. More particularly is this in federations where, as in Canada and Switzerland, there are religious differences which are territorially distributed, and where minorities may therefore be protected to some extent by their own provincial government. It is, of course, true that a national minority which is a provincial majority may not respect in its turn the rights of the minority within its own province. The questions that arise over education in communities where language and religion differ are many. If there is only one set of school, whether provided by the government or by religious bodies, there may be a demand that there should be no religious instruction; or that if there is, it should be given by clergy of the different denominations, or be non-denominational, or be optional. Or there may be a claim to establish separate schools, and if this is granted, a further claim, that those who contribute to establish denominational schools should not be taxed by the government to provide state schools which is, in effect, the schools of the majority denomination in the province or canton.

On the whole, the conclusion Wheare draws from the above illustration makes it imperative that education remain for the most part under the regional control.²⁵⁴

2. **Social Insurance and Social Assistance:** For Wheare, social insurance covers workmen's compensation for industrial accidents and occupational diseases, sickness insurance, invalidity, old age, widow's and orphan's insurance, unemployment insurance and schemes of voluntary insurance. Social assistance covers much the same field, but the help given does not depend upon contributions from the persons benefited or from employers. It includes, therefore, non-contributory persons, pension schemes, for invalidity, old age, widow and orphan's; unemployment relief; assistance to the blind, aged and infirm; and to poor persons who have no other means of support. The peculiar federal problem is how they should be allocated as between general and regional governments.

The question is: Which of the authorities is better able to meet the cost of these social services? Disagreeing on the nature of the question, Wheare argues that it should not be which of the authorities are better able, but which authorities is most likely to be in a position to finance these services when they are most needed. Using unemployment as an example, Wheare argues that the region where unemployment payments will be most necessary will usually be least able to provide them. Therefore, the provision of assistance and insurance for the unemployed therefore seems to mark itself off as a service which the general government may most appropriately deal with. The general government alone have available the greatest power for attempting to reduce the volume of unemployment and it seems fitting therefore that the care of the unemployment should be in its hands.

²⁵⁴ K. C. Wheare, *op. cit.* p. 156

This leads Wheare to ask, “If the care of the unemployment is most appropriately a function of the general government, what should be said of other services mentioned?” In practice the question has to be settled largely on financial grounds. Therefore, which authority can afford it?²⁵⁵

3. **General Health Services:** This includes: the control of hospitals, infectious diseases; and epidemic, medical practitioners, public medical services, pure food regulation, poisons, drug, patent medicines, and the like. Generally speaking, these are shared between the general and regional authorities upon principles which are understandable, and although there is bound to be overlapping and a lack of uniformity. However, general government through their powers, express or implied, to deal with those aspects of health which involves medical inspection of immigrants and travellers from abroad, hospitals for sailor, care of the armed forces, the control of foods, drug and poisons imported into the country and so on.²⁵⁶ For the rest, the powers over public health remain with the regions.
4. **The Regulation of Conditions of Labour:** Conditions of labour such as safety, cleanliness and sanitation of factory, ventilation and the mass of detailed regulation covers by factory act. This jurisdiction is divided between general and regional governments, and the general government’s authority is derived either from specific grants or from its power to regulate inter-state and foreign commerce, navigation and shipping, the criminal law or to carry out public works.²⁵⁷
5. **The control of the Manufacture and Consumption of Alcoholic Liquor:** This aspect of social legislation has produced some interesting federal problems. In Switzerland the subject has been placed almost entirely under the control of the

²⁵⁵*Ibid.* p. 159

²⁵⁶*Ibid.* p. 160

²⁵⁷*Ibid.* p. 162

general government by constitutional amendments. So also with United States and Australia. Then, as the movement develops and more powers become necessary, the co-operation of other states and assistance of general government become necessary.

6. **Law Enforcement in Federal System:** This is about police and prison services, and the criminal law. The practice in the different federations differs on these questions. In Switzerland both police and prisons are under the control of cantons. In Australia, a similar system of control by the regions prevails. There are no commonwealth prisons. The constitution actually provides that every state shall make provision for the detention in its prisons of persons accused or convicted of offences against the laws of the commonwealth, and for the punishment of persons convicted of such offences, and the commonwealth parliament has power to make laws to give effect to this provision.²⁵⁸ Police also are similarly under state control. Thus, there is satisfactory co-operation between the police departments of the different states.

Canada and the United States are alike in having a dual system of prisons. Indeed, the Canadian constitution expressly gives penitentiaries to the Dominion government and reserve public and reformatory prisons to the provinces. This means that long sentenced prisoners are under the charge of the Dominion government. In Canada, the criminal law is a dominion matter, and not provincial as in Australia, there is a tendency for longest (sic) term prisoners to be dominion offenders.

In eight of the ten Canadian provinces the police services are performed entirely by the Royal Canadian Mounted Police, a Dominion force, their services being rendered in return for provincial payments under agreements made between the Dominion and the provinces. However, the provinces of Ontario and Quebec maintain their own

²⁵⁸*Ibid.* p. 165

separate forces for the administration of provincial territories also for Dominion purposes.

United States stands at the opposite end of the scale from Switzerland and Australia so far as police are concerned. There are federal police for the enforcement of federal law and state police for enforcement of state law. A series of six crime control Acts of 1934 provide for the close co-operation of federal and state authorities in connection with the enforcement of criminal law.

The passing of these acts draw attention to the problem which arises when criminal law in a federation is placed almost entirely under the control of the regions, as it is in the United States and Australia. With the advancement and development of modern means of transportation, state boundaries within federation means nothing – except a hope of escape to the criminal who is equipped with the automobile or the motorcycle or the aeroplane. Law enforcement becomes increasingly difficult if it is to be split up into independent, sometimes non-co-operative units. One example of the difficulty in the United States may be seen in the working of the constitutional provisions for the rendition of criminals. The spectacle of the police pulling up at state boundaries while the criminal drives off seems a denial of common sense. With the alarming growth of crime in the United States, an attempt was made to obtain co-operation. Many states in that vein have enacted uniform laws to modify the process of rendition. About half the states permit the officers of one state in pursuit of a criminal to cross their borders and arrest the fugitive on their own soil. More than one third of the states have legislated to waive the formal requirements for rendition proceedings in the state of arrest and they permit the easy transfer of fugitive back to the state in which the crime was committed. But it seems clear that co-ordination through the general government by such means as the Federal Crime Control Acts is likely to be more effective. And

here, fortunately, the fact that crime has become inter-state makes it possible for the general government to take a hand in its control. The powers available to the general government in the constitution are sufficient to authorize its action.²⁵⁹

On the whole there seems no insuperable difficulty in permitting the regional governments to control a great part of the criminal law. The weakness of divided jurisdiction have been illustrated in an extreme form in the United States, but they can be overcome to a large extent by co-operative actions where difference of outlook upon social questions are important – and they are in the United State – it may be wise to permit some freedom to the state to frame criminal justice as they think right, provided always there resides in the general government a power to protect the interests of other states and of the union as a whole.²⁶⁰

4) Federal Government and Control of Foreign Relations

It is always assumed that foreign relation of a federation will be controlled predominantly, if not exclusively, by the general government of the whole territory. Indeed, one of the arguments for establishing a federation is usually that it will provide for a unified foreign policy. So, in most federation there is an explicit provision in the constitution absolutely forbidding the component states from entering into obligations with foreign states, or permitting it only with the consent of the general government, in which case potentially exclusive control rests with the general government. Quoting United States' Constitution, Wheare declares that “no state shall enter into any treaty, alliance, or confederation, and a little later, that no state shall, without the consent of congress enter into any agreement or compact with each other state or with foreign powers.”²⁶¹

²⁵⁹*Ibid.* p. 167

²⁶⁰*Ibid.* pp. 167-168

²⁶¹ United State Constitution, Art. I, s. 10, as cited in Wheare, *Federal Government*, p. 169

But giving general government exclusive control of the foreign relation does not mean that it represents views and interests of the greater majority of the regions of which the federation is composed. Thus, he argues, “

It cannot assume therefore that because a federation is governed by the cabinet system based upon representative and party government, the general government can be trusted to use an unqualified power to control foreign relations in a way which will respect the views and interests of the greater majority of the regions of which the federation is composed. Against which legal safeguard is proposed – legal safeguards in the form of division of responsibility in the power of controlling foreign relations may be essential if regional rights are to be respected and the spirit as well as the letter of the federation be maintained.²⁶²

Of course, it may be thought preferable that divided authority in these matters should be avoided or gradually softened. That may be wise politics in certain circumstances. But, if that is not desired, if, on the contrary, it is desired to maintain regional interests in the sphere, then it must be realised that the political conventions of democratic cabinet government may not be enough, without the assistance of appropriate legal safeguard.²⁶³

There are thus at least two important problems confronting the framers of the federal constitution in respect of the conduct of the foreign relations of the federation. Firstly, there is the problem of whether the power to control foreign relations should be given in its entirety to the general government, or divided between general and regional government, more particularly so far as the carrying of treaties into effect is concerned. Secondly, there is the problem of how the power of the general government in foreign affair, whatever its extent may be, is to be so controlled that in its exercise the divergent interests of the component regions in the federation shall be duly safeguarded.²⁶⁴

5) Federal Government and War Power

²⁶² Wheare, op. cit. pp. 179-80

²⁶³ *Ibid.* p. 180

²⁶⁴ *Ibid.* p. 183

The working of federal government in war-time would seem likely to exhibit in extreme form the peculiar problems which a federal system produces. For, while it is the essence of federalism to be pluralistic, it is however essence of the war power to be unitary, to be centralised and regimented, and to be, in the modern parlance “totalitarian”.²⁶⁵ This makes this topic amongst others discussed so far to seem to provide the most critical test of the efficiency of the federal government.

Tracing the history of federalism, it is meant to understand that it is as a result of the need of common defence that impelled the regions to join together in the modern federations. Therefore, one would expect that the control of defence in a federation would be granted to the general government. Thus, if the control of the foreign relations has been given to the general governments, it seems reasonable to give them also the control of those armed forces which give to policies their influence and their final effectiveness. Wheare states generally that the control of the war power has been given to the general government in the four federations which we are discussing. But there are interesting differences of detail from case to case.

1. **Power to declare war:** In the United States and Switzerland this power is placed exclusively in the hands of the general government. Nevertheless, it is the general legislature, not the executive, which is given the power. According to Wheare, one advantage which can follow from this arrangement in a federation is that no war will be entered upon unless a majority of representatives of the regions agree, for in each case the consent of the upper house is required, and the upper house is composed of two representatives from each of the states or cantons.²⁶⁶

²⁶⁵*Ibid.* p. 187

²⁶⁶*Ibidem*

The experience of United States that congress alone can declare war is true, but it is also true that the president, by virtue of his powers as commander-in-chief, can engage in war without waiting for congress to declare war.²⁶⁷ And again, “If a war be made by invasion of a foreign nation, the president is not only authorised but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority.”²⁶⁸

The principal point in the Canadian and Australia case, according to Wheare, is that the regions have no power to declare war and that the power in these federations to declare war is vested in or controlled by the general executives. The executive, he said, are responsible to their legislatures, and in the case of Canada, the formal prior consent of the legislatures has been sought by the Prime Minister before the declaration of war has been made. In this way, Wheare believes, the differences of opinion are given a chance to express themselves.²⁶⁹

2. **To Wage War:** In waging war, these requirements are considered: the raising of armed forces on sea, land and in the air. For Canadian and Australia federations exclusive control over raising armed forces has been given to the general government. In Australia, the parliament of the commonwealth is positively empowered to deal with the naval and military defence of the commonwealth. The power of the general government is therefore potentially exclusive.

In the two earlier federations, the United States and Switzerland, there was not the same clear cut intention to hand over the entire control of the armed forces to the general government. In Switzerland, between 1848 and 1874 the cantons had

²⁶⁷ *Ibid.* pp. 187-188

²⁶⁸ See the discussion in J. G. Randall, *Constitutional Problems under Lincoln*, as cited in Wheare, *Federal Government*, p. 188

²⁶⁹ Wheare, *op. cit.* p. 189

considerable control, but in the reorganisation of the constitution in 1874, their powers were limited. Nonetheless, the cantons still exercise some powers.²⁷⁰

The constitution of the United States left with the component states a power to raise a militia²⁷¹ and gave them the exclusive power to appoint the officers of the militia, and the authority to train the militia according to the discipline prescribed by congress. There were two kinds of military forces contemplated by the constitution of the United States: the state militia under the command of the governor, and the army of the United States. Alone among federal governments, as Wheare has defined them, the United States tolerated this dual system.²⁷²

3.7 Kenneth C. Wheare and The Constitutional Amendment

There is always the need that at every point to stay back and review a federal constitution, especially to know whether it is still capable of being adapted to the needs and aspiration of the community for which they were established. Thus, Wheare says,

...a brief review of the working of federal government may be attempted. Perhaps the best way in which to begin this review is to consider how far federal governments have shown themselves capable of being adapted to the needs of the communities for which they were established.²⁷³

Critically, one of the essential characteristics of the federal constitution is its rigidity, or being too conservative, too difficult to alter, which it was criticised. Therefore, Wheare's study of federal government is truly to ascertain its workability, and whether it supports this (above)

²⁷⁰ *Ibidem*

²⁷¹ The militia was, in theory, composed of all men (or women) of military age. In practice, it was composed of a small force of volunteers which spent part of its time in drill and encampment and received a payment for these services.

²⁷² Wheare, *op. cit.* p. 190

²⁷³ *Ibid.* p. 209

general criticism. Furthermore, to ascertain also whether such excessive rigidity and conservatism, if it exists, is an inevitable consequences of a federal system.²⁷⁴

Wheare argues that there are several methods by which changes may be brought about in federal governments. And the most obvious method is through *Amendment of the Constitution*. And it is as a result of this method of amendment process in federation that led political scientists to classify constitutions as being rigid or flexible. What is the meaning of rigid or flexible constitution?

Wheare advances the meaning by defining rigid constitution as “one which enjoys an authority superior to that of the other laws of the state, and can be changed only by a method different from that whereby those other laws are enacted or repealed.” While flexible constitutions, on the other hand, “are those which stand upon an equal footing with other laws and which can be changed by the same process as other law.”²⁷⁵ On this definition, Wheare alleges, the constitutions of the United States, Switzerland, Canada and Australia would be classed as rigid, for they are intended to be supreme over the legislature – general and regional – which they create or recognise, and they cannot be altered by these legislatures acting through the ordinary process of legislation.²⁷⁶ The four federations adopted different methods in amending their constitutions. This work reviews it one after the other.

In Switzerland, the amendment of the constitution requires always the consent of a majority of the electors voting in the referendum, and of a majority of the electors voting in a majority of the cantons; and on some occasions, the consent of the general legislature also, the process has been used frequently and successfully. For instance, since 1874, when the constitution of 1848 was submitted to a general revision, there had occurred, up to 1962, 125 plebiscites in

²⁷⁴*Ibidem*

²⁷⁵*Ibidem*

²⁷⁶*Ibidem*

Switzerland upon constitutional questions. Of these sixty-four were referenda upon constitutional amendments submitted to the people by the general legislature. Forty-nine of these proposals were accepted. This is a high proportion indeed. Of the remaining plebiscites, forty-nine were proposals for amendment of the constitution presented on the initiative of 50,000 voters. Seven only of these were accepted by the people. Then there were thirteen cases where the general legislature offered proposals as substitutes for those offered on the initiative of 50,000 voters, and in nine out of these thirteen cases, the proposals for amendment which commended themselves to the general legislature have in most cases been adopted by the people.²⁷⁷ Therefore, if the Swiss constitution is rigid, the Swiss people are flexible. They have been ready to use an amendment process which, from its careful safeguards, might have proved a conservative and obstructive force to adapt their constitution to what they conceived to be needs of their time.²⁷⁸

In Australia, their amendment bears striking semblance with that of Swiss, and was borrowed from Switzerland. They have refused on most occasions to alter their constitution. From the foundation of the commonwealth in 1901 until 1963 proposed constitutional amendments were submitted to the people by referendum on twelve separate occasions; only four were carried by the requisite majority of all electors voting and of a majority of electors in a majority of states. With the exception of the proposal of 1910;²⁷⁹ 1928 and 1946 (social service), each proposal to extend the powers of the commonwealth has been rejected, and in all cases, except three, this rejection was registered by a majority of all the electors voting. The majority of the Australia electorates, in so far as it has expressed its views upon the matter in referendum, had been, in general, opposed to the encroachment of the commonwealth upon the sphere reserved by the constitution to the states.

²⁷⁷ *Ibid.* p. 210

²⁷⁸ *Ibidem*

²⁷⁹ Commonwealth taking over state debt irrespective of the date at which they are contracted

In this respect while Swiss electorates have been liberal or flexible in its use of a rigid amendment process, the Australia electorates have been conservative. Whereas in Australia attempts were made to obtain alteration in the constitution, as reflected in most amendments rejected, to extend the powers of the commonwealth parliament over matters concerning the state governments. These are not the case in United States.²⁸⁰

In United States of America, amendments may be initiated at the instance of two-third of both houses of congress or by convention called by congress at the request of the legislatures of two-thirds of the states. Amendments initiated by congress or by convention may be ratified either by the legislatures of three-fourths of the states or by conventions in three-fourths of the states, as the one or the other mode of ratification may be proposed by congress. In practice all amendments so far have been initiated by congress except in one change of note in the sphere of public finance. Unlike in Australia where attempts were made to obtain alteration in the constitution to extend the powers of commonwealth parliament over matters concerning state governments, no comparable attempts were made in the constitution of United States, to alter the distribution of power or function between the general and state governments. But it would be a mistake to conclude that the powers of the general government had not been extended by other constitutional amendments means. To do so, Wheare argues, would be to overlook or ignore an important sentence which appears in the XIIIth, XIVth, XVth and XVIIIth amendments, among others; congress shall have power to enforce this article by appropriate legislation.²⁸¹

There are perhaps some signs of a great rigidity in the process than in the Switzerland and Australia. The legislatures of the states may be more tenacious of their powers than the people of the states; the three-fourths majority is more difficult to obtain than the simple

²⁸⁰ Wheare, *op. cit.* p. 212

²⁸¹ *Ibidem*

majority required in Switzerland and Australia. But on the whole it would seem that it is the conservatism of the people, not the rigidity of amending process, which explains the relatively few changes made in American constitution so far as the division of powers between general and state governments are concerned.²⁸²

Canada provided until 1949 the extreme example of a federation with, in law, no amending process under its own control. And even now the parliament of the United Kingdom alone has power to alter the British American Act in respect of the division of powers between Dominion and provinces. An important question is raised: "How much consent is requisite before the Dominion parliament may ask the United Kingdom parliament to legislate and before that parliament may itself feel free to accede to the request. At present it would seem that any amendment, to which Quebec or Ontario objected, would not be pursued. This veto by a single province imposes a greater rigidity in practice upon the amending process in Canada than is imposed by law in the other three federations."²⁸³

Judicial Review: Wheare was of opinion that the amendment of the constitution was not as a result of the extension of the power of general government as was remarked earlier. Nevertheless, the fact remains that the power of general government is being extended. This makes Kenneth C. Wheare to query: What has made it possible? He was able to deduce it from judicial review of the constitution; thus, he say, "It was the result, in large measure, of the interpretation of the constitution by the court."²⁸⁴ K. C. Wheare proceeds with illustrations to buttress the fact of the role of the court in the constitutional interpretation. His many examples are sufficient to illustrate how far the flexibility of a federation depends upon the manner in which judges exercise their function. They have it in their power in many cases to

²⁸²*Ibid.* p. 213

²⁸³*Ibid.* p. 214

²⁸⁴*Ibid.* p. 215

adapt the constitution to the changing needs of the time. They can do this without violating their oath to the constitution.

Then what is the function of the court as regards to constitution? According to Wheare,

Court may adapt but they may not amend, they may follow common sense, but they may not follow mere expediency. They may have opinion but they may not be partisan. They may choose to treat a constitution as a living instrument, but they must treat it first of all as a constitution.... They can give a broadening construction of existing powers, but they cannot assign to one authority powers explicitly granted to another.²⁸⁵

Thus, the two factors, according to Wheare, which determine the **rigidity** and **flexibility** of federal governments which have so far been discussed - the process of constitutional amendment and the exercise of judicial review – have this in common that they operate upon the actual law of the constitution.

Wheare deems it interesting to consider factors which operate not upon the strict law of the constitution but upon the practice of the constitution; factors which accept the existing division of legal powers, but operate upon the governments which exercise the powers so divided. The factors are: usage and customs or convention. By usage, Wheare means some usual way of behaving which government follow but which they do not recognise as completely binding. By custom or convention, Wheare means some method of behaving which is regarded binding, though it lacks the actual force of law. The question is how the operation of usage and convention has affected the rigidity and flexibility of the federal government or constitution? Wheare argues,

At the outset it has to be affirmed that usage and convention cannot alter the rules of the law which govern the distribution of powers between general and regional governments. They may nullify certain legal powers by making it constitutionally improper to exercise them, and in this way actually restrict in practice the extent of the powers of general and regional governments. They may establish certain rule which requires that some powers should not be exercised except with certain consents or after consultation. Here again in

²⁸⁵ *Ibid.* p. 223

practice the extent of a power may be affected, but in law the power is still there and it may be used. Above all, usage and convention cannot make it possible for a general and regional government to make laws on a topic which is, by the terms of the constitution, beyond its powers.²⁸⁶

But usage and convention are not confined in their working to matters of the kind. Thus, Wheare argues, “they enter into sphere which, for want of a more exact term, may be called intergovernmental co-operation.”²⁸⁷ Here, Wheare is trying to demonstrate not really the way in which the general and regional government exercise their powers upon each other, or restrict each other in the exercise of their powers, but how each, operating within its own allotted sphere, is able to offer help to the other, or to receive help from the other. He believes that in the line of the co-operation, flexibility in the working of federal government may most easily be found.²⁸⁸

Wheare gave two main areas in which there is room for inter-governmental co-operation in the federation: as relations between general and regional government and inter-regional/state relations. In the relation between the general and regional government, through the effects of the division of powers, co-operation is needed to ensure that co-ordinated and complete administration of the divided fields is attained. Whereas in the area of inter-regional/state relations, if each regional government keeps completely to itself, many matter will suffer from diversity of regulations, and government itself will be less efficient because the experience of other states will have been neglected. In both these spheres some attempts at co-operation have been made in the United States, Canada and Australia, and in some cases the same machinery operates in both spheres.²⁸⁹ Arguing further from the point of view of usage, Wheare exemplified the inter-governmental relation in the meetings of the chief executives of the general and regional governments in periodical conferences. In United

²⁸⁶*Ibid.* p. 224

²⁸⁷*Ibidem*

²⁸⁸*Ibid.* p. 226

²⁸⁹*Ibid.* p. 227

States there is the Governors' conference; in Australia there are the Premiers' conferences; and in Canada there is the Dominion-Provincial conference, and inter-provincial conference.

Wheare at a point briefly surveys the methods by which federal governments may be modified and adapted. According to him, federal governments have a high degree of adaptability. One of such is war-time. Thus, he argues,

In war-time, all four federations have been shown to possess the power to adjust their pluralistic structure to the necessities of unified and total war effort. This proved possible from the terms of their constitutions as interpreted by the courts.²⁹⁰

This supports the above proposition because, "it proved possible also because of the willingness of regional governments to co-operate and to supplement the legal powers of their general government with their co-ordinated efforts."²⁹¹ The working of federal governments in war time demonstrates quite clearly that in some situations at any rate there is amply adaptability in a federal structure. The second one is the time of economic crisis. In it the degree of adaptability has not been great. Most federation, like Canada, has been largely unable to modify their federal government to meet the demands of economic depression. This is as a result that there is not usually obvious or overwhelming support of all the regions/states/cantons in favour of new deal or modification. Like in Canada case, Wheare argues, it was more of the conservatism of the Canadian people than the rigidity of the constitution which left the Canadian federal system largely unchanged. Australia and United States achieved the modification by governmental co-operation and judicial interpretation, while Switzerland by constitutional amendments.²⁹²

3.8 Tendencies and Prospects of Federal Government in Kenneth C. Wheare's Federalism

²⁹⁰*Ibid.* p. 235

²⁹¹*Ibidem*

²⁹²*Ibidem*

One important tendency of federal government is that general governments in all four federations have grown stronger. Wheare does not mean that growth in strength is as a result of general governments' acquisition of new field of jurisdiction in addition to those which were originally conferred upon them at the initiation of the federal union. Thus, Wheare argues,

So, when it is said that there has been a tendency in federations for the general governments to increase in strength, this does not mean that they have steadily acquired from the regional governments fields of jurisdiction which at the establishment of the federation were confined to the exclusive control of the regions.²⁹³

Therefore, it means that, "...the general governments have development more and more intensively the area which was assigned to them originally."²⁹⁴

Some of the assignments were the control of defence, and the power to make peace and war; so also with their powers over foreign relation and particularly over foreign trade.

The general governments, then, have grown in importance in comparison with the regional governments, because they began from nothing and because they were endowed with control over most of the important matters with which governments have to deal. Another important increase of the power of the general government is found in the sphere of finance, and it is here that the increase has been greatest. These obviously put Wheare in the situation to question a lot of things. Therefore, against the above obvious fact, Wheare queries, "What is the prospect of federal government?"

Wheare argues that some students of federalism allude, having seen the power the general government weighs, that the prospect is nothing less than unitary government. Thus, he argues, "Some students have concluded from the way in which general government have increased in importance and strength at the expense of regional governments that federal

²⁹³*Ibid.* p. 237

²⁹⁴*Ibidem*

government is really no more than a stage towards unitary government.”²⁹⁵ He sees above stated assertion as a prophecy rather than historical judgement, for, so far, no federal government, as he describes it, has become a unitary government subsequently. He went further to examine the evidence upon which such a prophecy can be based.

The chief forces which have caused general governments to increase in strength at the expense of the regions, according to Wheare, seems to have been in four-fold: war, economic depression, the growth of social services and the mechanical revolution in transportation and industry. Firstly, war and economic depression demand unitary control if their problems are to be effectively treated, and they impose financial strains which only the general government have been able to bear. Secondly, the growth of social services and its cost has been greatly increased in times of economic depression and by the war, and they meant that the general government had to come to the assistance of the regions. These matters in most federations were under the control of the regions, but in all it was found that the regions required financial assistance from the general governments. Finally, the revolution in transportation and industry made so much of life inter-state instead of intra-state, that large areas of activity came within the ambit of the general government’s control.

Thus, Wheare queries again, “How do these affect the prospect of federal government? The issue is that increase in power of general government as a result of these factors, is fairly certain to continue – and necessarily so. Therefore, if federations are to survive these crises successfully they must submit to a large measure of unitary control while the crises last. Consequently, war, or power politics, and economic crisis, or depression politics, are the enemies of federal government.”²⁹⁶ That implies that peace and prosperity are in truth prerequisites for the successful working of federal government. Deductively it may be said,

²⁹⁵*Ibid.* p. 238

²⁹⁶*Ibid.* p. 239

therefore, that if wars and economic crises are to recur frequently the prospect is that federal government will not survive for long.

There is an argument of another tendency, which is that the regional government also can expand too. Thus, Wheare argues, “I have indicated that war and economic crisis, if they recur frequently, will almost certainly turn federal governments into unitary governments, and I have suggested that the growth of social services may, but need not, tend towards the same end. But that is not the whole picture, because that prospect is based upon the consideration of one tendency only – the tendency of general governments to grow at the expense of the regional governments. One other tendency at least must be noticed. It has not been the general governments alone which have been grown in strength. The regional governments also have expanded. In all the federations, the regions now perform functions which at the establishment of the federation, they perform either not at all or to a much less degree than now.”²⁹⁷ The sphere in which their powers and functions have expanded considerably are: police services, such as pursuit of criminals; protection and welfare services; reformative institutions, advisory services, traffic control and a wider range of helpful rather than prohibitive activities. Other services where they have expanded are: education, health and destitution services. The regional governments, according to Wheare, have all expanded their activities in these spheres and although it is true that many have found their financial resources insufficient to meet the total cost, they have none the less spent their limit.²⁹⁸

Wheare, however, highlighted one strange element in the tendency of general government to increase their power and that is the financial predominance which they have attained. Hence, he alleges,

²⁹⁷ *Ibid.* p. 240

²⁹⁸ *Ibid.* p. 241

The regions have not succeeded in resisting this, and it is noticeable that, with all their assertions of independence and of their determination to resist unification, there is a tendency to accept at the same time a large measure of financial assistance from general government.²⁹⁹

In Canada and Australia for instance, the provinces and states are reluctant to give up jurisdiction but they demand grants and subsidies to enable them to perform the functions within their jurisdiction. The prospect is usually federal aid leads to federal control. Thus, Wheare argues, “The prospect for federal government, so far as this tendency is concerned is, in my view, that a plurality of jurisdiction is likely to be combined with some measure of financial unification.”³⁰⁰ But Wheare argues that this is rarely the case because as he alludes,

The regions will cling to their areas of independent power to the topics over which they have legislative and executive control, but in return for this they will have to accept from the general government some degree of financial assistance and with it a greater or less degree of control. This means a modification of the federal principle to some degree, though it need not mean a complete denial of federation. It will mean, too, that the independence in jurisdiction of the region in law may be unreal to some degree in practice. But such a combination may well prove workable and it may produce better government than complete independence in finance and jurisdiction.³⁰¹

Here, Wheare brings forward the importance of system of co-operation between general and regional governments in which something was said of previously. The co-operation between regional jurisdiction and general finance has already developed in it. Thus, Wheare argues,

It enables the two sets of authorities to work together in such a way that neither is completely independent of the other, though each is exercising its own independent powers, as allotted to it by constitutions.... It is this co-operative tendency in federal government which provides its most hopeful prospect because, through co-operation the tendency of the general government to grow in strength especially in finance is associated with the desire of the regions to maintain the right to make law for themselves on the matters confided to them by the constitution.³⁰²

Wheare however sees it as unwise to speak optimistically about the prospect of co-operation because general government are not anxious to share powers if they can acquire them entirely

²⁹⁹*Ibid.* p. 242

³⁰⁰*Ibidem*

³⁰¹*Ibid.* p. 242-3

³⁰²*Ibid.* p. 243

for themselves. Hence, he advises for the need to adopt before the co-operation some machinery in order to control some excesses. As a result, He argues,

So far the making of grants by the general to the regional governments has been allotted to grow haphazardly and it has encroached steadily upon the federal principle. General governments have not been sorry to see this happen; regional governments have been able to prevent it, or have not wished to refuse money when it was offered. But unless some machinery is adopted by which assistance from the general government can be combined with some independence in finance for the region, co-operation will be something of a screen behind which unification is practiced.³⁰³

Wheare is also cognizant of the argument of unitarists when they asked “Is it worthwhile to preserve federal government? For them, federal government is out of date because, in a world where economic, and indeed social, life is becoming more and more a single whole, federal government preserves hard and fast regional divisions. Where unity is the predominant characteristic and tendency of life, where the word unity is so ardently desired, federalism offers multiplicity and plurality.”³⁰⁴ To this end Wheare answers, “That mere unity is no virtue in itself, that if large scale economics in the modern world is making all people one, it does not follow that it is a good tendency or that it is a tendency which should be assisted by governments or extended to all spheres of life.” To this he argues further,

...federal government, after all, does not stand for multiplicity alone. It stands for multiplicity in unity. It can provide unity where unity is needed, but it can ensure also that there is variety and independence in matters where unity and conformity is not essential..., within this unity there is room under federalism for each region to govern itself in its own way. This exercise in self-government is sufficiently valuable to be worth the cost it entails.... One of the most urgent problems in the world to-day(sic) is to preserve diversities – either where they are worth preserving for themselves, or where they cannot be eradicated even if they are not desirable and at the same time to introduce such a measure of unity as will prevent clashes and facilitate co-operation.”³⁰⁵

³⁰³*Ibidem*

³⁰⁴*Ibid.* p. 244

³⁰⁵*Ibidem*

Finally, he concludes, “Federalism is one way of reconciling these two ends, and this book has tried to show in what circumstances it is likely to succeed.”³⁰⁶

³⁰⁶*Ibid.* p. 245

CHAPTER FOUR

THE CHALLENGES OF NIGERIA FEDERAL SYSTEM

4.1 Historical Origin and Evolution of Nigeria's Federalism

The concept of federalism originated from the idea of intergovernmental relations which date back to the Greek civilization when efforts were made to describe the legal relationships between the Delian League and the City states.³⁰⁷ The system of intergovernmental relations was used by the Italians of the Middle Age, and also in the development of the Swiss Confederation from the 13th century. The ideas of federalism were also known to have influenced experiments in the governmental organisation in the Western hemisphere in the scattered islands of the Caribbean which by the 1680s have developed a form of federal council legislating in matters of common concern. Jean Bodin was noted as the first advocate of modern federalism, followed by Otto Cosmanus, Hugo Grotius and others. These writers, according to the Thom-Otuya³⁰⁸ reiterating Ifesinachi, view federalism as a voluntary form of political union, either temporary or permanent, of independent authorities, for special common purposes such as defence against foreign powers for the interests of trade and communications or for other reasons. It was in 1787 that American constitution introduced a new concept of federalism, which emphasized contract at the government level between participating units and among the citizens of the different units. The study of contemporary federalism is traceable to the work of Kenneth C. Wheare³⁰⁹ in which he sees the federal

³⁰⁷ K. Ifesinachi, "The Concept and Practice of Federalism," in J. Onuoha and C. J. Nwanegbo (eds) *Theory and Practice of International Relations in Nigeria*, (Enugu, Quitagon Publisher, 2007), as cited in E. N. Thom-Otuya, "Strengthening Nigeria's Federalism for National Development," *Mediterranean Journal of Social Science*. Vol. 4, No. 5 July, 2015, p. 29

³⁰⁸ E. N. Thom-Otuya, "Strengthening Nigeria's Federalism for National Development," *Mediterranean Journal of Social Science*. Vol. 4, No. 5 July, 2015, p. 29

³⁰⁹ K. C. Wheare (1946-1964), *Federal Government*, (1st - 4th editions), (New York: Oxford University Press) p. 11

principle as the method of dividing powers, so that general and regional governments are each within a sphere co-ordinate and independent.

Nigeria is one of the most ethnically diverse countries of the world, with well over 350 ethno-national and linguistic groups, some of which are bigger than many independent states of contemporary Africa.³¹⁰ The Nigerian federalism is a creation of the British colonialists. Before their arrival, the area now known as Nigeria was inhabited by people who belonged to different empires, kingdoms and societies, which were traditionally administered. The relationship between these various entities was characterized by much conflict and little cooperation.³¹¹ Buttressing the above claim, Aderonke argues that, “Nigeria is a country of extraordinary diversity and as such, one of extraordinary complexities. This complexity is a reflection of the avalanche of ethno-cultural and religious groups cohabiting the territory and intricacies of interaction among them.”³¹² However, it was the amalgamation of 1914 that actually brought the state of Nigeria into being. Thus, upon the amalgamation, three separate territories emerged. These were Lagos colony, the protectorate of Southern Nigeria and protectorate of Northern Nigeria. Chukwujekwu³¹³ argues that the amalgamation was done in spite of contrary research findings and advice given by British sociologists and anthropologist that were empowered to carry out a study of the cultural and sociological differences of the different groups that make up Nigeria. According to their findings, He argues, “The most important aspect of the research indicated that there is no single pattern of political system

³¹⁰ E. O. Ojo, “Federalism and the Search for National Integration in Nigeria”, *African Journal of Political Science and International Relation*. ” As cited in F. Aiya and Y. Alabi, “Nigerian Federalism: Issues, Challenges and Prospects.” *Review of Public Administration and Management*. Vol. 5, No. 9, 2016, p.65.

³¹¹ F. Adigwe, *Essential of Government of West Africa*, (Ibadan: Oxford University Press, 1975), as cited in F. Aiya and Y. Alabi, p. 65

³¹² M. Aderonke, “Federalism in Nigeria: The Past, Current Peril and Future Hopes,” *Journal of Policy and Development Studies*, Vol. 9, No. 2 Feb. 2013

³¹³ C. Chukwujekwu, “Historical Origin and Evolution of Nigerian Federalism”, in *Federalism and National Integration in Nigeria*. p. 21

that is prevalent among all the territories now called Nigeria. Therefore any system of government that will be adopted should take this into consideration.”³¹⁴What this finding implies is that Nigeria is a complex and plural society with over 350 ethnic groups whose components and social aggregates remain sharply divided.³¹⁵ So, ethnic and religious issues are part of the recurring issues in Nigeria’s body politics. These ethno-cultural and religious rivalries are permeating the Nigerian landscape since the colonial period, and up till the present time, there seems to be no imminent solution in sight to accompanying conflicts of ethnic rivalry and religious intolerance. The majority and minority ethnic groups treat each other with suspicion and the different religions worldwide clash at slightest provocation.³¹⁶Thus, Nigerian federalism which seems to be born accidentally in 1914 was actually a deliberate preferred system of government in order to achieve socio-political stability in multicultural Nigeria. The eventual transformation of Nigeria into a federal state however started in 1954 as a result of the 1953 Lyttleton constitutional conference. In that federal constitution, adequate autonomy was given to each level of government to enable it perform its responsibility without frustration. Actually, federalism as a system of government was introduced as an intervening pacifying factor in containment of intra societal pluralism. Federalism offers good prospect for achieving political stability of especially heterogeneous societies. In describing the popularity of the federal idea in the post 1945 period, Watt³¹⁷ aptly captured the compromises that greeted the adaption of the federal system in many countries. In this, Nigeria is not an exception. According to him,

³¹⁴*Ibidem.*

³¹⁵ T. Edoh, “The Upsurge of Ethno-Religious Sentiments and the Future of Democracy in Nigeria,” in *Nigeria Journal of Political and Administrative Studies*, Vol. 1, No. 2, p. 87, as cited in E. C. Ezeabasili, *Will Kymlicka’s Multicultural Citizenship and Democratic Practice in Nigeria: A Philosophical Evaluation*. (Awka: Unpublished Thesis, 2013), p. 1

³¹⁶ E. C. Ezeabasili, *Will Kymlicka’s Multicultural Citizenship and Democratic Practice in Nigeria: A Philosophical Evaluation*. (Awka: Unpublished Thesis, 2013), p. 1

³¹⁷ R. L. Watts, “The Contemporary Relevance of the Federal Idea”, *African Journal of Federal Studies*. Vol. 6, No. 1, pp. 2-18

...the creators of the new states approaching independence found themselves faced with simultaneous conflicting demands for territorial integration and balkanization. They had not reconciled the need, on the one hand, to retain authority for relatively large economic and political units ... with the desire, on the other hand, to retain authority of the smaller political units with traditional allegiances representing racial, linguistic, ethnic and religious communities. In such situations, where the forces for integration and separation were at odds with each other, political leaders of nationalist independent movements and colonial administrators alike found in the 'federal solution' a popular formula, providing a common ground for centralizers and provincializers. Given this background, it could be reasoned that Nigeria's adoption of the federal system was not as a strategy to manage problems of pre-independence period but more importantly as future political stability of an independent Nigeria.³¹⁸

Therefore, Nigeria adoption of federal arrangement dated back to 1954 when it emerged as a federation of three regions defined by the three major ethnic groups. Although Federalism took root in 1954, the first formal efforts that were made to create a federal system of government in Nigeria were in the constitutions of the following colonial Governors: Sir Arthur Richard (Lord Milverton, 1946), Sir John MacPherson (1951), and then Sir Oliver Lyttleton (1954).

Sir Arthur Richard's 1946 constitution entrenched regionalism. According to Chukwujekwu, the 1946 constitution was drawn without the consultation of Nigerians. Regionalism as a structure of federal government was followed immediately by the growth of regional political parties in 1947. That is, the three major ethnic groups' zones of influence. This is without any recognition of other 247 ethnic nationalities in Nigeria. The creation of three regions in 1946 by Arthur, motivated like I mentioned, the formation and fusion of traditional and educated elites into an ethnic ruling class, NPC for the North, Action Group (AG) for the West and finally NCNC for the East. These political parties were actually nationalistic parties by virtue of their formation, objectives, membership, area of political influence and political performance. But they later became an instrument used mainly by the tribe leaders, for example: Dr. Azikiwe for East, Chief Awolowo for West and Ahmadu Bello for North, to

³¹⁸ R. L. Watts, as cited in F. Aiya and Y. Alabi, "Nigerian Federalism: Issues, Challenges and Prospects." *Review of Public Administration and Management*. p. 65

secure the political/economic control of their regions. That was when Zik's NCNC lost its political influence to Action Group in Western Nigeria and was swallowed by the unbridled ethnic Pan-Yoruba politics. Awa says that "Nnamdi Azikiwe was subsequently forced from Lagos back to the East, Whence he came."³¹⁹ The divergent political philosophies and views of the three major political leaders – Dr. Azikiwe, Chief Awolowo and Ahmadu Bello designed and sustained the evolution of the unstable contraption called Nigerian federalism.

The 1951 and 1954 constitutions of Sir John MacPherson's and Sir Oliver Lyttleton's respectively in which Nigerians were involved in drafting did not change the regional bloc and culture that were formally established by the 1946 constitution. Nevertheless, unlike the later, the 1951 and 1954 constitutions allowed more Nigerian participation in the legislature and executive, but the ultimate decision making power still resided with the colonial administration. But unlike the 1951 MacPherson's constitution, the Lyttleton's 1954 constitution entrenched or institutionalised regional ethnicity in the civil service through the regionalisation of the civil service. This policy, Chukwujekwu believes, also had a significant centripetal impact on the evolution of Nigerian federalism.³²⁰

The pre-independent constitutional conferences that took place by 1958 and 1959 which gave birth to independent constitution were characterised by ethnic political manoeuvre and bargaining among the major ethnic groups represented by the educated/traditional elites. In retrospect, in spite of the political differences amongst the major political ethnic leaders, they were united in 1953/54 agreeing to end colonial administration by 1959/1960 when Nigeria became independence.

The post-independent Nigeria, also known as first republic was characterised by a political structure every scholar adjudged as truly federal. The three regions were fully autonomous

³¹⁹ E. O. Awa, *Issues in Federalism* (Benin City: Ethiope Publisher, 1978)

³²⁰ C. Chukwujekwu, "Historical Origin and Evolution of Nigerian Federalism", p. 23

federating units. Each region, with a premier as head of government, operated its own law and constitution. Each of them had native police authority while the federal government maintained the Nigerian federal police. Each region was allowed to have its representatives in some foreign countries. They were designated agents, not ambassadors although they functioned practically in that capacity. Each region also had symbol of its own authority. None of them was totally or near totally dependent on the centre for its fiscal and other needs and responsibilities. The main criticism of this arrangement was that the regions were too powerful and the centre was too weak for a meaningful federal system and national unity. The regions, given the degree of their autonomy, tended to treat the federal government with disdain. The federal government could not impose its will on the federating units. It was generally felt that if this continued, things would eventually fall apart.³²¹

Essentially, the federation in the first republic favoured the units to the extent that the regions hoped that they would be capable of existing on their own in case of balkanisation of the country into independent nations. This was the situation until the First Republic finally collapsed on 15th January 1966 through a military coup-d'état.³²² Before going into Nigerian federalism and military rule, this work firstly ascertains the nature of Nigerian federalism. Having seen the historical origin and evolution of federalism, the issue we need to consider is “whether federalism is rightly practiced in Nigerian political space?” Or rightly put, “what is the nature of Nigerian federalism?”

4.2 The Nature of Nigeria's Federalism

³²¹ J. C. Ebegbulem, “Federalism and the Politics of Resource Control in Nigeria: A Critical Analysis of the Niger Delta Crisis”, *International Journal of Humanities and Social Science*, Vol. 1, No. 1; September, 2011, as cited in F. Aiya and Y. Alabi, “Nigerian Federalism: Issues, Challenges and Prospects.” *Review of Public Administration and Management*. pp. 66-67

³²² O. S. A. Obikeze, “Origin and Growth of Federalism in Nigeria: An Assessment,” *Federalism and National Integration in Nigeria*.

A federal system often arises from the desire of the people to form a union without necessarily losing their identity.³²³ Due to her multicultural nature, the dominant conceptual and legal foundation for Nigerian internal political geography is federalism. A federal arrangement was expected to be instrumental for forging national unity out of the plural society and at the same time in preserving the separate social identities cherished by its component parts. Adoption of federalism notwithstanding Nigeria's political system has continued to operate with minimum cohesion.³²⁴ Rivalry fundamentally instigated by ethnic mutual suspicion increasingly weakens the fabrics of Nigerian sovereignty. This has culminated in turbulent June 12 political crisis which has completely made Nigerian sovereignty frail and fragile.³²⁵ Sixty years after independence, Nigeria still battles with one of the major fall-out of federalism, the politics of trying to appease all sections of the polity. This is as a result of the multi-ethnic nature of the society. According to Ola, different governments that have governed this country have at one point or the other derived various methods to cope with this ever present problem of power distribution in both the political and economic spheres. Therefore, there have been accusations and counter accusations from all sections of the polity, as to how powers are being distributed or how they ought to be distributed.³²⁶

³²³ F. Aiya and Y. Alabi, "Nigerian Federalism: Issues, Challenges and Prospect," p. 64

³²⁴ R.F. Ola, *Nigerian Political System: Inputs, Outputs and Environment*, (Benin City: Ambik Press, 1995). As cited in F. Aiya and Y. Alabi, "Nigerian Federalism: Issues, Challenges and Prospects." p. 68

³²⁵ S. O. J. Ojo, *Of Justice Political Development and the Nigeria State: A Theoretical Focus* (Benin City: University of Benin, Unpublished Postgraduate Seminar Paper, 1989), as cited in F. Aiya and Y. Alabi, "Nigerian Federalism: Issues, Challenges and Prospects." p. 68

³²⁶ R. F. Ola, 1995, op. cit. as cited in F. Aiya and Y. Alabi, "Nigerian Federalism: Issues, Challenges and Prospects." p. 68

Ogbe called Nigerian federation “a bad marriage that all dislike but dare not leave.”³²⁷ This is because federalism as a system of government is meant to integrate people who are diverse ethnically, culturally, geographically and even religiously. But in Nigeria, there are instances where government has openly violated these principles of federalism. Therefore, a political system that is meant to unite people of diverse culture disintegrates them. Suffice it to say that in theory, Nigeria can be said to be operating the federal system of government, but actually the country tends towards a unitary system. Hence, the problem with federalism in Nigeria is the mix-application or non-application of this (federal) clause especially as it has to do with power distribution.³²⁸ It therefore becomes imperative that once a government is in place, it must endeavour to adequately and equitably distribute powers, functions and resources among these diverse groups.

Power distribution is a volatile issue which if not properly handled could lead to various forms of crises which are bound to crop up. Nigeria has not been forthright applying this principle to the letter and the result of this has been the heightening of ethnic tension, mutual mistrust among ethnic groups, minority problem, e.g., militancy in the Niger Delta’s region and insurgency at the North East regions of the country, and clamour for secession at the South East. Ethnic tension in Nigeria is the resultant effect of improper distribution of power, function and resources. This is because the people who now fall out in the scheme of things see it as a necessity to rely on their ethnic groups which will provide them a good ground for competing with others for resources and against domination by the dominant ethnic groups.

³²⁷ O. Ogbe, M. Max, M. D. Shija, and A. T. Zever, “The Need for Reform of Fiscal Federalism in Nigeria”, in *National Journal of Human Resource Development*, Vol. 1, No. 1, (Benue: 2011), p. 196, as cited in F. Aiya and Y. Alabi, “Nigerian Federalism: Issues, Challenges and Prospects.” p. 68

³²⁸ E. O. Awa, *Issues in Federalism* (Benin City: Ethiope Publishing Corporation, 1977) as cited in F. Aiya and Y. Alabi, “Nigerian Federalism: Issues, Challenges and Prospects.” p. 68

This can escalate further and become the order of the day as it is believed that an alignment with one's ethnic group enables an easy access to resources.³²⁹

There is also a mutual suspicion and mistrust among the different sections of the nation. This is manifested in the fierce manner the political posts in the country are contested for, and in the way elections are fought out among groups as no section wants to shift grounds due to this suspicion. The contemporary instance is the 2015 presidential election between PDP's Goodluck Jonathan and APC's Buhari, which was like a contest between southern and northern Nigeria. One thing that is peculiar about that election was the tension and fear that trailed the result of election. This is to show us the level of mistrust and suspicion that pervade the Nigerian political landscape. Other instances where there is apparent political fear and tension was between 1960 and 1964, political disaffection among the Tiv people in the middle belt area resulted in bloody disturbances and in early 1966, the opportunity for some little secessionist bid by the Igbo of the eastern region in 1967 was as a result of this perceived imbalance in the allocation of political power and resources.³³⁰

Structurally, Nigerian federalism may be likened to a biological cell capable of dividing and reproducing itself. Muhammad descriptions gave proper illustration of the above metaphor, thus,

...it (Nigerian federation) has continued to witness continuous splitting of units in 1954, it began as a federation of three regions but by 1964, it became four with the creation of the mid-western regions from the then western region. By 1967, the federal structure became subdivided into 12 states while by 1976 it

³²⁹ S. O. Uhumwangbo and A. Epelle, "Corruption and The Nigerian State: The Relevance of ICPC and EFCC in War against The Scourge", in *Babcock Journal of Management and Social Science*, Vol. 6, No. 1 (2007) as cited in F. Aiya and Y. Alabi, "Nigerian Federalism: Issues, Challenges and Prospects," p. 68

³³⁰ S. O. Ajagun, *Federalism: Problems of Power Distribution in Nigeria*, (Ekpoma: Unpublished Seminar Paper Presented at the Department of Public Administration, 2004), p. 6, as cited in F. Aiya and Y. Alabi, "Nigerian Federalism: Issues, Challenges and Prospects," p. 69

was further split into 19 states. By 1989, it became a federation of 21 states, increasing to 30 by 1991 and by 1996 it had subdivided to become a federation of 36 states. In addition, the creation of more states has always been accompanied by the creation of additional local government areas. Thus, from 301 in 1976, the country currently boasts of about 774 Local Government Area Councils. Implicit in the above description is that Nigeria's federal structure is predicated on the three-tier administrative structure – the federal, state and local governments. While it is not a misnomer to have, in a federation, more than two tiers of government, in order to cope with the extent of diversities, the continued structural division, however, have not produced a satisfactory outcome for the component units. This is evidently so because every attempt at states and local government creation is usually followed by increased agitations for more.³³¹

It was deduced that the wildcat creation of states was clearly a deliberate act by the then military regimes to weaken the local and fiscal autonomy of the states vis-a-vis the federal government, as well as concentrating more power and resources at the federal level. This made the state governments dependent on the federal government for power and financial resources.

In the federal polity, there is irrevocable division of power between the central and component units. It is pertinent to note that in the Nigerian federal experience, the federal principle of Wheare's *Federal Government* which equally divides powers between central and state governments is no longer in vogue. This is because the central government through the 1979, and subsequently, 1999 federal constitution has usurped the powers, which were formally exercised by the regional governments. Power division and separation between the tiers and arms of government respectively is a volatile issue which if not properly handled could lead to various forms of crisis which unavoidably are being experienced presently in Nigerian political space amongst the ethnic groups. The fact is that Nigeria government is not living up to the principle of federalism to the letter. The result of which has been heightened ethnic tension and mutual mistrust among ethnic groups; minority problems; clamour for

³³¹ A. A. Muhammad, "Federalism and Political Stability in Nigeria: Current Peril and Future Hopes", *Journal of Sustainable Development in Africa*, Vol. 9, No. 4, (2007), as cited in M. Aderonke, "Federalism in Nigeria, p. 113

answers to the national questions, etc.³³² Thus, ethnic tension in Nigeria is the resultant effect of improper distribution of functions and resources inherent in true fiscal federalism.

The abandonment of true federalism in Nigeria has led to the neglect and marginalisation of the Niger Delta region of Nigeria, where the bulk of the country's wealth is produced through the exploration and exploitation of crude oil which is the colossus of Nigeria's economic base. The people of this region have been agitating for fair share of the country's wealth, the bulk of which comes from their region. This quasi model of federalism inherent in 1999 Nigeria Federal Constitution has not been able to address the socio-economic and developmental needs of these people in spite of their unquantifiable contribution towards the development of the entire nation. But the situation in the Niger Delta region of Nigeria does not place Nigeria among nations operating a federal system of government. In an ideal federation, as we have in the United States of America, Canada, Switzerland, the states, provinces and cantons respectively are semi-autonomous, virtually independent of the centre. The states have control of the resources found in their area, but pay royalty to the central government. Such areas as defence, foreign affairs and customs among others are exclusive preserve of the government at the centre.³³³

Observers of Nigeria's federalism have always said that, while the underlying principles of federalism have often been ignored by successive Nigerian governments, efforts were made earlier to implement the policy of fiscal federalism based on the principles of derivation. The 1960 and 1963 constitutions not only granted greater fiscal autonomy to the regions, but also empowered them to compete with one another. The recurrent movement for better treatment

³³² S. O. Uhumwuangho and C. E. Ekpu, "Federalism: Problems and Prospects of Power Distribution in Nigeria", *Journal of Sustainable Development in Africa*, Vol. 13, No. 5, (2011) as cited in M. Aderonke, "Federalism in Nigeria, p. 113

³³³ M. Aderonke, "Federalism in Nigeria: The Past, Current Peril and Future Hopes, Op. cit. p. 114

of the people of the Niger Delta region has brought to fore the demand for resource control.³³⁴ But the problem is that the present crop of Nigerian leaders will not concede to true fiscal federalism which Chief Victor Attah, a former governor of Akwa Ibom State of Nigeria, alleges is the panacea to the problems plaguing Nigeria. Thus, he argues

If the government just accepts the principle of fiscal federalism, whereby the state should control what they have and pay certain percentages as royalty to the centre. Believe me; I can say categorically that at least 90 percent if not 100 percent of issues confronting Nigeria today will be solved.” He continued, “If fiscal federalism is practiced, the demand for separation and talk of disintegration of the country will stop and the country will develop drastically.³³⁵

State Creation was an intentional predisposition of military rulers to assuage the demands of the minority groups subsumed in an unavoidable dominance of the three majority ethnic groups. As the existential threat the situation portends, the minority groups can be said to have no say in the democratic process of their subunits. Therefore, the demand for the creation of more states where they can maintain majority as well as feel belonged, and actively participate in policy or decision making of their country through acts of representation or parliamentary discussions were heeded. The bone of contention is that instead of these states being viable to carry out their function allocated to them as part of their legislative commitment and responsibility, they are however feeble by the fact that they depended on federal or central government’s monthly financial allocation for their sustenance. Consequently, they lost their autonomy or independence to central government which goes against the fundamentals of the principles of federalism. Rather than state creation becoming a major factor in enthronement of democratic participation of minor ethnic groups, it is seen in Nigeria’s democratic space as a tool to weaken component units and centralisation of power and function to the centre. Therefore, rather than component units

³³⁴*Ibidem*

³³⁵<https://www.naija.ng/amp/1106055-problem-nigerian-federalism-solutions.html>, retrieved on 03/08/2011

becoming co-ordinating government, they are made subordinate or appendage of the central government.

In summary, Nigeria can be said to be practicing federal system of government in which power is divided amongst the three tiers of government: federal, states, and local government councils. However, there are a lot of issues Nigerian government needs to resolve before it can be counted amongst the comity of nations with true and deep-rooted federal system of government grounded completely on K. C. Wheare's federal principle. The issues, which is the recap of the above argument, are as follows: division of power, resource control, fiscal federalism or revenue allocation, power sharing formula, diversity or minority issue, the creation of states (and local governments), secession issue, etc. It is believed that these issues can be resolved through the amendment of Nigerian 1999 federal constitution. Meanwhile, we need to highlight the basic features of Nigerian 1999 federal Constitution that needed to be amended; it is summarised as follows:

1. Division and sharing of governmental powers amongst the federal, the state and local governments.
2. The derivation of the powers of the different levels of government from the constitution.
3. Adoption of a written and rigid constitution.
4. The supremacy of the federal government.
5. The existence of a supreme court for judicial interpretation and review.
6. United or federal police force.
7. Decentralisation of the public service and judiciary.
8. The existence of a bicameral legislature at the federal level.
9. The principle of the federal character, and

10. A three-tier system of government.³³⁶

But before delving into the historical stages of Nigerian constitutional amendments, this work looks into how military rules truncated Nigerian federal democratic process.

4.3 Federalism and Military Regimes in Nigeria

This section focuses attention on military rule and how this distorted Nigerian federalism. But before that, this study identifies and brings to the fore some of the numerous stultifying and extirpating impacts of military rule on federalism and its accompanying principles and philosophy.

Ahamefule – Ofoeze gave a precise definition of military system of government by arguing that it is

...a state of affair in a political system whereby the rulership of the political system is carried out by a group of military personnel (junta) who, through surreptitious planning and clandestine activities – coup d'état, forcefully overthrow an existing government and seizing and exercising power of governance to enact, promulgate and execute edicts, decrees and laws/ordinances and programmes and decisions leading to authoritative allocation/reallocation of the political system's values and resources. And once in power, the first thing the military does is to suspend the constitution and dismantle all other democratic institutions and structures of the state especially where the government that was replaced by them, was a democratic government.³³⁷

The nature of military rule for him is well-ordered bureaucratic organisation with chains of command in a hierarchical order from the lowest to the topmost position. Under this system the occupant of the topmost position becomes the embodiment of the corporate authority and exercises, on the basis of this, the highest command and which impels and elicits actions, obedience and performance from all organisation members. There is strict adherence to command, and this is made possible by the hierarchy principle which emphasizes the

³³⁶*Ibidem*

³³⁷ H. G. A Ofoeze, *Federalism: A Comparative Perspective*, (Enugu: Classic Publisher Ltd, 2000), p. 52

existence of different levels of authority whereby for every lower office, there is a superior one to which the lower office is answerable and accountable.³³⁸ Another characteristic of military rule is the concentration of power to the centre, with great emphasis on hierarchy and centralised system of command and order.

The above characteristics and nature of the military, are what, according to Ofoeze, make them suitable for their constitutional role of the defence of their territorial integrity and peacekeeping and intervention. But the sojourn of the military into rulership of the political system has become the bone of contention in this section of this write up. Thus, He argues,

...these characteristics enhance the military internal cohesion and unity of purpose. But very unfortunately, these attributes and characteristics rather than being utilized and directed towards attaining the primary constitutional role of defence and security of the independent and sovereignty of their country and country men, the military in Africa societies have employed these characteristics negatively to intimidate their fellow country men and women to usurp their power of self-governance and unleashing in the process, the greatest socio-political, and economic deprivation, plunder, robbery, moral debauchery and general retrogression of their people and society.”³³⁹

This is the case with military incursion into Nigeria political system in 1966 through the dethronement of first republic through a coup d'état. Has military rule helped in the betterment of the federal status of Nigeria government?

Military rule did not fare well for the federal status of the nation. Nwokedi has summarily noted that, “The military which ruled the country for a greater part of her sovereign existence as an independent nation were solely responsible for dismantling the old four regional structure.”³⁴⁰ What military rule did was the indiscriminate creation of states; thus, all the

³³⁸ *Ibidem*

³³⁹ H. G. A –Ofoeze, *Politics and Law in Africa – Unpublished Lecture Note on GPD 422*, Abia, Uturu: Abia State University, as cited in H. G. A Ofoeze, *Federalism: A Comparative Perspective*, pp. 155-56

³⁴⁰ R. C. Nwokedi, *Power Sharing in Nigeria Federation*, (Enugu: Money-line Consultants, 2000). As cited in C. A. Obiora, “Federalism and Democratic Rule in Nigeria,” *Federalism and National Integration in Nigeria*, p. 51

states in Nigerian federation was created during military regimes. The net effect, observed Nwokedi, of the subsequent wilddcat creation of the states by the military regime was the weakening of the local and fiscal autonomy of the states vis-à-vis the federal government.³⁴¹

Nigeria, it would recall gained political independence more than 59 years ago, out of which the military has ruled for over thirty years, and people are still suffering the decadences and destructions they left in their wake. Military being an institutional undemocratic regime with a hierarchical chains of command weakened the powers and autonomy of the constituent units and concentrate power and resources at the federal level. One important dimension of various distortions and destructions inflicted on the Nigerian people by the military rule are those inflicted on Nigerian federal structure, which is believed to have weakened the very foundation of the corporate existence of the Nigerian multination state. How doesmilitary rule distort federalism in Nigeria?

There are different ways military rulership distorts federalism. One of the ways is that whenever and wherever the military comes to power, its first object of attack is the constitution and other democratic socio-political institutions and structures which they suspend, and/or completely abrogate. Thus, they start governing by decrees, edits and other ordinances and most of which have retrogressive effects. And once the constitution is destroyed in this way, the military follows it up with further assaults and destruction of federalism. The Nigerian experience at the hands of the military provides more than sufficient examples. For instance, once the General Ironsi regime emerged, it not only went on to uphold constitution suspension already decreed by Major Chukwuma Kaduna Nzogwu, and his group of revolutionaries, the regime went on to transform Nigerian federal state to unitary

³⁴¹*Ibidem*

state through its Unification Decree No. 34 of 1966.³⁴² On its own part, the Gowon regime after unseating its predecessor, not only repealed the Decree No. 34, it went on later to redraw the geographical arrangement of Nigeria by transforming Nigeria into a twelve state structure from its original four-region federal structure. This number was later increased to nineteen states by Muhammed/Obasanjo regime and yet later to twenty-one, and subsequently to thirty states by the Babangida regime, and further still to the present thirty-six states by the Abacha regime. These creation was done without recourse to firstly, the viability of the state in sustaining itself; and secondly, constitutional criteria. Therefore, military rule is not only anti-federalist, but out rightly unitaristic in nature since it is imperative that for a country to claim to practice federal system of government, such a country must have a written and rigid constitution.³⁴³

Another important evidence where military rule maintained inimical stance to federalism is demonstrated in division of power. In military rule, there is nothing like distribution of legislative powers between the general government and those of the component units. Thus, there is concentration or centralisation of all powers of governance under one military head also known as Commander-in-Chief of the armed forces or military head of state. In the case where anybody exercises any legislative, executive and judicial power, such power is simply a delegated one, coming solely from the head of central government. Therefore, by eliminating the formal division of power, and the consequent concentration and centralisation of all governmental powers in the central military government headed by Commander-in-Chief, military rule therefore is an antithesis of federalism. In Nigeria for example, the various state military governors or administrators whether in the past or at the present, did

³⁴² See Decree No. 34 of 1966, as cited in H. G. A –Ofoeze, *Federalism: A Comparative Perspective*, p. 157

³⁴³ H. G. A –Ofoeze, *Federalism: A Comparative Perspective*, pp. 157-58

not/do not exercise any independent action which went/goes contrary to the instructions from the military Head of State and Commander-in-Chief of the armed forces.³⁴⁴

Another very important way by which military rule negates federalism is the military's undermining of the independence of the judiciary and the divestment of the Supreme Court of its powers of judicial review. This is because whenever the military takes over the reins of government by way of coup d'état, military government pays very little respect to the judiciary and its decisions and judgements. Thus, under the military rule, as exemplified by the Nigerian experience, the judges and their courts really do not enjoy the necessary independence of action.³⁴⁵

One other very important pre-requisite for federalism is existence of bicameral legislature constituted in such a manner as to ensure that both the citizens and the component units of the federation are adequately represented and protected. But under military rule, scarcely does any legislature in the true sense of legislature exist not to talk of a bicameral one. During the military rule in Nigeria, the military administrators deploys different names in place of legislature such as: Provisional Ruling Council in the case of the Abacha's regime; Armed forces ruling Council as was the case with the Babangida's regime; or the Muhammed or Gowon's Supreme Military Council, such bodies were composed of military officers all of who were of lower rank than the Head of the State or Commander-in-Chief who both appointed them and presided over them. Therefore, the absence of legislative body with actual power of law making under military is a clear manifestation of the anti-federalist nature of military rule; hence, military rule negates federalism.³⁴⁶

³⁴⁴*Ibid.* p. 158

³⁴⁵*Ibid.* p. 159

³⁴⁶*Ibid.* pp. 159-160

Another important feature of federalism is that the general and component units derive their existence and power from constitution, which remain supreme above other things. But not military regime, as it was demonstrated in Nigerian military era. Therefore, the source of existence of the general and component units is the Head of State and the Commander-in-Chief of the Armed Forces who not only appoints the military governor/administrators and instructs them on what to do but also has powers to create new states or dissolve the old ones depending on what or how he feels.³⁴⁷

One other primary feature of federalism is acceptance of the supremacy of the constitution and the Rule of Law. But in military rule there is neither a constitution nor its supremacy. By its nature, military rule does not believe in rule of law, except it is the law made by it.³⁴⁸

Besides, another important way military rule in Nigeria has distorted federalism is the issue of the central government's invasion of all spheres of legislative authority including those which would be regarded as obviously local ones.

Furthermore, one other very serious dimension of military rule in Nigeria and which has contributed to the distortion of federalism is the fact of fusion of powers of the executive with the legislative authority into one person – the Head of State and Commander-in-Chief of the armed forces. This is at variance with the federalist principle which demands that powers of law-making be invested in the central legislative body which must be bicameral in the sense that there exist different functions between the legislature and the central executive body. To this extent, military rule is totally inconsistent with, and antithetical to, federalism.³⁴⁹

The above evidences demonstrated that the military shared a lot of blame for destroying the federal structure existing prior to their incursion into politics in 1966, and as well, the over

³⁴⁷*Ibid.* p. 160

³⁴⁸*Ibid.* p. 161

³⁴⁹*Ibid.* p. 161-162

concentration of much powers on the central government. Therefore, military rule is one of the major challenges of Nigerian federalism. However, there are other current challenges of federalism. We shall in next subsection briefly discuss key current challenges of federalism in Nigeria.

4.4 Current Challenges of the Nigeria's Federalism

Apart from military rule there are current challenges which plague Nigerian federalism. This dissertation finds relevance in the challenges propounded by Isawa Elaigwu.³⁵⁰ Thus, these challenges include:-

- 1) Centralization / Decentralization; 2) Homogenization; 3) Federalism and Democracy;
- 4) Resource Distribution, Equality and Development; 5) Maintenance of Law and Order;
- 6) Intergovernmental Relations and Delivery of Service; 7) Citizenship and Indigeneship; and
- 8) The Economy.

1. Centralization / Decentralization

Many observers of the Nigerian federation agree that it is quite highly centralized. This is expected after (more than) 30 years of military rule. Decentralization is an administrative technique for participation and development, therefore, governance becomes more legitimate if the people through their communities, provinces, states or regions are involved in the decision-making process, especially, to determine their priorities and development goals.

In Nigeria, the decentralization of powers between the federal and states may not be legally feasible. However, the delegation of authority, decongestion of federal offices and the establishment of (formal and informal) frameworks for intergovernmental relations, provide new opportunities. However, Nigerian political structure is more centralised.

³⁵⁰ J. I. Elaigwu, "Nigeria: The Current State of the Federation: Some Basic Challenges", *Institute of Intergovernmental Relations*, (Canada: Kingston University Press, 2007)

As some centrifugal forces take a toll on the Nigerian federation, outcries of marginalization, unfairness, injustice, even threat of annihilation, exploitation etc., are the order of the day. For some Nigerian groups, the solution to marginalization and other fears could only be found in a far weaker centre than we now have. These groups feel that the centralization of power and resources has made the federal government titanic. The process of constitutional reform should however address this challenge for true federal process to take root.

2. Homogenization

Federalism presupposes “unity and diversity” and “diversity in unity.” However, almost thirty years of military rule with its hierarchical command structure has given the impression that a typical federation must be homogenous. That is why most Nigerian leaders have been emphasizing the importance of Nigerian unity to the neglect of her culturally diversified nature. It is our contention that some federally desirable homogeneity is an imperative in every federal system. And that can be achieved through respecting rather than subordinating the individual cultural identities of different cultural groups in Nigeria. However, federalism also provides that subnational units can and should be separate in other ways, including the protection of their identities. Local governance in the federation must be sensitive to the local peculiarities of various areas. That is, the protection of local identities as a means of achieving nation-building (i.e. new national identity).

3. Federalism and Democracy

Federalism operates best in a democratic setting which enables the people to determine who leads them and in what direction. While Nigerians have found the federal grid as a conducive mechanism for managing conflicts arising from their heterogeneity, the record of democratic regimes is poor. Out of its sixty years of independent existence, thirty of those years were under military rule. Over the years, there have been frictions between the federal grid and

Nigeria's democracy. Often the Nigerian 'federation' had to operate without any democratic underlay. Of course, this generated its own kinds of problems which we cannot discuss here. When the federal grid coincides with the democratic polity, new forms of conflicts emerge. Thus, one of the greatest problems of Nigerian federalism is how to make democracy durable or sustainable in the Nigerian policy. Nigeria's experience since 1999 indicates that much more work has to be done and commitment demonstrated, to make democracy durable.

Basically, for a stable federation, Nigeria needs to build a stable democratic polity. While it is true that the post-military period has been too short for the establishment of a stable democracy, it is necessary that Nigerian politicians should demonstrate more commitment to democracy as an end and should imbibe essential values of democracy.

4. Resource Distribution, Equality and Development

Resource distribution includes both statuses and material resources. In fact, it includes the distribution of all scarce but allocable resources. The location of government projects, the pattern of recruitment into political offices, and the public services are also yardsticks for measuring the fairness of leaders in the distribution process in Nigeria.

In order to ensure relative fairness in the appointment of people from various groups into the Federal Public Service, the Constitution provides for the establishment of the *Federal Character Commission*, to monitor the pattern of appointment into all the public services of Federal, State and Local Governments, in order to give Nigerians a sense of belonging to the nation. Cries of discrimination and marginalization by groups have not abated even after establishing this commission.

On the horizontal level, there has been a crisis of 'marginalization' by all groups. The oil producing states of Niger-Delta are angry that the dividends of oil produced in their area, go to other parts of the country, without adequate concern for their own interests. Basically

while oil accounts for over 80% of the country's annual revenue, it has not changed the lives of the Niger-Delta people.

Similarly, there are pressures for a review of tax powers in favour of states and local governments. It has been variously argued that the federal centre has all the lucrative sources of taxes. The argument is that unless some of these sources are given to states and local governments, they may not be able to carry out their primary functions, not to mention coping with the challenges of development.

5. The Maintenance of Law and Order

Over the years there have been more cases of violence – communal and others. Armed robbery, kidnapping, ritual killings, etc., have virtually become part of normal life. Political killings and other homicides have become rampant in the system – even worse than the situation under the military.

Democracy presupposes responsibility. It presupposes that political leaders would be responsible enough to be crisis dampers rather crisis escalators. It also means that government should effectively maintain law and order to encourage the 'rule of law' and prevent the aggrieved from taking laws into their hands. Unfortunately, the Nigerian Police Force seems overwhelmed while the constant use of the military for police duties is dangerous for everyone. The Nigerian Police and other security agencies have earned themselves bad image when it comes to the discharge of their constitutional responsibilities. The level of insecurity and the violation of human rights in the country speak volumes of this image. The failure of the police to perform up to expectation pushed some state governments to establish vigilante groups. Besides, the way the police is used/misused have prompted many to recommend the establishment of State Police. The bone of contention is that security agencies and apparatuses are under the control of the centre. One had argued in the past that the time is not ripe for the establishment of states' police based on our past experience of its

misuse. However, the persistence of brazen misuse of the Nigeria Police by the presidency has made revision of the policy inevitable.

6. Intergovernmental Relations and Delivery of Services

In all federations, the need for intergovernmental relations has become even more pressing, as many issues of governance transcend a single tier of government. Unfortunately, in the dynamics of Nigeria's federation, intergovernmental relations have been low. The big question is how to establish intergovernmental relations to cut out duplications and wastage, and to ensure greater efficiency in the delivery of services. Intergovernmental relation is an important attribute of federalism since both general and state governments have direct contact with the people of the federation in service delivery. The challenge is to ensure a more efficient delivery of services for poverty alleviation.

7. Minorities, Citizenship and Indigeneship Issue.

Any federation which does not adequately protect its minority groups, but gives leverages to the majority group, is bound to have incessant communal violence and instability. In Nigeria, the minority question has been made more complex because of the nature and content of diversity. While it is very easy to identify Hausa-Fulani, Yoruba and Igbo as the three major ethnic groups at the national level, the majority–minority divide is also visible at state and local levels. This is the manifestation of the problem of accommodating over three hundred and fifty (350) ethnic groups in the few subnational units. Over the years, states and local governments were created as a means of minimizing the majority–minority conflicts. But the various exercises have further created *new majorities* and *new minorities* at the subnational levels. Similarly, the issue of citizenship and indigeneship is related to the problem of majority/minority divide. Reconciling the diverse ethnic groups, which make up Nigeria, is no doubt a herculean task. The Nigerian Constitutions from 1960 to 1999 recognized the citizenship of every Nigerian. All Nigerians supposedly have the right to settle down

anywhere in the country to pursue their legitimate businesses and are expected to have equal rights everywhere in practice. But this is not true. In reality there is a contradiction. The ethnic consciousness, indigeneship-citizenship rights are not still well-defined and accepted. Many states and communities recognize their indigenes and can easily isolate settlers, and treat them so, no matter how long they have lived in the area. In the political process this has become very controversial and has generated many violent crises.

8. Economy and Federalism

Nigeria's economy is still in a bad shape – the exchange of the naira is more than N340 to one USA dollar; inflation still haunts the citizen's hope for good take home pay; some banks have collapsed; the manufacturing sector has experienced closures; there are cries that the privatization process appears to be the personalization of national assets by the leaders of the government. There seems to be greater invasion of Nigeria's market by external factors than investment; her infrastructures are dilapidated; the educational system is collapsing and the health sector is severely in pains. With all these, one is tempted to ask whether the gloated economic reforms of the most civilian governments were not really causing economic damages (Buhari's civilian regime in my mind)?

Political leaders must address these issues urgently because they relate to the sustenance of Nigeria's democracy, the federation and the nation. Nigeria needs to diversify her mono-economy (crude oil). Her deregulation and privatization policies must be pursued with all sense of patriotism and sincerity, transparency and accountability. Presidents Yar'Adua and Goodluck Jonathan tried to ensure that this was done, giving the background of the exercise in the past. But lack of political will to fight corruption seems to have rubbished their efforts. One must not forget that democratic culture and stability cannot thrive in a society where there is abject poverty. Some believed that Nigeria leaders cannot have serious economic headway without decentralising economy. Candidly, housing, water, agriculture, primary

school and rural development should be reverted to state and local governments, which should have enough resources to carry out these functions. With regard to the adequacy of fiscal or tax powers, it is clear that all tiers of government have been complacent about generating needed revenues. The over-dependence on the Federation Account by all governments is not conducive to the fiscal autonomy and accountability of component governments of the Nigerian federation. One wonders if reversing the tax powers would make any difference if the appropriate authorities do not show any determination to collect these taxes. Internally generated revenues and accountability are essential part of the federal autonomy.

It is believed that the malaise of Nigerian Federal System started from the subsequent constitutional reforms after 1960 or 1963 constitutional amendments. Therefore, this study in next subsection studies the stages of Nigerian constitutional reforms to discover what is the root cause, and when the challenges started.

4.5 The Stages of Nigeria Constitutional Reforms and Their Challenges

When the British colonised Nigeria in the beginning of the twentieth century, they saw her multicultural dispositions delineated along social, political, linguistic and religious, and besides the need to fashion out new political order or arrangement that would best suit not only her multicultural characters, but also would assuage the feelings, demands and aspirations of the minor ethno-national groups amongst them who were afraid of domination and suppression by major ethnic groups in Nigeria's cultural, economic and socio-political space. Thus, upon occupation of Nigeria's political space, British colonialists introduced their version of democracy known as Westminster parliamentary system of government. Since democracy is the rule by the people, they want the colonised to be in charge of their destiny. Being that the poor masses are in the majority, democracy as a descriptive term may be regarded as synonymous with majority rule, but not without minority rights. The British, by

this, wants the interest of the people in a given area to be addressed with their consent which in this case is by electing the government that will represent them. Through democracy, the problem posed by disenfranchising the smaller communities/minority will be resolved by their meaningful representation and participation in the political process. As a result, sharing of power in a large and heterogeneous nation like Nigeria becomes a possible way of ensuring democratic rule.

Apart from institution of a parliamentary system of democracy, they saw federalism as a principled structure in Nigeria multicultural nature. Being that federalism, according to Mclean, suggests that everyone can be satisfied (or nobody permanently disadvantaged) by nicely combining national and regional/territorial interests within a complex web of check and balances between a general, or national, or federal government on the one hand, and a multiplicity of regional governments on the other hand. Therefore, while federalism ensures that powers are shared between levels of government in a given polity, democracy aims at ensuring that the will of the majority is done in that polity, as well as in recognising minority interest. Thus, British colonial master saw democracy and federalism respectively as principled system and structure of government that can best guarantee the unity of multicultural Nigeria.

Hence, upon her colonisation, they amalgamated the northern and southern protectorates into a united federation, and established the constitution to guide the economic and socio-political activities of these two protectorates. There were subsequent constitutional reforms introduced to address certain lapses that failed to make democratic federalism to enjoy stability. This section of the chapter will deliberate in stages the constitutional reforms undertaken since the 1914 amalgamation of the protectorates of North and South. This reforms are divided into three major stages; they are:

1. Nigeria Pre-Independent Constitutional Reform (1914-1958)
2. Nigeria Independent Constitutional Reform (1960)
3. Nigeria Post-Independent Constitutional Reform (1963-1999)

4.5.1 Nigeria Pre-Independent Constitutional Reform (1914-1958)

Under pre-independent constitutional reform, we have the following reforms undertaken by the British colonial masters before Nigeria achieved her independence. They are:

1. The Constitutional Amendment of 1914
2. The Clifford's 1922 Constitutional Reform
3. The Bernard Bourdillion's 1939 Constitutional Reform
4. The Richard's 1944 Constitutional Reform
5. The MacPherson's 1951 Constitutional Reform
6. The Lyttleton 1954 Constitutional Reform
7. The 1957/1958 Constitutional Conference

The Constitutional Amendment of 1914

This constitutional amendment of 1914 validated the creation of Nigeria through the amalgamation of Northern and Southern protectorates in 1914 with the overriding interest being economic gains to firstly, colonialists; and secondly, impoverished Northern protectorate, which provides them the opportunity of benefiting from the revenues of the customs, which could be shared between the Northern and Southern Nigeria. These protectorates were kept apart as two federating units, though meant to depend on the centre for sustenance. This amendment established the general governor in the person of Fredrick Lord Lugard in charge of the administration of these protectorates, who also stood as both legislator and executor of new Nigerian government. Southern protectorate was believed to be more advanced educationally and economically, but northern protectorate was not due to

her aversion of western education and its influence to her Islamic culture and religion. As a result, the British colonialists decided to monopolise and centralise power to the centre in order to enable the north to catch up with the south in all spheres of life. This did not augur well for Nigeria's political stability.

The Clifford's 1922 Constitutional Reform

The Clifford's constitution of 1922 created a legislative council for the country with the exclusion of the northern region. The major amendment in this constitutional reform is the separation of legislative arms from executive administrator, and the institution of the divide and rule policy of the British colonial administration.

The Bernard Bourdillion's 1939 Constitutional Reform

The Sir Bernard Bourdillion's 1939 constitutional reform divided the southern protectorate into the regions of east and west, while refusing to divide the northern protectorate, creating in its wake the regions of north, east and west. Thus, this constitutional reform of Bernard divided the country into three regions still presently recognised in Nigeria's socio-political space. This division was justified because it was done in accordance to the three major ethnic groups (Hausa/Fulani, Igbo and Yoruba) in Nigeria. Critically, this division institutionalised ethnic politics in Nigerian socio-political space.

The Richard's 1944 Constitutional Reform

The Richard's constitutional reform of 1944 established a central legislature for the whole country with three regional houses of assembly. The major aim of Richard in constituting the 1944 constitutional amendment was to promote unity of the country by establishing in the constitution provisions for the establishment of regional councils and legislatures. Nevertheless, he failed to make regional councils and legislatures independent from the general council and legislature. He was a little bit federalist in his constitutional amendment;

however, the manner of its introduction where he failed to consult the regions killed the regionalisation or federalism on arrival.

The MacPherson's 1951 Constitutional Reform

The MacPherson's 1951 constitutional amendment granted more power to the regional government, but failed to give them autonomy; thus, it is a unitary constitution because the regions so to say were essentially dependent on the central government. Therefore, MacPherson's constitutional amendment of 1951 failed to establish federalism in Nigeria's political system.

The Lyttleton's 1954 Constitutional Reform

With the promulgation of the Lyttleton's constitution of 1954, Nigeria adopted a full-fledged federal system by firstly establishing the three arms of government in each of these regions (Ezerra, 1964) and gave these regions and federal government independent and autonomous existence, and independence of each other from any kind of economic and socio-political control. This constitution was adjudged by scholars with interest on Nigeria political system as the true federal constitution colonialists have ever constituted.

The 1957/1958 Constitutional Conference

The constitutional conference consolidated the Lyttleton's 1954 constitution as it solidified the autonomy and independence of regional government from the general government. Thus, the constitutional conference was a gathering on how to entrench a true federal constitution in Nigeria's political system. It however predisposed Nigerian political elites, though with anexception of northern elites, to self-rule or independence of colonial rule. This constitutional amendment brought about political and socio-economic developments to the regions as each region was free to raise revenue, control her resource, and develop her regions at her own pace unhindered.

4.5.2 Nigeria Independent Constitutional Reform (1960)

The colonialists' efforts in carrying out the above amendments were as a result of their proper understanding of the herculean nature ruling Nigeria was. They understood that each federating unit of the nation could express its feelings and reservations about the reforms and the unity of the nation. Following the granting of the political independence to Nigerians in 1960, the independent constitution was drafted in 1958 independent conference held in London where the elites of all the ethno-national groups were in attendance. The major deliberation of the conference was how true federal structure could be better instituted through division of power between the federal and regional government, and the independence of all federating units from any kind of control. The conference later gave birth to what is then known as Independent Constitution.

The Independent Constitution of 1960 continued with the same trends without altering the regions structurally so that the federal system will stand the test of time. However, the difference between it and the previous constitution (esp. Lyttleton's Constitution) is that the division of power was more clear and codified in Independent Constitution.

To throw more light on its elaborateness, the powers of the federal government were set out in Executive Legislative List consisting of forty-four subjects that principally include defence, currency, external affairs, mines and power, Lagos affair and customs. There was also a concurrent list of twenty-eight subjects on which both federal and regional government have competence. The Residue power was reserved to the regions on subjects not listed in the Executive Legislative List (Nwokedi, 2002).

4.5.3 Nigeria Post-Independent Constitutional Reforms (1963-1999)

There are many constitutional reforms undertaken by both civilian and military regimes between 1963 and 1999. The stages of constitutional reforms are listed as follows:

1. The First Republic Constitutional Reform of 1963
2. Military's 1966 Reform of Suspension of Constitution and Creation of States
3. The Second Republic Constitutional Reform of 1979
4. The Third Republic Constitutional Reform of 1989
5. The Fourth Republic Constitutional Reform of 1999 till Date

The First Republic Constitutional Reform of 1963

Although, Nigeria gained independence from the United Kingdom on October 1, 1960, the nation retained the British Monarch, Elizabeth II, as titular head of state until the adoption of a new and independent constitution in 1963 declaring the nation a republic, that is, a Federal Republic of Nigeria. Therefore, there is no difference between the first republic constitution and the independent constitution since the former was a simple adoption of the later. The difference can be said of the creation of one more region known as Midwest region from the then western region, making it a total of four regions. One peculiar thing about the first Republic Constitution is that the regions weigh greater power and finance than general government, which made them capable of existing on their own in case the country is balkanised. Another important aspect of the first republic constitution is the existence of a clause in the constitution which empowered the federal government to declare a state of emergence in the country or any part thereof, when the federation is at war, and that democratic institutions in Nigeria are threatened by subversion. This provision which was highly contentious and open to abuse was applied during the Western region crisis of 1964 and precipitated a major political crisis that led to the January 15, 1966 coup thereby ending civilian rule of President Nnamdi Azikiwe and Prime Minister Tafawa Balewa. Therefore, the first republic establishes Westminster system of government in which there was ceremonial president and head of state, and prime minister, which was the head of government.

Military's 1966 Reform of Suspension of Constitution and Creation of States

Military rule in Nigeria and its effects in her federal status have been given a considerable attention above, but for the sake of emphasis, military rule did not fare well for the federal status of Nigeria as a nation. The first thing it did after occupying Nigeria political space is to suspend constitution and stop federal democratic process by making Nigeria a unitary system by centralising governmental powers in its unification Decree 34. Being an undemocratic institution with hierarchical chains of command or structure weakened the powers and autonomy of the constituent units and concentrating power and resources at the federal level. To weaken the regions further, it divided the federation into 36 states with federal capital territory. Here is the simplified chronological creation of these states by the centralised military regimes: General Yakubu Gowon created 12 states in 1967; General Murtala Mohammed created 7 states in 1976 making them 19 states; General Ibrahim B. Babangida created 2 states making them 21 states in 1987; General Ibrahim B. Babangida created 9 states making them 30 states in 1991; and finally, General Sani Abacha created 6 more states making them 36 states in 1996.

The Second Republic Constitutional Reform of 1979

First military rule was terminated after the assassination of the then military head of state, General Murtala Mohammed in 1976, and voluntary handing over of power by general Obasanjo, to his successor, Shehu Shagari. In 1979, a new constitution was drafted that ushered the regime into the civilian rule known as **Second Republic**.

The 1979 constitution which is federal constitution saw the Westminster system of parliamentary government (previously used in First Republic) jettisoned for an American-style Presidential system. The constitution also divided power between federal government and state governments, but unlike 1963 first Republic constitution, federal government this

time weighed greater power and financial resources than state governments. Like the previous constitutions, there was party system, and the parties and cabinet positions reflect the “federal character” of the nation. Political parties were required to be registered in at least two-third of the states, and each state was required to produce at least one cabinet member.

Another important aspect of 1979’s constitution is the promulgating of the local government system as the third tier of government. Although it was the military head of state General Murtala Muhammed’s government that did the reform of the local government administration in 1976.

The Third Republic Constitutional Reform of 1989

The Third Republic constitution was drafted in 1989 after General Ibrahim Babangida promised to end military rule by 1990. The constitution was the adoption of suspended second republic constitution. The Third republic constitution primarily was meant to institute federal democratic culture with a stronger centre. The constitution was also suspended after the annulment of the June 12, 1993 election by General Ibrahim Babangida and taking over of the reign of government by another military ruler, General Sani Abacha.

The Fourth Republic Constitutional Reform of 1999 till Date

The fourth Republic is the republican government of Nigeria. Since 1999, it has governed the country according to the fourth republican constitution. It was in many ways a revival of the Second Republic constitution which was in place between 1979 and 1983. Nigeria adopted the constitution of the Fourth Republic on May 29, 1999. The Fourth Republic constitution was ill-fated Second Republic – which saw the Westminster system of government jettisoned for an American Presidential System. Political Parties were formed and the President was assigned military power by naming him – President and Commander-in-Chief of arm forces of the Federal Republic of Nigeria.

The 1999 constitution is believed to entrench the concept of federalism. There is no doubt that the 1999 constitution distributes powers among the three tiers of the government, but the major criticism is that 1999 constitution gives too much power to the central (federal) government. An all too powerful central government is not acceptable to those not in the control of the federal government. Main point to note is that the vesting of more powers in the central government was deliberately done as the centre needed to be stronger than the states to prevent secession and to ensure uniformity. For instance, section 4 of the 1999 constitution provides for the legislative powers of the federal and state governments. Thus, 1999 constitution is believed to have granted too many powers to the federal national assembly that they are required to make laws for the federation and states respectively. Therefore, federal national legislature was granted more power by 1999 constitution to make law with respect to matters included in the exclusive legislative list, which state house of assemblies cannot legislate on. National Assembly can also legislate on matters set out in the concurrent legislative lists and any other matters to which it is empowered to make law in accordance with the provisions of the constitution. Though the state house of assemblies of the federating units also are empowered to make law on matters listed in the concurrent legislative list but any law enacted by the State House of Assembly (on a matter set out on the concurrent legislative list) if inconsistent with any valid laws of the National Assembly will become inoperative and void to the extent of the inconsistency. However, both parliaments cannot legislate on laws which are inconsistent with provisions of the 1999 constitution; the judiciary will declare such laws null and void.

The above argument implies that the 1999 constitution granted too many powers to the federal National Assembly, in that a state's House of Assembly cannot legislate on matters on the exclusive legislative list and its laws may be overridden by a National Assembly Act if it covers a field listed in the concurrent legislative list. And that both houses cannot legislate

against the letters of the provisions of the 1999 constitution. In such situation, judiciary plays an intervention rule by voiding such laws. The point this paper wants to make here is that 1999 constitution gifted federal government with enormous powers to the detriment of states who supposed to have co-ordinating supremacy in its own sphere.

Fiscal federalism relates to the division of economic and financial functions amongst the tiers of government – federal, state and local governments. The major aspect of this principle is that the central government should be more willing to surrender powers to the state and local governments of the federation in matters regarding allocation of resources while the federal should be responsible for economic stabilization and income re-distribution. Fiscal decentralisation is the best means of achieving effective and efficient solutions to social and economic challenges. But the 1999 constitution contradict the principle of fiscal federalism and resource control by gifting the federal government with enormous powers over the resources of the federation. The Niger Delta Oil is the typical example. While the oil produced from the region is the main Nigerian economic stay, the region is the most backward in the human and infrastructural development.

The 1963 constitution provided for a 50% derivation to the region where mineral rents were derived and the rest to be distributed based on various basis and indices. In that era, regions were able to develop at the fastest rate, and the south west and east for example were able to grant their citizens free education. The above evidential truth highlights the possibility of achieving a situation where states can be granted more allocation. However, this cannot be achieved in the present skewed 1999 constitution that made it impossible to achieve fiscal decentralisation and responsibility. It is a self-evident truth that fiscal decentralisation and devolution of powers cannot be easily achieved within the framework of the 1999 constitution; hence, the need for radical restructuring of Nigerian constitution to reflect true

federalism. Now, how should a federal constitution look like? The next subsection of this chapter will deliberate on the characteristic of (federal) constitution.

4.6 The Characteristic Features of (Federal) Constitution

Constitution is a set of fundamental principle or established precedent according to which a state or other organisation is governed. It is what constitute or make up what the entity is. It is a written instrument containing the fundamental rules of a political or social organisation. Constitution is the body of doctrines and practices that form the fundamental organising principle of a political state. There are different kinds of constitutions: **federal and unitary constitution**. Federal constitution can be defined as a document that is drafted and ratified for the purpose of stating as precisely as possible the relationship of the federal government to the governed – in effect, the people – and the relationship of the federal government to the individual political entities that collectively comprise the nation.³⁵¹

There are three essentials characteristics of (federal) constitution. Therefore, Constitution must be: 1) Written, 2) Rigid, and 3) Supreme.

The Written Constitution: A federal constitution must necessarily be a written one. The foundations of a federal state are complicated contracts. It will be practically impossible to maintain the supremacy of the constitution unless the terms of the constitutions have been reduced into writing. According to Ahamefule-Ofoeze, it is within the constitution that the formal division of governmental legislative powers among the different levels of government is done. Of course this constitution must be as detailed as possible in terms of the powers allotted to the various levels of government in the country.³⁵² Emphasizing the importance of

³⁵¹ What is federal constitution? Retrieved 2018/07/24 from www.enotes.com/homework-help/what-federal-constitution-259747.25/09/2018

³⁵² H. G. Aghamefuna-Ofoeze, *Federalism: A Comparative Perspective*, (Enugu: John Jacob's Classic Publishers Ltd, 1999), p. 7

the characteristic feature of federal constitution, he cited K. C. Wheare, as cited by Dare, thus:

“...since federal government involves a division of functions and since the states forming the federation are anxious that they should not surrender more power than they know, it is essential for a federal system of government that there be a written constitution embodying the division of powers, and binding all governmental authorities throughout the federation. From it, all state and federal authorities derive their powers and nay actions they perform (sic).Contrary to it are invalid...”³⁵³

The foregoing argument clearly demonstrates the indispensability of this characteristic feature of the federal constitution as a prerequisite for federalism. Again, this feature is very necessary because in order to actually exercise their powers, each level of government must be clearly aware and indeed have a good knowledge of its own powers and its limits so as to actually operate within its own areas of jurisdiction. Besides, the existence of written constitution is also very important since it would enable each level of government to have the basis upon which it would not only defend its action but also and more importantly, the basis to challenge any encroachment on its own powers.³⁵⁴

The Constitution Must Be Rigid: It is an important feature and prerequisite condition for federalism. In a rigid constitution the procedure of amendment is very complicated and difficult. However, it doesn't mean that the constitution should not be legally alterable. It simply means that the constitution, which is the basic framework that defines and specifies the powers of each of the various levels of government, must be one whose procedures and processes of amendment are both vigorous and difficult as well as being a joint responsibility of all the levels of government in the country. In the second place, the constitution must be rigid essentially in such a manner as to ensure that the power to amend the constitution

³⁵³ L. O. Dare, “Perspectives on Federalism” in A. B. Akinyemi et al (eds.) *Readings on Federalism* (Lagos, Nigerian Institute of International Affairs, 1979), p. 27 as cited in H. G. A – Ofoeze, *Federalism: A Comparative Perspective* p. 7

³⁵⁴ H. G. A. Ofoeze, *Federalism: A Comparative Perspective* p. 8

should be the joint responsibility of all levels of government in the country.³⁵⁵ In other words, it simply means that the power of amending of the constitution should not be remained exclusively with either the central or state government – otherwise it leads to state of affair which certainly will derogate from the principles of federalism.

What it entails is that constitution must be such that highlights, in a detailed manner, all the procedures and processes for amending the constitution as well as the manner for approving such amendments. Citing K. C. Wheare, Ofoeze states as follows:

That if federalism is to be maintained – i.e. ... if the division of powers is to be guaranteed and if the constitution embodying the division is to be binding upon the federal and state governments alike, it follows that the power of amending (especially) that part of the constitution which embodies the division of powers must not be conferred either upon the federal government acting alone or upon the state government acting alone. It is preferable... to federalism that the power should be exercised by the federal and state authorities acting in cooperation.³⁵⁶

Thus, in effect, one important feature of all federal constitutions is that it must, in addition of being written, also be rigid which means that the constitution cannot be amended simply through the ordinary law-making process. It can only be amended by special processes and procedures which themselves are specified in the constitution itself.

The Supremacy of the Constitution: This is another important characteristic feature of federal constitution and indeed a fundamental prerequisite of federalism. In addition of being written and rigid, the constitution of the federal states is also necessarily supreme. A federal state derives its existence from the constitution. Hence, every power, executive, legislative, or judiciary whether it belongs to the union or the individual states is subordinate to and controlled by constitution. As a result, any other law made, whether by the central or state governments, which contravenes or is inconsistent with the constitution or any of its

³⁵⁵ *Ibidem*

³⁵⁶ L. O. Dare, “Perspectives on Federalism”, p. 27 as cited in H. G. A. Ofoeze, *Federalism: A Comparative Perspective* p. 9

provisions or aspects, is usually considered as “*ultra vires*” and hence null and void to the extent of its (i.e. the law) inconsistency with the constitution.³⁵⁷ The constitution in a federal state constitutes the supremacy of the land. The supremacy of the constitution is one of the essential institutions of the federal government. Thus, K. C. Wheare argues that those institutions – the supreme constitution and the written constitution are then, the essential institutions of a federal government.³⁵⁸ Therefore, the supremacy of a constitution is essential if a federal government is to be federal.³⁵⁹

³⁵⁷ H. G. A. Ofoeze, *Federalism: A Comparative Perspective*, p. 10

³⁵⁸ K. C. Wheare, *Federal Government*, p. 55

³⁵⁹ www.rdlawnotes.com/2015/11/essential-characteristics-of-federal.html?m=1

CHAPTER FIVE

COMPARATIVE ANALYSIS OF THE WHEARE'S FEDERALISM AND THE NIGERIAN FEDERAL SYSTEM OF GOVERNMENT: AREAS OF CONVERGENCE AND DIVERGENCE

5.1 The Distinctive Features of Federal Government

One important point this dissertation mines from the study of K. C. Wheare's *Federal Government* and Nigerian Federal System of Government is that federalism whether as a principle or system of government can be adopted in accordance with the exigencies of the government and the peculiarity or particularity of the people, albeit not deviating from the most basic or fundamental tenets or principles of federalism – which is, the division of the powers so that the general and state governments, within a sphere, are independent and co-ordinate with each other. It is a fact that Nigerian Federal Government is yet to live up to the basic tenets of federalism which she professed to practice. This chapter enumerates the basic characteristics of true federalism, and comparatively studies Kenneth C. Wheare's *Federal Government* and Nigerian Federal System of Government. Via establishing their areas of convergence and divergence, this work conversely ascertain how true Nigeria observes federalism basic tenets in her practice of federal system of government as contained in Kenneth C. Wheare's Federalism principle. However, before delving into the comparative investigation, this study firstly advances better understand of federalism by looking into some scholars' view on federalism.

Several scholars across the world have written about federalism. They also differ in their opinions, both theoretically and empirically on the application and contextualisation of federalism, without necessarily abusing the core values of the system. Some of these scholars include the father of classical theory of modern federalism, Professor Kenneth C. Wheare whose literature *Federal Government* published in 1964, laid the foundation of the discourse on modern federalism. On his theoretical breakthrough, other federal thinkers like Livingston

1956; Riker 1964; Friedrich 1968; Elazar 1987; Oyovbaire 1985; Awa 1976; Watts 1999 among others, from different viewpoints contributed to the study of, or expanded the discourse on federalism. Their separate studies and theorizations on federalism though interlocking formed the different moulds on the practice of federalism. The context from which these scholars have engaged the debates on federalism have been shaped largely by their environments, experiences, perceptions and scholarships drawn from the poll of studies of the nature and practice of federalism in many countries across the world.

The obvious is that federalism is practiced in many countries of the world, and the practice of federalism differs in these countries. This indicates that federalism is not a static concept, its application changes depending on the change in conditions that warrants it, not exogenously but endogenously construed. From the above context, what then is federalism?

Arowolo offered the etymological conception of the word ‘federalism’, as a concept derived from Latin word *Foedus*, meaning ‘covenant’.³⁶⁰ Simply put, federalism is therefore a treaty or agreement over the distribution of the spheres of operation, both vertically and horizontally, in a political community.³⁶¹ In this instance, federalism determines the nature and manner with which power and resources are distributed. Therefore, federalism is at one point about distribution of power and resources between the government for all and the government for the constituent units, and at some other point, it is between the organs of government, such as the executive, legislature and judiciary.

Also, Sagay argues that in a federal arrangement, “The central authority exist as a government separately and independently from others, operating directly on persons and

³⁶⁰ D. Arowolo, “Fiscal Federalism in Nigeria: Theory and Dimensions”, *Afro-Asian Journal of Social Sciences*, Vol. 2, No. 22, p. 4, as cited in Lenshie and Yenda, “Is There any True Federalism...” p. 55

³⁶¹ Lenshie and Yenda, “Is There any True Federalism? Revisiting the ‘True Federalism’ Debate in Nigeria,” p. 55

properties within its territorial area and with a will of its own apparatus for the conduct of affairs and with an authority in some matters exclusive of others.”³⁶² These definitions of federalism from the legal and/or constitutional standpoint are narrow conception about federalism. This leads to exploring other definitions of federalism. Aalen defines federalism as “‘a political remedy for political disease,’ designed to prevent tyranny without preventing governance.”³⁶³ This means the role of the federal system as a political framework to remedy political disease by promoting a way of checking power and creating balance that cannot be undermined.³⁶⁴

However, other perspectives also exist about federalism. One of these perspectives is sociological, which sees federalism as the link between the state and society aiming at the attainment of national integration. In this context, Oyovbaire (1979: 81) contends that there exist at least two patterns of communities, one all-inclusive and the other composed of several exclusive communities in any federal system.³⁶⁵ In the federal practicing countries, the federal system is reduced to having the central and regional government from at least two levels of government.³⁶⁶ Awolowo puts it differently, “federalism must reflect the distinct characteristics of the principal and minor ethno-linguistic groups. The objective for this

³⁶² I. E. Sagay, “How a True Federal System Should Run”, *The Nation*, (Lagos: Vintage Press Ltd, 19th May), as cited in Lenshie and Yenda, “Is There any True Federalism...” p. 55

³⁶³ L. Aalen, *Ethnic Federalism in a Dominant Party State: The Ethiopian Experience*, (Norway: Chr. Michelsen Institute for Development Studies and Human Rights, 2002), p. 12, as cited in Lenshie and Yenda, “Is There any True Federalism...” p. 55

³⁶⁴ M. Burgess, “The Political Uses of Federalism,” p. 32, as cited in Lenshie and Yenda, “Is There any True Federalism...” p. 55. See also D. J. Elazar, 1987, especially page 5

³⁶⁵ S. E. Oyovbaire, “The Theory of Federalism: A Critical Appraisal”, in *Nigerian Journal of Political Science*, Vol. 1, No. 1, June, (Zaria: Ahmadu Bello University, Nigeria, 1979), p. 18, as cited in Lenshie and Yenda, “Is There any True Federalism? Revisiting the ‘True Federalism’ Debate in Nigeria,” p. 56

³⁶⁶ R. Vernon, “The Federal Citizen”, in R. D. Olling and M. W. W. Macolt, (eds.), *Perspectives on Canadian Federalism*, (Canada: Prentice Hall, 1988), p. 25, as cited in Lenshie and Yenda, “Is There any True Federalism? Revisiting the ‘True Federalism’ Debate in Nigeria,” p. 56. It is also seen in the work of D. J. Elazar, 1979.

principle is to accommodate diversities of ethnicity, cultures and traditions as evidence of ‘unity in diversity.’³⁶⁷

The second perspective is one that was advocated by Livingston when he posits that, “federalism is about the pluralistic inter-relationship that goes on not just among the institutions of government or between different levels of governments, but also about the practical socio-economic, political and cultural relationship, which exist in the society.”³⁶⁸

This means that federalism as a political and cultural framework has the capacity of managing conflict in diverse settings.³⁶⁹ However, the capacity for mitigating conflicts is relative, because it depends greatly on the institutional structures of the state and certain prevailing conditions.

The third perspective is about the procedures and functionality of federalism. Riker³⁷⁰ associated federalism with the political dynamics of party and intergovernmental relations in divided societies. Accordingly, the adoption of federalism is significant for two reasons, which include first, the constant desire and quest among politicians at all levels to expand their territorial control and relevance, and, the second is about the governed being willing to submit themselves and their rights to self-government in exchange for peaceful co-existence and wellbeing. On the part of intergovernmental relations, federalism permits autonomous fields of operation to the extent that no one part is worse-off to decide quitting the

³⁶⁷ O. Awolowo, *Thoughts on Nigerian Constitution* (Oxford: Oxford University Press, London, 1966), p. 24, as cited in Lenshie and Yenda, “Is There any True Federalism? Revisiting the ‘True Federalism’ Debate in Nigeria,” p. 56

³⁶⁸ W. S. Livingston, *Federalism and Constitutional Change*, Oxford: Oxford University Press, 1956), pp. 81-95, as cited in Lenshie and Yenda, “Is There any True Federalism? Revisiting the ‘True Federalism’ Debate in Nigeria,” p. 56

³⁶⁹ D. Horowitz, “Ethnic Conflict Management for Policy Makers”, in J. V. Montville, (ed.) *Conflict and Peace-Making in Multi-Ethnic States*, (New York: Lexington Books, 1997)

³⁷⁰ W. Riker, *Federalism: Origin, Operation, Significance*, (Boston: Little Brown and Company, 1964) as cited in Lenshie and Yenda, “Is There any True Federalism? Revisiting the ‘True Federalism’ Debate in Nigeria,”p. 56

federation.³⁷¹ In this context, federalism is therefore, an outcome of rationale bargain among various constituencies for a better life, socially, economically and politically. The essence of rationale bargain in federalism is the need to achieve greater economies and political freedom to protect and promote constituent-valued identities in a multi-ethnic state formation.

Moreover, federalism is a non-equilibrium political process, as such, federal arrangements are bound to be unstable, and overtime may change to the advantage or disadvantage of other federating units. Federalism could be peripheral (where the sub-national body is more powerful than the central body) or centralised (where power navigate to the national government).³⁷² Either way, the nature of federalism has a direct implication on the state. When power navigates more to the subordinating units, it will undermine and negate the essence of federalism. When power navigates more on the central units, the co-ordinate bodies loses certain level of independence, thereby making the power at the centre to be twice the powers at the circumference. Put differently, power sharing between the central government (government for all citizens) and co-ordinate government (government for specific groups of ethnic enclaves) in most circumstances disproportionately favours the central government. This situation begs for federal bargain to adjust the interplay within the federal pluralist societies, like Nigeria.³⁷³

In addition, federalism is a process for generating development. For example, the plural nature of the state can effectively be harnessed and channelled towards achieving national collective goals. Friedrich³⁷⁴ and Deutsch³⁷⁵ in their respective studies understood the

³⁷¹ W. Riker, (1964), as cited in Lenshie and Yenda, p. 56

³⁷² *Ibid.* p. 56

³⁷³ *Ibidem*

³⁷⁴ C. J. Friedrich, *Trends of Federalism in Theory and Practice*, (New York: Praeger, 1968) as cited in Lenshie and Yenda, p. 56

³⁷⁵ M. Deutsch, *The Resolution of Conflict: Constructive and Destructive Processes*, (New Heaven: Yale University Press, 1973), as cited in Lenshie and Yenda, p. 56

efficacy of federalism towards development of multicultural societies. All over the world, federalism depends on the social, economic and political conditions of the state. The stronger the economy is, the better the political condition of the state and its citizens.³⁷⁶ Federalism, therefore, is not only a political ideology as others may conceive, rather a political framework designed to solve the problems associated with multiculturalism through collective processes of constitutional, sociological and functional means of the federal system.³⁷⁷

There are two points to deduce from the above assertions. First, is the manner of which ‘power’, which also symbolises ‘resources’ are generated and distributed at all levels of government in the state; and lastly, is the procedural relations, which exist at the level of inter-governmental relations and informal institutional relations in the state. These constitute central concern about the working of federalism, because it hinges on ‘unity in diversity’ as well as ‘shared rule and self-rule’, which sustains the hard-won compromises that no federating unit have absolute victory.³⁷⁸ In a federal system, all federating units collectively work for the survival of the state, and no federating unit can quit the federation, except upon the consent of all the federating units.³⁷⁹

The Distinctive Features of Federal Government

There is categorical distinction between the federalism Kenneth C. Wheare proposes in his work, and the one being practised by Nigeria Federal Government. Therefore, the comparative analysis will be done under the following major characteristics of federal government:

³⁷⁶ R. L. Watts, *Comparing Federal Systems*, Montreal and Kingston: McGill-Queen’s University Press, 1999), as cited in Lenshie and Yenda, p. 56

³⁷⁷ A. P. Odojin, *Federalism and the Challenges of Citizenship in Nigeria’s Multi-Ethnic State*, (Zaria: Department of Political Science, Ahmadu Bello University, 2003).

³⁷⁸ D. J. Elazar, *Exploring Federalism*, (United States: University of Alabama Press, 1987)

³⁷⁹ N. E. Lenshie and H. B. Yenda, “Is There any True Federalism? Revisiting the ‘True Federalism’ Debate in Nigeria,” p. 56

1. The Division of powers
2. The Existence of Constitution (it must be Written, Rigid and Supreme)
3. The Existence of the Independent and Non-Political Judiciary
4. The Existence of Bicameral Legislative Assembly
5. The Form of Democratic Government
6. The Provision of Constitutional Amendment (Constitutional Reform)
7. The Resource Control
8. The Fiscal Federalism and Revenue Allocation; and
9. Financial Autonomy of Each Level of Government.

5.1.1 The Division of Power

In any federal system of government there must be dual governments with independent and co-ordinating powers. Therefore, the formal division of governmental legislative powers by constitution among the various levels of government in a country is one of the most important fundamental characteristics of federalism. Thus, in his principle of federalism, Kenneth C. Wheare argues that power must be divided between general and regional government so that they, in a sphere, should be independent and co-ordinate. Kenneth C. Wheare made division of power important prerequisite and central to the concept of federalism that without it the country in question is not and cannot be regarded as a federation at all.

5.1.2 The Existence of Constitution (It must be Written, Rigid and Supreme)

Constitution is a set of fundamental principles or established precedents according to which a state or other organisation is govern. Therefore, when this fundamental principle is written down in a single document or a set of legal documents, those documents may be said to

embody a written constitution; and if they are written down in a single comprehensive document, it is said to embody a codified constitution.

In a federal set-up, whether written or unwritten, existence of constitution is another important feature of federal system of government. According to Scott Gordon, "... a political organisation is constitutional to the extent that it contains institutional mechanisms of power control for the protection of the interests and liberties of the citizenry, including those that may be in the minority."³⁸⁰ This important characteristic of constitution to protect vulnerable minority from the social majority is where the federalism becomes relevant. For a constitution to be federal, it must be: 1) written, 2) rigid and 3) supreme.

A federal constitution must necessarily be a **written** one. The foundations of a federal state are complicated contracts. It will be practically impossible to maintain the supremacy of the constitution unless the terms of the constitutions have been reduced into writing. According to Ahamfule-Ofoeze, it is within the constitution that the formal division of governmental legislative powers among the different levels of government is done. Of course this constitution must be as detailed as possible in term of the powers allotted to the various levels of government in the country.³⁸¹

For a **rigid** constitution the procedure of amendment is very complicated and difficult. However, it doesn't mean that the constitution should not be legally unalterable. It simply means that the constitution which is the basic framework that defines and specifies the powers of each of the various levels of government must be one whose procedures and processes of amendment are both vigorous and difficult; as well as being a joint responsibility of all levels of government in the country.

³⁸⁰S. Gordon, *Controlling The State: Constitutionalism from Ancient Athens to Today* (USA: Harvard University Press, 1999), p. 4, ISBN 0-674-16987

³⁸¹H. G. A – Ofoeze, *Federalism: A Comparative Perspective*, (Enugu: John Jacob's Classic Publishers Ltd., 1999), p. 7

In addition of being written and rigid, the constitution of the federal state is also necessarily **supreme**. A federal state derives its existence from the constitution. hence, every power, executive, legislative, or judiciary whether it belongs to the union or the individual states is subordinate to and controlled by constitution. as a result, any other law made, whether by the central or state governments, which contravenes or is inconsistent with the constitution or any of its provisions or aspects, is usually considered as “ultra vires” and hence null and void to the extent of its (i.e. the law) inconsistency with the constitution.³⁸²

5.1.3 The Existence of an Independent and Non-Political Judiciary

Judiciary is an important arm of government which is an indispensable and prerequisite feature of the federal government. This means that for the constitution to perform its function and its provision to be binding, especially with respect to the division of power, there must necessarily exist an independent and apolitical body (supreme court) which will have and indeed exercise the exclusive responsibility to interpret the constitution and adjudicate on any issue or clash between the central government and the regional governments. This means that the Supreme Court has the “power of judicial review.”³⁸³ In federal government judiciary performs these functions: 1) the authority to interpret the constitution and decide conflicts of jurisdiction between or among levels of authority, and their verdict is usually final; 2) the responsibility to adjudicate on issues of conflict between the Legislative and Executive arms of government especially when the issues in question are of constitutional relevance; and 3) the authority to declare law or action of any level of government that contravene the constitution and its provision as inconsistent with it, ultra vires and hence null and void to the extent of its inconsistency with the constitution. Indeed, the importance of this characteristic feature of constitution is strongly underscored by K. C. Wheare, who states inter-alia:

³⁸²Ibid. p. 10

³⁸³ Ibid. p. 11

... in case of dispute between the federal and state government as to the extent of the powers allocated to them under the constitution, somebody other than the federal (i.e. central) and the state government must be authorized to adjudicate upon those issues....³⁸⁴

In order to perform its function effectively in a federation, this arm of government should be independent of central or state government, especially in its finance and constitution of its body.

5.1.4 The Existence of Bicameral Legislative Assembly

A bicameral system is considered as an important characteristic of federal system of government, though it is not an exclusive preserve of federal government as there are number of unitary governments practising bicameralism as well. Bicameral means two chambers (Houses). Legislature is an important arm of government, which though is political, is very much independent of other arms of government, especially in finance and constitution of their legislative body. Their autonomy is very sacrosanct for the proper functioning of the federal system of government.

5.1.5 The Forms of Democratic System of Government

In one way or another this work has reiterated the importance of democracy in federal system of government as they are the same coin of different sides. Some scholars however have argued variously that federalism is not compatible with democracy³⁸⁵, or that federalism can be operated effectively under a totalitarian or military regime.³⁸⁶. Nevertheless, it is

³⁸⁴ K. C. Wheare, in Ramsome (ed.) *Studies in Federal Planning* (London: Macmillan Press, 1943), pp. 28-31, as cited in H. G. A. Ofoeze, *Federalism: A Comparative Perspective*. p. 12

³⁸⁵ H. J. Laski, *The Obsolescence of Federalism. The New Republic*, in A. A. Anyebe, *Federalism as a Panacea for Cultural Diversity in Nigeria*. *Global Journal of Social Science*.15 (3) 2015, p. 15, as cited in N. C. Abah, *Federalism, Democracy and The National Question in Nigeria*, p. 28

³⁸⁶ S. E. Oyovbaire, "Military Rule and the National Question in Nigeria" in P. Ekeh and E. Osaghae (eds), *Federal Character and Federalism in Nigeria*, (Ibadan: Heinemann Book Ltd.,

indisputable that federalism and democracy are implicitly related and mutually complementary and compatible. Kenneth C. Wheare's use of four most democratic nations in the likes of United States, Canada, Australia and Switzerland as cases of study is a strong indication that it would be difficult, if not impossible, to conceive of the successful practice of federalism under a non-democratic system. Representative system inherent in both federal and democratic systems of government is a testimony that both federalism and democracy are two sides of the same coin, and that they both promote pluralism and dispersal of governmental powers and functions.

In the study of K. C. Wheare's *Federal Government* one is drawn to the two major forms of democratic government being practiced by the federations he used as case study. One can deduce that there are two major forms of democratic governments: Presidential form of democratic government practiced by United States, and parliamentary form of democratic government seen mainly in Canada. Both systems are democratic, but differ in their form of administration. Presidential system is a democratic and republican system of government where a head of government leads an executive branch that is separate from legislative branch. He is both head of state and government, and he is called President. In presidential countries, like United States, the executive is elected directly by the people, and is not responsible to the legislature, which cannot in normal circumstances dismiss it. Meanwhile, Parliament is quite a contrast of Presidential system. Parliamentary system is where the head of government is elected to power through legislature. A parliamentary system is a system of democratic government of a state where the executive branch derives its democratic legitimacy from its ability to command the confidence of the legislative branch, typically a parliament, and is also held accountable to that parliament. In a parliamentary system, the

1989). as cited in N. C. Abah, *Federalism, Democracy and The National Question in Nigeria*, p. 28

head of state is usually a person distinct from the head of government.³⁸⁷ Parliamentary system is typical form of democratic government as practiced in Canada and Switzerland. Both forms of democracy are applicable to any country that is federally structured; nevertheless, any country can choose the one that most suited to the nature of her composition. While presidential system is *adrem* in countries that are territorially distributed, parliamentary system is for countries that are nationally or ethnically distributed.

For the sake of clarity, **territorial federalism**, seen as a typical example of what the United States practice, is a kind of federalism that does not recognise a national group(s) as capable of self-government; therefore, no need of original division of powers within the federal system that is capable of giving them greater power, autonomy and independent.³⁸⁸ Looking at American federation where presidential system is in vogue, it seems that the people who devised American federal constitution had no interest in accommodating national minorities. In deciding how to arrange their federal system – from drawing of boundaries to sorting out the division of powers and the role of the judiciary – their aim was to consolidate, then expand a new country and to protect the equal rights of individuals within a common national community, not to recognise the rights of national minorities to self-government.

Meanwhile in **multination federalism**, the kind of federalism that is widely practiced in Canada with parliamentary system of democratic government, is seen not just as a means by which a single national community can divide and diffuse power, but as a means of accommodating the desires and aspirations of national minorities for self-government right. This is partly a matter of the structure of federal system whether the constitutional provisions regarding the boundaries and powers of federal subunits reflect the needs and aspirations of

³⁸⁷ en.m.wikipedia.org/wiki/presidential_system_&_parliamentary_system

³⁸⁸ *Ibid.* p. 136

minority groups.³⁸⁹ Therefore, while presidential form or system can be best suited in a country that is territorially delineated, parliament system can be best suited in a country with multicultural set-up.

5.1.6 The Provision of Constitutional Amendment

An amendment is a formal or official change made to a law, contract, constitution, or other legal document. It is based on the verb “to amend,” which means to change for better. Amendments can add, remove, or update parts of these agreements. They are often used when it is better to change the document than to write a new one.³⁹⁰ Therefore, constitutional amendment is a modification of a constitution of a nation or state. In many jurisdictions the text of a constitution itself is altered; in others the text of a constitution is not changed, but the amendment changes its effect. The method of modification is typically written in the constitution itself. Thus, amendment is one of the characteristic features of federal constitutions.

Most constitutions require that amendment cannot be enacted unless they have passed a special procedure that are more stringent than that which is required of ordinary legislation; thus, that makes federal constitution rigid. According to Kenneth C. Wheare, being rigid involves: having supermajorities in the legislature, or approval by the electorates in a referendum, or even a combination of two or more different special procedures. A referendum to amend the constitution may also be triggered in some jurisdictions by popular initiatives.³⁹¹

Kenneth C. Wheare considers amendment of federal constitution as one of the essential characteristics; thus, he argues, “...a brief review of the working of federal government may

³⁸⁹*Ibid.* p. 138

³⁹⁰ Definition of Amendment “www.merriam-webster.com, retrieved 19/08/2018”

³⁹¹ www.en.m.wikipedia.org/wiki/constitutional-amendment, retrieved 19/08/2018

be attempted. Perhaps the best way in which to begin this review is to consider how far federal governments have shown themselves capable of being adapted to the needs of the communities for which they were established.³⁹² What the above submission implies is that as time runs into decades and centuries, the general government and federating units may decide to review the working of federation to establish whether its constitution lives up to its commitments to the people and the units. The outcome of the review will determine whether there will be need for adjustment or reform in the constitution that defines their corporate existence. However, the amendment to the constitution must be rigid, or conservative or difficult to alter, since one of the essential characteristics of federal constitution is its rigidity in the amending process. The rigidity lies in the inability of any level of government in a federal set-up acting unilaterally to facilitate a successful amendment process of federal constitution. Therefore, the amendment of the federal constitution requires a collective participation of all levels of government.

5.1.7 The Resource Control

This implies having total or semi-total control of the natural resource domicile in one's state or federating unit. Since federal or central government is not the creator of the state governments, federal government should not assume the ownership of the natural resources in the federating units. Rather such resources should be owned and managed by the regional or state governments wherein the resource is found. Therefore, what this implies is that every state in the federation has unalloyed rights over the control and management the natural resources located therein. It indicates not the seizure of the natural resource in which it is domicile, but it shows a sense of participation of the community involved. Resource control is indeed positive aspect of the practice of federalism. In short, resource control is an indication of the practice of true federalism.

³⁹² K. C. Wheare, *Federal Government*, p. 209

5.1.8 The Fiscal Federalism and Revenue Allocation

Fiscal Federalism is the division of powers, responsibilities, expenditures and tax powers between or amongst levels of government in a federation. Kenneth C. Wheare in his definition of principle of federalism, argues that it is a constitutional arrangement which divides the law-making powers and function between two levels of government in such a way that each within its respective sphere of jurisdiction and competence, is independence and co-ordinate. He added that coordinate supremacy of all the levels of government with regards to their respective functions remains a cardinal principle of true fiscal federalism. Hence, fiscal federalism according to Okigbo, refers to the existence in one country of more than one level of government, each with different expenditure, responsibility and taxing powers. Thus, in fiscal federalism, one is subjected to the influence of the fiscal operations of different tiers of government. According to Nyong (1999), fiscal federalism is concerned with the relationship among various levels of government with respect to the allocation of national revenue and assignment of functions and tax powers to the constituent units in a federation.

5.1.9 The Financial Autonomy of Each Level of Government

Kenneth C. Wheare sees financial autonomy of each level of government as a necessary condition guaranteeing “true” federalism. This is because without the financial autonomy of the component units from the general government on the level of financial assistance, the authority and area of functional jurisdiction of the federating units will be encroached into with impunity by general government. Thus, Kenneth C. Wheare argues,

...if the governmental authorities in a federation are to be really coordinate with each other, in actual practice as well as in law, it is essential that there should be available to each of them under its own unfettered control, financial resources sufficient for the performance of the functions assigned to it under the constitution. It will be no good allotting functions to the federal or to state authorities and devising legal safeguards so that each should be limited strictly to the performance of its respective functions unless at the same time adequate

provision has been made so that each authority can afford to do its job without appealing to the others for financial assistance.³⁹³

The importance of this characteristic feature of federalism hinges on principle of federalism which emphasizes the importance of independence or autonomy of each level of government, which the financial subordination of each to another destroys.

5.2 Areas of Convergence and Divergence between Kenneth C. Wheare's Federalism and Nigeria Federal System of Government

Even in the midst of their overwhelming discrepancies one cannot deny that there exist some similarities between Nigeria federal system of government as enshrined in her constitution and Kenneth C. Wheare's principle of federalism. Nigeria federal constitution contains federal characteristic features which Kenneth C. Wheare believes when contained in one's country's constitution qualifies one's country to be considered a federation. However, K. C. Wheare is very avowal in arguing that having a federal constitution does not in totality qualifies one's country a federation.³⁹⁴ What he meant here is that one must walk one's talk. That is, federal constitution must necessarily bear significant semblance with practice of federal system of government. Taking the aforementioned into consideration, Nigeria system of government can never be seen or taken as a federal system of government in actual sense of the concept "federalism". Without further ado, this study investigates the areas of their convergence and divergence, and whether in the light of their discrepancies, Nigeria system of government can be taken as truly a federal system of government. This study carries out this investigation in the study of the characteristic features of federal government, starting with division of power.

³⁹³ K. C. Wheare, in Ramsome (ed.) *Studies in Federal Planning* (London: MacMillan Pres, 1943), pp. 28-31, as cited in H. G. A. Ofoeze, *Federalism: A Comparative Perspective*, pp. 14-15.

³⁹⁴ K. C. Wheare, *Federal Government*, p. 15

i. The Division of Power

In his principle of federalism, Kenneth C. Wheare argues that powers must be divided between general and regional governments. However, there is horizontal and vertical division of powers between or amongst the tiers and arms of government. Nigeria has three tiers of government: a federal or general government, 36 states or federating units with a Federal Capital Territory, and 774 local government councils. Hence, Nigeria has a constitution that divides powers and functions between three independent tiers of governments (general, state and local governments) and three arms of governments (executive, legislative and judiciary), which however stipulated that none should be subordinate to another. This very characteristic feature of federalism resonates with what Kenneth C. Wheare argues makes a country a federation. But the bone of contention is in the actual practice of federalism.

The problem with the Nigeria is the discrepancy that exists between her federal constitution and federal government. Although there are relatively similarities between the Nigerian federal constitution and Kenneth C. Wheare's federalism, but the federal principle does not reflect predominantly in the Nigerian federal constitution. Kenneth C. Wheare argues that if there is significant different between them, or many modification in the application of the federal principle, then the country or the constitution cannot be termed federal.³⁹⁵ For instance, the autonomy or independence of all tiers and arms of government are not properly demarcated or well defined in Nigeria Federal Constitution. In short, most powers are concentrated in central or general government while others (state and local governments) are made subordinate to the central government. For Kenneth C. Wheare, this marks the end of federalism. Hence, Nigerian federal system of government allotted the federal or central government with enormous powers and functions, thereby making it impossible for other tiers of government to operate independently in a co-ordinate stance. In her constitution, there

³⁹⁵*Ibidem*

are three legislative lists: exclusive, concurrent and residual lists. Federal government has sole jurisdiction over exclusive items, but shared jurisdiction with state governments over concurrent items, albeit overriding power over state governments whenever they conflict; meanwhile the state governments exercise sole control over items in residual list. Though Kenneth C. Wheare's Federal Government restricted federal government on five most important items like Military (defence), immigration, foreign trades and affairs, central bank (currency, minting and coinage, and national guideline, but Nigerian Constitution allotted federal government with more than 64 items in her exclusive list, while sharing remaining items with state governments in concurrent capacity, though not without overriding authority.

Also Kenneth C. Wheare emphasizes that there must be two levels of government and there must be constitutional division of powers amongst them, Nigeria Federal System of Government has three levels of government which are constitutionally recognised. Though there is nothing wrong with having more than two levels of government as it ensures grassroots government but K. C. Wheare was interested in not having them constitutionally recognised by federal constitution as an important tier of Federal Government. Thus, K. C. Wheare made it explicit that the division of powers shall be between the central and peripheral governments, though the federating units can create other tiers within the state governments to ensure local people's participation in governance, but must not be seen as another important tier of Federal Government like Nigeria's 744 local government councils.

ii. The Existence of Constitution

The Forth Republic Constitution also known as 1999 Nigeria Federal Constitution is an evidence that Nigeria has a set of fundamental principles or established precedents according to which she is governed. In a federal set-up there are two tiers of government with well

assigned powers and functions. In this system the central and the government of the units act within well-defined sphere, co-ordinate and at the same time act independently. When these principle of the division of power and function are written down in a single document or set of legal documents, those documents may be said to embody a written constitution.

One can never doubt whether Nigeria has a constitution, as there is a written document in 1999 call Nigeria Federal Constitution, but one doubts however if the constitution is a federal one. 1999 Nigeria Federal Constitution has no substantial division of power and function according to principle that there is a single independent authority for the whole area in respect of some matters and there are independent regional authorities for other matters, with each set of authorities being co-ordinate to and not subordinate to the other within its own sphere. Apart from written constitution being one of the characteristics of federal constitution, rigidity and supremacy of constitution are other features of federal constitution. though the fact that Nigeria has a written constitution, the important question is: are the amendment of her constitution rigid and her constitution supreme over all extant laws?

Though written aspect of Nigerian Constitution is not in doubt, the rigidity of its amendment and its supremacy over other existing laws are what is in doubt. The amendment of the Nigerian constitution can only be done by the two houses of National Assembly, without much inputs of the state houses of assembly not to talk of the people participating through referendum or plebiscite. Looking at the constitutional amendments of United States, Canada, Australia and Switzerland, K. C. Wheare made it clear that the amendment of the constitution fall within the jurisdiction of all. Every level of government has peculiar and important role(s) to play in constitutional amendment. But that is not the case with Nigeria Federal System of Government where the amendment is the sole jurisdiction of the federal government and her legislatures. That is why the 1999 Nigeria Federal Constitution can be said to favour the Federal Government more than state government by allotting them with

excessive and enormous powers. One can authoritatively say that the Nigerian constitution is not rigid.

Furthermore, the way political elites disobey or selectively obey the rule of law as contained in 1999 Federal Constitution is a perfect demonstration of the doubt of the Nigerian constitution being supreme. Summarily, Nigeria is said to have constitution written and codified, but lack rigidity and is never considered supreme rule that guides her existence. Meanwhile, K. C. Wheare alleges that regions, states or federating units should have their own constitution, separate from, but should not contravene, central or federal constitution. But all the states or local government councils in Nigeria do not have their own separate or independent constitution.

iii. **The Existence of the Independent and Non-Political Judiciary**

The parlance that 'judiciary is the last hope of common man' is an indicator that judiciary is an indispensable and important prerequisite feature of the democratic federal government. It is non-political organisation in the sense that they do not belong to any political party or being elected into office through party system. Nigerian judiciary is believed to have not departed from these important attributes of judiciary system. The bone of the contention is in the separation of power between judiciary and other arms of government, especially executive or presidency, who is imbued with responsibility of their appointment or the constitution of the judiciary body. In Nigerian constitution, there is no clear cut separation of power amongst three arms of government, in the sense that there are some levels of influence of one arm of government over another especially in their constitution of the judiciary body and finance. Meanwhile, Kenneth C. Wheare, argues in favour of them constituting the body and having separate budget.

In order to perform its function effectively in a federation, this arm of government should be independent of central or state government, especially in its finance and constitution of its body. Nigerian Federal Government are found really wanting in this regards as judiciary is seen as an important appendage of federal government as their finance and constitution of their judicial authority are being handled by the presidency. Though Kenneth C. Wheare advocated that all levels of government in every federation should constitute their own judicial body, but the fact remains that the supreme court, which verdict is final in Nigeria is seen to be under the authority of the central government or the executive arm of government. Whether one likes it or not, their verdicts will most likely favour the central government or the executive arm of government especially in the interpretation of the constitution as it concerns power allocation.

iv. **The Existence of Bicameral Legislative Assembly**

Like judiciary, legislature is an important arm of the federal government. Kenneth C. Wheare is of opinion that the legislative assembly of every federal system of government must be bicameral, made up of upper and lower houses each with its unique functions to the people and federation. Nigeria, like most of federations which Kenneth C. Wheare used as cases of study, had her parliament made of two chambers: House of Senate and House of Representative. Kenneth C. Wheare also made mention of having one of the houses, especially upper house, composed of equal representatives irrespective of the size of the state or region, who shall stand as the protectors of the federation and the rights of the people. Nigeria federation to a reasonable extent resonates with Kenneth C. Wheare's concept of federalism, but there are exceptions.

Though Nigerian national legislature is of bicameral composition, the two chambers are not equally represented or constituted as one ethnic group in Nigerian federation bears significant

numerical strength than other ethnic groups, making it possible and easy for the minority groups or nationalities to be schemed out in economic and socio-political affairs, or be outbid or outvoted in policy and decision making. Meanwhile, Nigerian National Assemblies are not completely independent of the executive arm of federal government as their legislations are being influenced by, and favour, the federal executive more than the constituent units.

v. **The Form of Democratic Government**

Research has shown that federalism can never be practiced in any other system of government except democracy. In short, it was established that they are the same coin of different sides. Kenneth C. Wheare argues that federalism thrives better in democratic dispensation, and Nigeria, as a result of the prevailing and extant structures and institutions of democracy therein, is assumed to be practising democratic system of government. Nigeria's sojourn into democratic dispensation started in 1960 independence, and despite intermittent military's unnecessary intervention into the Nigerian political body that obstructed and destroyed democratic rules, Nigeria is assumed today as a democratic nation.

The study of Kenneth C. Wheare's federal government and the countries he used as cases of study demonstrates that there are two forms of democratic government: presidential and parliamentary forms of democracy. Nigeria started with British style of parliamentary democracy which Canadian Federation practices, and terminates at American Style of presidential democracy which is still in vogue. Both are democracy but differ in their form of administration. Therefore, Nigeria is a democratic nation despite one or two lapses in the practice of democracy, but the fact is that her extant democratic dispensation resonates with K. C. Wheare's allusion that federalism can better thrives in a country where democracy is in vogue.

Apart from having issues in the practice of true democracy, Nigeria is believed to be putting a square peg in a round hole in the form of democracy she practices. The form of government which a country adopts, the study deduces, is dependent on the nature of the country's composition. While presidential system resonates with a country which is territorially distributed, parliamentary system is more *adrem* in a country that is nationally or ethnically delineated. This leads this study to the concepts coined by Kymlicka in his work.³⁹⁶ According to Will Kymlicka (1998), there are two kinds of federalism: territorial federalism and multination federalism.

The Nigeria independent and First Republic constitutions (1960 and 1963) ushered Nigerian government into parliamentary system of government. These periods were adjudged the best era Nigeria has recorded tremendous growth in all spheres of her existence, as well as, achieved political and socio-cultural stability. However, the 1973 and 1999 constitutional amendments ushered Nigeria into presidential system of government, and since then, Nigeria has taken retrogressive steps into economic recession, political instability, unstable democratic rules, religious or ethnic rivalries and violent clashes, etc.

Therefore, the categorical distinction between Kenneth C. Wheare Federal Government and Nigerian Federal System of Government is in the form of democracy which Nigeria practices and the form Kenneth C. Wheare's Federal Government advocates for countries like Nigeria, Switzerland and most countries of Africa, with multicultural or multinational set-up. Nevertheless, Nigeria is actually practicing Presidential system of government which allotted the presidency with enormous power against the powers constituent units weigh, as well as denying the nations, nationalities and people who are stakeholders in Nigerian multicultural state group-specific rights for self-government rule. So, this present democratic form of

³⁹⁶ W. Kymlicka, *Finding Our Way: Rethinking Ethnocultural Relation in Canada* (New York: Oxford University Press, 1998).

government which Nigeria practices is a wrong approach that needs to be corrected or changed for her all round progress and development.

vi. **The Provision of Constitutional Amendment**

Constitution is a set of fundamental principles or established precedents according to which a nation or state or other organisation is governed; while amendment is a formal or official change made to a law, contract, constitution or other legal document which however affects the governance of all levels of government, it is important and requisite that the amendment is rigid. What it implies therefore is that the participation in the amendment should be equal responsibility of all the stakeholder in the polity. Thus, rigidity of constitutional amendment is an important prerequisite of federal government. Rigidity here lies in the inability of any level of government in the federation acting unilaterally facilitating a successful amendment process of federal constitution, without having supermajorities in the legislature, or approval by the electorates in a referendum or plebiscite, or even a combination of two or more different special procedures. Therefore, the amendment of federal constitution requires a collective participation of all levels of government.

It is a different ball game in Nigerian federal setting. Though there is provision for constitutional amendment, but it is devoid of amending processes that involve the people directly. The amending processes are made exclusive function of the general legislative authorities, with little or no input of the legislatures under state governments. Even, Research has established that Nigerian Federal Constitution does not have provision for one of the important aspects of amendment; that is, referendum or plebiscite. Thus, the popular initiatives or uprising of IMN, IPOB, Niger Delta militants, or any kind of protest cannot trigger referendum because there is no provision for it in Nigerian Constitution. K. C. Wheare advocates not only the provision of constitutional amendment in every true federal state, and

that the amendment process must be a collective participation of the general government, state governments and the people. This, this study deduces, is lacking in Nigerian federation.

vii. **The Resource Control**

The principle of federalism establishes that there should be division of powers and functions between two independent and autonomous levels of government. This principle limits or eradicates any kind of interference of one level of government to another, especially in resource control. This situation was in vogue in early 1960 after Nigeria independence where the regions enjoy substantial level of autonomy or control over their resource and revenue generation. This was revoked or revised after unification decree by the military junta. Now, since federal or general government is the creator of the state and local governments in Nigeria, it has assumed control or ownership of the natural resources domicile in different federating units. But the revise should be the case in the sense that federalism entails management or control of the natural resource by the state or region in which natural resources is domicile. In short, resource control by the locals is an indication of the practice of true federalism.

In retrospect, the 1960 and 1963 constitutions not only granted greater fiscal autonomy to the regions, but also empowered them to compete with one another. Resource control does not portend outright or exclusive control and ownership of mineral and other resources by the states; rather, it is built upon the philosophy of justice that states should have deeper stake in the exploration of mineral resources located in their territories. Buttressing the above argument, Azaiki argues that “resource control implies that the federating units within a federation have right to primary control of the natural resources within their borders, and to

make an agreed contribution towards the maintenance of common services at centre.”³⁹⁷ This was the case with Nigeria until the military struck in 1966. Were Nigeria to uphold the principles of true federalism, the present call for resource control would be non-existent. This is because true federalism guarantees resource control. Therefore, federalism protects the fundamental rights of both the individual and the federating units/states. It affords states the benefit of deploying their resources for their own development.³⁹⁸

Research has provocatively established that the areas that provide the national wealth are mostly the poorest in the country. Nigerian Niger Delta Region can be used as a good example. Duru (1999), as corroborated by O’Neill (2007), captioned the narrative well when he argues that “foremost is that although the bulk of crude oil, the country’s main source of revenue is derived from their land, they belong to the ranks of the most marginalised groups in the country in terms of development. Another is that several years of exploration and hazard of spillage and gas flaring which accompany it have degraded their environment and left the communities desolate. Not only have farming and fishing the major occupation of these mostly riverine minorities been decimated, their territories have continuously lacked basic infrastructures and amenities like electricity, roads, schools, hospitals, portable waters, and so on.”³⁹⁹ Conclusively, Albert Okumagha argues, “the desire of every state in the federation of Nigeria is to control and manage the natural resources located in their area.”⁴⁰⁰ Therefore, any state that is endowed with natural resources should be empowered to control and manage same upon payment of taxes or loyalties to the federal government. Knowing

³⁹⁷ S. Azaiki, *Inequities in Nigerian Politics*, (Yenagwa: Communication Resource Limited, 2003), p. 163. As cited in P. O. Okolo, *Federalism and Resource Control: The Nigeria Experience*, *Public Policy and Administration Research*, Vol. 4, No. 2, 2014, p. 102

³⁹⁸ P. O. Okolo, *Federalism and Resource Control: The Nigeria Experience*, *Public Policy and Administration Research*, Vol. 4, No. 2, 2014, p. 103

³⁹⁹ Duru, 1999, p. 54, as cited by O’Neill, 2007, also cited in P. O. Okolo, p. 103

⁴⁰⁰ A. Okumagba, “Resource Control: A Bond of Unity, Beneficial to all”, *The Challenges of True Federalism and Resource Control in Nigeria*, (ed.) AkpoOdje, (Lagos: Quadro Impressions, 2002), p. 162, as cited in P. O. Okolo, p. 103

fully well that resource control by the state in which it is domicile will stimulate healthy competition amongst the states, and will eventually lead to even development of the country.

viii. The Fiscal Federalism and Revenue Allocation

Fiscal federalism implies the division of powers, responsibilities, expenditures and taxing powers between or amongst levels of government in the federation. Kenneth C. Wheare, in the definition of federal principle, argues that fiscal federalism is a constitutional arrangement which divides law-making powers and functions between two levels of government in such a way that each within its respective sphere of jurisdiction and competence is independent and coordinate. The emphasis here is in the independence and co-ordinate supremacy with regards to their respective functions; which are believed to be the cardinal principles of true fiscal federalism.

Currently, Nigeria operates a federal system of government with three tiers or levels of government against the two proposed and recognised by Kenneth C. Wheare's federalism principle. Nevertheless, Nigeria has a federal or central government, 36 states with Federal Capital Territory, and 774 local government councils recognised by her constitution as important tiers of Nigerian federation. Fiscal federalism results to fiscal responsibility when separation and independent constitution to each of the tiers; taxing powers; and independent and separate finance and budgeting are in place. Important question is "Can all the tiers in Nigerian federation be held fiscally responsible?" One cannot help but give a negative answer to the question in the sense that one cannot find any evidence that fiscal federalism is extant; and therefore, there is no way these artificial or ineffective tiers of government can be held fiscally responsible. In short, the fact is that in Nigeria, all the tiers of government are not co-ordinate or independent of another in the sense that most states of the federation depend on

central government for financial assistances or supports in terms of monthly allocation, grant-in-aids, loan, subsidy, intervention fund, etc. which however places them in subordinate stance or condition with central government. Consequently, the expert opinion of Kenneth C. Wheare in this connection is that financial subordination makes mockery of federalism no matter how carefully the legal forms may be preserved; therefore, one is made to ask whether there is financial autonomy amongst tiers of governments in Nigerian federation.

ix. The Financial Autonomy of Each Level of Government

Kenneth C. Wheare's federalism principle alludes to the importance of financial autonomy of each level of government of any federation. It is necessary condition guaranteeing true federalism. Kenneth Wheare alleges that financial autonomy forestalls encroachment of the federal government in the jurisdiction(s) that is constitutionally reserved for federating units. Therefore, he advises that every level of government should be allowed unfettered control of their natural resources in order to achieve financial sufficiency for the performance of the functions assigned to it under the constitution.

Nigerian federal system of government negates this essential aspect of the federal principle in the fact that central government virtually controls every aspect of socio-economic life of the federation; and consequently, wields enormous financial powers as to compare with other constituent units of the federation. Therefore, it should be noted here that the financial autonomy has never been achieved in Nigerian federation because of the high level of intervention of the federal government through national financial policies, grant-in-aids among others; thus, increasing the power of the federal government and making the federating units subordinate to the federal government. The reason is not far-fetched – the increased revenue from oil boom has made the federal government to be more financially powerful over the state governments. As a result of this financial power, the federal

government now embarks on some projects which were meant to be in the state residual list. The universal basic education board project is an example of this. Similarly, this increase in revenue from oil boom enables the federal government to give financial support to the state governments. In this sense, any state government that resists the control of the central government may likely not receive any financial supports from the federal government.

These overwhelming discrepancies, despite their apparent similarities, are an indicator or exposure of the failure of Nigeria Federal System of Government to be taken or seen as a true federalism. Nevertheless, next chapter shall be devoted in addressing the lapses while proposing Kenneth C. Wheare's federalism principle as a panacea.

CHAPTER SIX

THE PROPOSAL FOR THE TOTAL RESTRUCTURING OF THE NIGERIA 1999 FEDERAL CONSTITUTION: A CALL TO PRACTICE TRUE FEDERALISM AND NATIONAL UNITY

6.1 The Politics of Multicultural Federalism in Nigeria

Multiculturalism, etymologically, is derived from two Latin words “multi” and “cultura”, meaning “many or more than one culture. However, Oxford Advanced Learners’ Dictionary defines it as “for or including people of several different races, religions, languages and traditions.”⁴⁰¹ Andrew Heywood distinguishes between two forms of multiculturalism; thus, he explains that the term multiculturalism has been used in a variety of ways, both descriptive and normative. As a descriptive term, it has been taken to refer to cultural diversity...., while as normative term, multiculturalism implies a positive endorsement, even on either the rights of different groups for respect and recognition (sic) or to the alleged benefits to the larger society of moral and cultural diversity.⁴⁰²

In political context, the term is used for a wide variety of meaning, ranging from the advocacy of equal respect to the various culture in a society, to a policy of promoting the maintenance of cultural diversity, to policies in which people of various ethnic and religious groups are addressed by the authorities as defined by the group they belong to.⁴⁰³ A common aspect of many such policies is that they avoid presenting any specific national, ethnic,

⁴⁰¹ A. S. Hornby, “Multiculturalism,” *Oxford Advanced Learners Dictionary of Current English*, (ed.) Sally Webmeier, (New York: Oxford University Press, 2000), p. 770

⁴⁰² A. Heywood, *Key Concept in Politics*, (Palgrave Macmillan, 2000), p. 227, retrieved 4th September, 2018, from <http://en.wikipedia.org/wiki/multiculturalism>

⁴⁰³ C. Marsh, *Key Concepts for Understanding Curriculum: Perspectives*, (Falmer Press, 2010), pp. 121-122, retrieved 4th September, 2018, from <http://en.wikipedia.org/wiki/multiculturalism>

religious and cultural community values as central.⁴⁰⁴ Moreover, multiculturalism as a concept is a body of thought in political philosophy about the proper way to respond to cultural and religious diversity. Mere toleration of group differences is said to fall short of treating members of minority groups as equal citizens; recognition and positive accommodation of group differences are required through “group-differentiated rights,” term coined by Kymlicka.⁴⁰⁵

Most multiculturalists, especially Kymlicka (1995), recognise that multiculturalism is facing a lot of challenges in the modern or contemporary era in the sense that there is increase in confrontation of minority groups in demand of the recognition of their identity, and accommodation of their differences in multicultural market place.

In Africa, and Nigeria for instance, colonial masters or administrators carved up boundaries that divided territories inhabited by indigenous and autonomous society, and brought together a diversity of ethnonational groups within a **unitary administrative structure**. For example, between 1914 and 1915, British colonial administrator created three regional territories that explain their ethno-genesis, and later brought ethnic tension. The bone of contention is not that they brought different people together, but under unitary system of government. The resultant effect is crisis and tension between ethnonational groups. Since then and even in post-independent Nigeria, ethnicity played and is still playing latent roles in the body politics of Nigeria. As Otite rightly observed, he points out that “...the ethnic virus has been one of the most important causes of social crisis and political instability in Nigeria and ethnicity has

⁴⁰⁴ K. Malik, “Guardian.co.uk”, London: Guardian, 2010/03/17, retrieved 4th September, 2018 from <http://www.guardian.co.uk/commentisfree/2010/mar/17/multiculturalism-diversity-political-policy>

⁴⁰⁵ W. Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, (Oxford: Clarendon Press, 1995)

been perceived in general as a major obstacle to the overall politico-economic development of the country.⁴⁰⁶

The colonial tripartite division of Nigeria and structure of government prevented a Nigerian nationalistic movement, manipulating geographical boundaries to reinforce separation between ethnic groups and transforming ethnicity into an identity by which to gain political power. This structure along with other administrative decisions of Nigeria that reinforced ethnic group gave rise to ethno-political consciousness, and the development of ethnic/regional political parties demonstrated that the British administration intentionally prevented the rise and success of Nigerian nationalism, instead promoting regionalism without self-governing power as an avenue to gain political power and economic control. Like I reiterated above, the problem is not really about the regional tripartite partitioning or division of the country, but not supporting the division with *ad rem* political structure that should have ensured the self-governing rights of all the ethnonational groups in Nigeria. The fact this study is trying to establish is that federalism, through division of powers, protects more than 347 minority ethnic nationalities from the overbearing influence of the three dominant ethnic nationalities in multination Nigeria. Hence, Odivwri remarks, “Nigeria is a plural society and it is made up of over 250 (sic) ethnic groups with many subgroups. Three major groups: Yoruba, Hausa and Igbo dominating the political landscape. All other ethnic groups are swept under carpet.”⁴⁰⁷

The first shot at federalism by the colonialists is reflected in both Richard’s 1944 constitution and later Macpherson’s 1951 constitution respectively, wherein they established a central

⁴⁰⁶ O. Otite, *Ethnic Pluralism and Ethnicity in Nigeria*, (Ibadan: shaneson C. I. Ltd), as cited in J. Odivwri, *Ethnic Politics in Nigeria*, retrieved in September 4th, 2018, from www.ngex.com/public/articles.php?ArticleD=1953

⁴⁰⁷ J. Odivwri, *Ethnic Politics in Nigeria*, retrieved in September 4th, 2018, from www.ngex.com/public/articles.php?ArticleD=1953

legislature and three regional houses of Assembly, both however failed to guarantee in their constitutions the independences of the regional councils and legislatures from the general government. The division of power between two levels of government in their constitutions were not guided by federal principle, rather devolutionary principle. According to K. C. Wheare,⁴⁰⁸ there is a categorical distinction between devolutionary principle and federal principle. While both divide power between two levels of government, the form of association for federal principle is between two co-ordinate and independent governments; whereas, devolutionary principle is a form in which regional governments are subordinate to or dependent of the general government.⁴⁰⁹ Therefore, the British colonialists' kind of federalism as reflected in Richard's and Macpherson's constitutions did not assuage the situation created by the tripartite division, but rather highlighted the ethno-genesis and its subsequent tension between majority and minority ethnic groups; reinforced ethnic/regional boundaries; marginalised minority groups; and encouraged groups to compete as interest groups vying for political power. It is obvious that Richard's and Macpherson's constitutions concentrated so much power and functions at the centre/general government, leaving regional governments with little or no power; and indirectly made them appendages of the general government. But the ethnonational groups that are marginalised mostly are not really the three major ethnic groups, rather the other 347 minor ethnonational groups co-habiting with major three ethnic groups in Nigerian federation. Thus, Cooper argues, "...instead of allowing a wide variety of interest groups to make claims in the Nigerian state, the (Richard's and MacPherson's) federal systems focused power on the general and the three regions,

⁴⁰⁸ K. C. Wheare, *Federal Government*, 4th Edition, (New York: Oxford University Press, 1964

⁴⁰⁹ *Ibid.* pp. 32-33

ignoring the concerns of unrepresented minority ethnic groups.”⁴¹⁰ The existence of these three political dominant ethnic groups conveyed the contribution of colonialism to ethno-genesis and its effect on the individual ethnic identities of the various people within Nigeria. Colonial federal structure ignored and marginalised minority ethnic groups within Nigeria, as they were not recognised among the important stakeholders of the multinational Nigeria. Osaghae, buttressing this, states that, “...ethnic minorities are usually defined in contradistinction to major ethnic groups with whom they co-exist in political system.”⁴¹¹ He argues further that, “...the terms ‘majority’ and ‘minority’ evolved only after the creation of the three regions in the 1940s, which mobilised the main regions to unify and push the minorities to the periphery.”⁴¹²

The growth of ethnic nationalism among the Igbo, Yoruba and Hausa/Fulani illustrated that British’s vision of a Nigerian federation as reflected in Richard’s and Macpherson’s constitutions respectively sparked uneven socio-political and economic development in each region and introduced competitive politics which preserve ethnic consciousness and conflicts. This ethnic consciousness motivated ethnic elites to develop political parties along the regional/ethnic line.

Hence, in pre-independence era, party politics in Nigeria was based on ethnic factor; thus, one is right to claim that it was during this period in question that the seed of ethnic politics was sown, germinated in the First Republic, and the products started spreading during the 2nd,

⁴¹⁰ F. Cooper, *Africa Since 1940: The Past of the Present*, (Cambridge: Cambridge University Press, 2002), p. 70, as cited in Nicole Lancia, retrieved 4th September, 2018 from www.12georgetown.edu/.../lancia2.htm (bracket is mine)

⁴¹¹ E. E. Osaghae, “Managing Multiple Minority Problems in a Divided Society: The Nigerian Experience” in the *Journal of Modern African Studies*, Vol. 36, No. 1 (Cambridge: Cambridge University Press, 1998), p. 3 as cited in Nicole Lancia, retrieved 4th September, 2018, from www.12georgetown.edu/.../lancia2.htm

⁴¹² Ibid. p. 5 as cited in Nicole Lancia, retrieved 4th September, 2018, from www.12georgetown.edu/.../lancia2.htm

3rd and 4th Republics. For instance, the Action Group (AG) as a party developed from a Yoruba Cultural Association, EgbeOmoOduduwa, and NCNC was closely allied with the Igbo Union while the NPC developed from the JamiyyaArewa. And the leadership of the aforementioned parties were chosen along ethnic cleavages too. The AG was led by the Chief AwolowoObafemi, a Yoruba; the NCNC leadership fell on Nnamdi Azikiwe, an Igbo; while NPC was led by Sir Ahmadu Bello, the Sarduana of Sokoto, a Fulani. This political parties' arrangement fell within the dictate of the colonial master as it is reflected in Richard Constitution, who had divided Nigeria into three regions which are directly associated with the three major ethnic groups: Yoruba, Igbo and Hausa/Fulani. Therefore, it is not surprising that the first political parties were formed along ethnic line.⁴¹³

This political arrangement continued through Nigerian independence into post-independent era, though more than three political parties were created in post-independence era but not without ethnic colouration. This was the situation until the 1979 constitutional amendment, which stipulated that before a political party is registered, it must be nationalistic in outlook; that is, it must bear a wide geographical spread across the country, cutting across the people of different ethnic groups, especially, the three major ethnic groups. Even at that, ethnic colouration and affiliation played out in political parties' formation and operation during 2nd Republic. Even the two party systems formed in 3rd Republic: Special Democratic Party (SDP) and National Republic Convention (NRC) political parties had an ethnic colouration of southern (SDP) and northern NRC political parties respectively.

The same situation prevailed in the 4th Republic where we had AD mainly for south western states, ANPP and CPC predominant in the northern states, and APGA in south eastern states. It was only PDP, and later APC, that are perceived to having deviated a little from usual ethno-religious dominated political parties with membership and formation cutting across the

⁴¹³ J. Odvwri, *Ethnic Politics in Nigeria*, op. cit.

clime of multi-ethnic Nigeria. The pertinent question one needs to ask so far is: where were other ethnic nationalities in the formation and operation of the aforementioned political parties. The fact remains that they are irrelevant minorities who can become and maintain relevance by association with three major ethnic groups as recognised by three regions of Nigeria: Igbo East, Yoruba West and Hausa/Fulani North.

It is this plight of minorities in the multination Nigeria that my master's thesis⁴¹⁴ resolved by advancing Kymlicka's liberal theory of minority rights, in which he formulated three minority rights to protect the minority groups. These kinds of rights he terms "Group-differentiated Rights"⁴¹⁵. These rights for Kymlicka are individual rights as applied to members of racial, ethnic, class, religious, linguistic or sexual minorities; and also the collective rights of anyone who is not part of a majority decision. For him, these rights are differentiated because they form or mark differently from other such rights. They focus on specific persons or groups of persons such as women, disabled, race, minorities, gays or lesbians, etc. which they are interested in protecting. Kymlicka believes that these minority rights protect minority groups from socio-political, economic and cultural discrimination, marginalisation, and possibly eradication in the hands of major ethnic groups. Thus, he sees group-differentiated rights as politics of inclusion of ethnic minority; ensuring a voice for national minority through special representation; and finally guaranteeing their self-determination via ensuring their self-government rights. Nigeria being a multicultural nation with different ethnic, religious, and linguistic groups, the minorities amongst the set-up is inclined to demand some form of political autonomy or territorial jurisdiction, so as to ensure

⁴¹⁴ E. C. Ezeabasili, *Will Kymlicka's Multicultural Citizenship and Democratic Practice in Nigeria: A Philosophical Evaluation*, Unpublished Master Thesis, Nnamdi Azikiwe University, Awka, 2013.

⁴¹⁵ According to Will Kymlicka, there are three forms of minority rights, which he also termed group-differentiated rights. They are: Polyethnic rights; Special representative rights and Self-government rights.

the full and free practice and development of their cultural particularities, and the protection of the best interest of their people. In other words, they are inclined to demand some kind of self-government rights within the larger state. Contextually, in order to remain politically relevant in socio-political and economic space of multicultural Nigeria, the other ethnic minorities are inclined to demand some form of political autonomy or territorial jurisdiction, or what we can term self-determination rights. Kymlicka (1995) and Wheare (1964) argue that one of such mechanism for recognising claims of self-government is **federalism**.

Where national minorities are regionally concentrated, the boundaries of federal subunits can be drawn so that the national minority forms a majority in one of the subunits.”⁴¹⁶ In this circumstance, federalism can provide exclusive self-government for a national minority, guaranteeing its ability to make decisions in certain areas without being outvoted by the larger society. The definitions by these scholars ensure that minority groups are not marginalised socio-politically in the Nigerian multination state.

Colonialists seem to have understood the nature of Nigeria multi-ethnic composition, and her inability to be administered under unitary system of government after it was given a first trial immediately after the amalgamation of northern and southern protectorates. That in series of its pre-independence constitutional amendments, they tried out federal system of government firstly in Richard’s 1944, secondly in MacPherson’s 1951, and finally in Lyttleton’s 1954 constitutional amendments. In these constitutional amendments, they divided powers and functions between general and three regional governments, with general and regional legislatures. However, it is in Lyttleton’s 1954 constitution that these governments are granted autonomy, and subsequently, independent of another. That is why Lyttleton’s 1954 constitution is adjudged today as the first true federal constitution which British government bequeathed Nigeria. Nevertheless, Lyttleton’s constitution also has failed to incorporate the

⁴¹⁶ W. Kymlicka, *Multicultural Citizenship...* pp. 27-28

needs, desires, and aspiration of more than 347 other ethnic groups in its drafting. One can say that despite these, Lyttleton's federal constitution is to a reasonable extent, true, but asymmetrical.

Theoretically and contextually, federalism is divided into two categories, namely asymmetry and symmetry federalism.⁴¹⁷ Asymmetry federalism is a federal system of government where different constituent units possess different levels of power. The implication of asymmetry federalism is that, despite equal constitutional status of the federating units, some units considerably enjoys more autonomy. The incongruent nature of ethnic, social, economic, political and geographical structures of the various nations constituting the federation, usually inform the adoption of asymmetric federalism.⁴¹⁸ Rao and Singh capture it succinctly; thus, "Asymmetric federalism ...means federalism based on unequal powers and relationships in political, administrative and fiscal spheres between the federating units constituting a federation."⁴¹⁹ Meanwhile, symmetric federalism is in contrast with the asymmetric federalism, in that the federal system makes no distinction among the constituent units constituting the federation. The power sharing in federal system of government is between the government at the centre (otherwise, government of all) and government at the state level (otherwise, government for the federating units) proportionally as designated by the

⁴¹⁷ L.E. Nsemba and H. B. Yenda, "Is there Any True Federalism? Revising the 'True Federalism' Debate in Nigeria", in *Research on Humanities and Social Sciences*, Vol. 5, No. 15, (2015), p. 54.

⁴¹⁸ D. Brown, "Who's Afraid of Asymmetric Federalism? A Summary Discussion", *Asymmetric Series* 18/2005, IIGR, (Queen's University, Kingston), as cited in L. E. Nsemba and H. B. Yenda, "Is there Any True Federalism..." p. 57

⁴¹⁹ M. G. Rao, and N. Singh, *Asymmetric Federalism in India, Argentina*: UC Santa Cruz International Economic Working Paper, No. 04-08, as cited in L. E. Nsemba and H. B. Yenda, "Is there Any True Federalism..." p. 57

constitution.⁴²⁰ The fact is that asymmetric federalism is not a bad federalism between people of different nationalities as in the case of Canadian federation where such kind of federalism is prevalent; but the bone of contention is that Nigerian nascent federation is not yet ripe for asymmetric federalism, and applying it in the culturally diversified Nigeria where the new nation are still learning to trust each other kills federalism on arrival.

However, this trend was brought forward and adopted in 1958/59 independent constitutional conference, which later gave birth to independent constitution of 1960 and subsequent 1st Republic constitution of 1963. The independent or 1st Republic constitution was adjudged to be truly federal by the virtue of its division of powers between independent federal/general government and independent (three) regional governments, who are co-ordinate with each other; with full legislative functions well specified. Though they enjoyed complete autonomy, and the regional governments weighed equally enormous powers and finance; however, the post-independence constitution failed to assuage the socio-political and economic interests, aspirations and yearnings of other ethnic minorities. This necessitated the creation of another region known as mid-west region from the then western region in 1964. Even at that, the minority ethnic nationalities felt that they were still being marginalised and neglected politically and economically in the Nigerian project. This mutual mistrust and suspense that pervaded the political landscape gave birth to ethnic violent rivalries and clashes, and subsequent political instability that heralded agitation, insurgency and militancy amongst the ethnic groups. This was the situation in 1964's political unrest in Western region and subsequent military coup in 1966.

⁴²⁰ R. L. Watts, *Comparative Federal Systems*, (Montreal and Kingston: McGill-Queen's University Press, as cited in L. E. Nsemba and H. B. Yenda, "Is there Any True Federalism..." p. 57

Through the unification decree 34 of 1966, military government was able to suspend federal constitution and democratic process. Unitary system of government was followed by wildcat creation of states and local government councils that as of the time of 1999 constitutional amendment that heralded the 4th Republic, Nigeria has been partitioned into 36 states with a federal territory and 774 local government councils. The state creation according to military leaderships was a premeditated attempt to assuage the demands and interests of minor ethnonational groups for self-government rights. However, there are other suspicious reasons for the states creation: firstly, to weaken the eastern regions (Biafra) in their secession bid which later resulted into civil war; and secondly, to weaken the powers of regional/state governments against the federal government by concentrating enormous power in the centre and usurping the functions that were exclusively regional/state governments'. As a result, regional/state governments were created without taking cognizance of federal principle of K. C. Wheare that stipulated that regional government must be independent of the general government in all ramifications. Thus, most of the Nigerian state governments are feeble, and incapable of sustaining or surviving on their own. That is, they depend on federal government for survival. This Nigerian method of state/local government council creation by central government is anti-federal, though there is nothing wrong with the original intent of creation of the locally based government since it takes governance to the grassroots or directly to the people. Furthermore, locally based government incorporates minor ethnic nationalities into political process especially in decision and policy making without the fear of being outvoted or outbid. But the crux of the matter is that Nigerian political leaderships are doing the unnecessary by placing a square peg in a round hole. Not only that it is the people that will first create the states before creating the general government, the state creation should have been multinational instead of territorial.

According to Will Kymlicka,⁴²¹ there are two kinds of federalism; that is, territorial federalism and multinational federalism. Territorial federalism, which is a typical example of what United States practices, does not recognise a national group(s) as capable of self-government.⁴²² While multinational federalism, typical of what is obtained in Canada and Switzerland, recognises ethnonational groups as capable of self-government.⁴²³ Contextually, Nigeria federalism is typical of what is obtained in United States, in which the states' creation was strictly territorial, in deliberate negligence of the desires, wants, interest, and aspiration of minor ethnonational groups especially in their overall participation in Nigerian economic and socio-political set-up. Therefore, this testifies to the claims that the state creations were a deliberate attempt to weaken the federating states by the military leaderships.

As reiterated, this unitary structure was adopted, authenticated and codified into the present 1999 federal constitution by the civilian governments. It is without doubt that 1999 federal constitution distributes powers amongst the three tiers of government, but the major criticism of this constitution is that it allots too much power to the central government, and state governments are meant to depend on federal government for financial assistance. Thus, there are more than 68 items in Exclusive Legislative List, matters that are exclusive to general government, which the state governments have no jurisdiction. There are few items in Concurrent Legislative List, the matters exclusive to both general and state government, in which the general government has overriding influence on. Then, there is little or no item in the Residual Legislative List, which supposed to be matter for which states legislate exclusively. This is the reason why Nigeria is not holistically developing like most of other federations. There is no nation building in the sense that most ethnonationalities are still

⁴²¹ W. Kymlicka, *Finding Our Way: Rethinking Ethnocultural Relations in Canada*, (New York: Oxford University Press, 1998)

⁴²² *Ibid.* p. 136

⁴²³ *Ibid.* p. 138

living in mutual exclusion and suspicion of one another. Political instability and inconsistent democratic rule have been recurrent issues. Peaceful and egalitarian existence is still an illusory and elusive concept. The fact is that the Nigeria federal system is not working as supposed. The aim of this dissertation is to advance how to make federalism work in Nigeria in accordance with her peculiar nature using K. C. Wheare's *Federal Government* as principled guideline.

But before delving into how Nigerian federal government should work, this study will deliberate on the prerequisites for successful working of federalism in multicultural Nigeria in order to determine what makes federalism appropriate in Nigeria. Therefore, what are the prerequisites?

6.2 The Prerequisites for Successful Working of Federalism: What Make Federalism Appropriate in Multicultural Nigeria

All these while, we are trying to prove that ethnicity and ethnic consciousness, between minority and majority groupings, are creations of colonialists. Before the colonial rule in Nigeria, no ethnic national groups envisaged the coming into being a country called Nigeria. The area now known as Nigeria was completely a chock-full of kingdoms, chiefdoms, fiefdoms, city-states, empires, dynasties, and other several autonomous and independent communities that were loosely organised. The social, economic and political structures of these autonomous communities' formations and their mode of social relations of production were essentially primordial.⁴²⁴ And ethnic consciousness in these communities' formations was still undeveloped, or at best underdeveloped, because various ethnonational groups, who

⁴²⁴ J. O. Aper, "Political Attitude, Political Manipulation and Elections in Nigeria: Role of Politicians and Security", in S. M. Omodia, (ed.) *Managing Election in Nigeria*, Vol. 1 (Onaivi Printing and Publishing Co. Ltd.), p. 130, as cited in L. E. Nsemba and H. B. Yenda, "Is there Any True Federalism..." p. 54. One can also find it in the works of Oyovbaire S. E (1985), *Federalism in Nigeria: A Study in Development of Nigeria State*, p. 29; and also in Odojin, A. P. (2003), *Federalism and The Challenges of Citizenship in Nigeria's Multi-Ethnic State*, p. 6

later identified themselves either as Hausa/Fulani, Igbo, Yoruba, Ijo, Idoma, Ibibio, Manbilla, and Kaka etc., preferred to be identified with their respective families, clans, and villages. In essence, what defined group consciousness during the pre-colonial era in Nigeria were kinships, language, religions, and ancestry, whether either actual or assumed.⁴²⁵

Hence, colonialism accelerated the development of ethnicity as well as religion; as there was no such identity as Igbo, Hausa/Fulani, and Yoruba, (or Christianity, Muslim or Traditional religion) and so on in pre-colonial era. Thus, the colonialists encouraged the emergence of ethnic structures that enthroned the Igbo, Hausa/Fulani and Yoruba ethnic nationalities regionally as majorities, with other ethnic nationalities sub-grouped under them, or relegated to the ranks of ethnic minorities. This informed the basis for the multicultural character of Nigeria. Unfortunately, the evidence across the country indicates that the multicultural nature of the Nigerian state constitutes serious challenges to her co-operate existence.⁴²⁶

Colonialists in pre-independence Nigeria, and post-independence Nigerian leaderships see federal system of government as an intervening factor in addressing the multicultural challenges facing Nigerian co-operate existence. The pre-independence and post-independence federal system of government evidently did not address the Nigerian multicultural challenges, but compounded it rather. It is obvious that the founders of Nigerian federalism do not take cognisance of the prerequisites for the successful working of the federalism in multicultural Nigeria.

⁴²⁵ E. Isichei, *A History of the Igbo People*, (London and Basingstoke: The Macmillan Press), as cited in L. E. Nsemba and H. B. Yenda, "Is there Any True Federalism..." p. 54. See also Nnoli, 2008; O. Ibeanu, 2006; A. A. Mazrui, 2001; and A. Jega, 1999.

⁴²⁶ R. W. J. Post and M. Vickers, *Structure and Conflicts in Nigeria (1960-1966)*, (London: Macmillan Publishers) as cited in L. E. Nsemba and H. B. Yenda, "Is there Any True Federalism..." p. 54

The prerequisites of successful working of federal government in a country with pre-existed autonomous ethnonational groups can be deduced from K. C. Wheare concept of federal government, which he defines as that which “...exists when the powers of government for a community are divided substantially according to the (federal) principle that there is a single independent authority for the whole area in respect of some matters and that there are independent regional authorities for other matters, each set of authorities being co-ordinate with and not subordinate to the other within its own prescribed sphere.”⁴²⁷ From a consideration of this definition it is possible to infer the sort of conditions or requisites which should exist before the federal principle is adopted. According to Wheare, the primary prerequisites for the successful adoption and practice of federal principle in any multination state are: **desire** and **capacity** to federate. Though these prerequisites have been given a considerable consideration in chapter three, subchapter 5 in this work, but in retrospect, this work briefly highlights important factors on the desire and capacity to federate.

The Desire to Federate: There are two kinds of desire in communities that wish to federate with other communities. The first desire is to remain united with other communities under a single authority; the second is to retain some control or remain separated within the community. Thus, K. C. Wheare argues, “To being with, the communities or states concerned must desire to be under a single independent government for some purposes at any rate. That is essential. Unless they are prepared to go as far as this, the question of federal government does not arise. If they are not prepared to submit themselves to an independent government, but desire rather to retain a control over the general authority, then they have not achieved the first requisite of federal government.”⁴²⁸ For him the desire to be under a single independent government is not enough. Thus, he argues, “They must desire at the same time to retain or to

⁴²⁷ K. C. Wheare, *Federal Government*, p. 35

⁴²⁸ *Ibid.* pp. 35-36

establish independent regional government in some matters at least. Without this desire to be separate in some things, the communities could form a unitary state with some appropriate degree of decentralisation.”⁴²⁹ Then Wheare finalises by arguing, “So far, it would seem that federal government is appropriate for a group of states or communities if, at one and the same time, they desire to be united under a single independent general government for some purposes and to be organised under independent regional governments for others. Or, to put it shortly, they must desire to be united, but not to be unitary.”⁴³⁰

Factors on Desire to Unite

K. C. Wheare went on to inquire into what factors or circumstances that lead communities to desire union. Thus, he argues, “communities have been led to desire union from a variety of reasons. But in modern federalism, some factors seem always to have been present. A sense of military insecurity and of the consequent need for common defence; a desire to be independent of foreign powers, and a realisation that only through union could independence be secured; a hope of economic advantage from union; some political association of the communities concerned prior to their federal union either in a loose confederation..., and similarity of political institutions.”⁴³¹

Factors on Desire to be Separate

If there are some factors which produce in communities the desire to form federal union for some purpose, Wheare asks, “What are factors which operating at the same, produce the desire to be separate for other purposes?” For him, they are: A previous existence as distinct

⁴²⁹*Ibid.* p. 36

⁴³⁰*Ibidem*

⁴³¹*Ibid.* p. 37

colonies or states; divergence of Economic interest; geographical factors; divergence of nationality; and dissimilarity of socio-political institutions.

It can be admitted that, if these two desires exist simultaneously, then there is good cause prima facie for saying that federal government is appropriate. But more is needed. To say that a thing is desired by a group of states is not to say that it is right thing for them. They must not only desire it; they must as well be able to operate it. They must have the capacity to work the system they desire. This brings this work to the study of capacities for federal union.

The Capacities to Form Federal Union: Wheare argues that federal government is not appropriate unless the communities concerned have the capacity as well as the desire to form independent general government and to form independent regional government.⁴³² In his inquiry into the factors that bring about capacities of communities to form federal union, Wheare argues that desires themselves provide some guarantee of the capacity to form and work the system of government desired. Hence, “the forces which produce the desire for federal union are in some cases – but by no means in all – forces which also produce a capacity to work federal union.”⁴³³ These factors produce the **capacity to enter into federal union**: common defence, the hostility to or fear of a common enemy and the need for common defence produces the desire to unite; community of race, language, religion and nationality; and similarity of socio-political institutions. Meanwhile, these factors produce the **capacity to remain separate or distinct** within a federal union: their previous existence as distinct government; size in wealth, area and population; and sufficient economic resources or financial autonomy.

Before her accidental federation, more than 350 ethnic nationalities co-habiting geographical area now known as Nigeria have shown neither desire nor its consequent capacity to go into

⁴³²*Ibid.* p. 36

⁴³³*Ibid.* p. 44

Nigerian federation, nor were they consulted willingly to consider these factors. Consequently, Nigeria is a forced or involuntary association of different peoples through act of colonisation. Here, within this context, this work comes up with two kind of federalism: voluntary and involuntary federation. Voluntary federation is the kind in which more than two autonomous and independent nations, colonies, states, communities, kingdom, etc. voluntarily, having considered several factors of which the desire and capacity to go into union and to be separate within the union are inherent, decide to form an independent general government, and also independent regional/state governments that are co-ordinate, rather than subordinate to each other. While involuntary federation is the kind that resulted from colonialism in which the pre-existing national or cultural groups are involuntarily incorporated into a country through conquest and colonialism. Thus, Kymlicka alleges, “Many other western democracies are also multinational, either because they have forcibly incorporated indigenous populations (e.g. Finland; New Zealand), or because they were formed by the more or less voluntary federation of two or more European cultures (e.g. Belgium and Switzerland). In fact, many countries throughout the world are multinational, in the sense that their boundaries were drawn to include the territory occupied by pre-existing, and often previously self-governing, cultures.”⁴³⁴ In involuntary kind of federation, the individual national or cultural groups in Nigeria were not given the needed opportunity to decide whether or not, to go into federation with their neighbours. They just woke up that particular time in 1914 and saw themselves as Nigerians.

The missing gap here is that there is no willingness in more than 350 autonomous ethnonational groups before going into the Nigerian federation. To fill this void, there is need to renegotiate her co-operative existence, and define her existence in accordance with principle of federalism which divide powers between independent general government and

⁴³⁴ W. Kymlicka, (1995) *Multicultural Citizenship...* p. 13

independent regional governments, having incorporated the desires and aspiration of all the ethnic or linguistic groups co-habiting the Nigerian federation. This can be achieved through restructuring of the Nigerian 1999 Federal Constitution. Before coming to the avenues of achieving this noble task the study delves into how federal government should work in Nigeria.

6.3 The True Operation of Federal Government in Nigeria: The Structural Outlook of the Amended Constitution

So far, research has established that Nigeria is a multicultural society of more than 350 ethnic nationalities and much more linguistic groups, and a country of this multicultural set-up should be structured politically in such a way that her peaceful and egalitarian existence, political stability and holistic and integral development in human, material and natural resource will be enthroned and fast tracked. The reality is that Nigeria, since 1966 has taken retrogressive steps into infamy through making of her decisions and policies, starting with that infamous unification decree 34 that suspended the federal constitution and democratic process. The inability of Nigeria to move in the same pace developmentally with the comity of nations that ended colonialism the same time with her since 20th century still puzzles sane minds. Rather Nigeria has insistently blamed her leaderships for her holistic under-development. Is the leadership the problem of Nigeria?

Many commentators and scholars have argued that federalism provides the most appropriate mechanism for accommodating the increasing “multicultural” nature of modern societies, not really the leadership. Why? Federalism respects the desire of groups to remain autonomous, and to retain their cultural distinctiveness, while nonetheless acknowledging the fact that these groups are not self-contained and isolated but rather are increasingly and inextricably bound to each other in relations of economy and political interdependence. But Nigeria

according to her 1999 constitution is regarded as a Federal Republic of Nigeria. If Nigeria is a indeed a federation, what is wrong with her federalism?

Yes! Nigeria is a federation with three tiers or levels of government presumed to be independent of each other. The important question this work raises after studying 1999 Nigerian Federal Constitution is: Has federal constitution of 1999 really served its purpose? Or, does Nigeria really have a Federal Constitution? After diligent and critical assessment of the different federal constitutions that preceded 1963 First Republic constitution, and many challenges facing Nigeria presently, this study came to the conclusion that the real problem of Nigeria's underdevelopment is not solely leadership, but mainly the structural defects inherent in her incompatible unitary political structure on the pretence or guise of federal political structure. In other words, the problem with Nigeria is the defective unitary system which we falsely called a federal system as reflected in 1999 Nigeria Federal Constitution. Nigeria has never had any federal constitution made by the critical mass (the peoples, nations and nationalities). In short, federalism as a system of government has not work in Nigeria. This study is interested in demonstrating how federal government should work in Nigeria multination state.

After intensive and diligent study of multicultural Nigeria and her political system, this work comes up with the following findings: 1) Nigeria is a multination/polyethnic society with people of different ethnic, linguistic and religious nationalities; 2) That she has a federal constitution that highly concentrated powers and function on the centre; 3) that federal government created 36 states with a federal capital territory and 774 local government councils, that is, the creation moves top – bottom, unlike bottom-top motion that is prevalent in most federation; 4) she practises presidential system of democracy which allots presidency with enormous power; and 5) that she has never fared well socio-politically and economically under this political structure. The finding seems to have been validated by Awolowo findings,

and according to him, the remedy is simply, “introducing federalism in the system, which recognises the linguistic and national groups, and according them regional autonomy.” So, there is urgent need to devolve or divide powers and responsibilities not just between general and state governments, but to make sure that the critical mass, wherein ethnonational and linguistic groups, have greater autonomy and control over the most basic issues affecting their existence. This, it is believed, will imbue a true sense of local participation, accountability, transparency and mutual respect between the people and their leaderships, at the local levels particularly.

In retrospect, this prevailing pseudo-federal structure which is currently in operation puts too much powers in the hands of our leaders (president and presidency), thereby making them autocratic and corrupt. This system makes them what they are. That is why the problem of Nigeria can never be the problem of leadership. One of the aims of this work is to demonstrate how local communities can be empowered with self-government rights in order to have control of the development of their people and communities, irrespective of the ethnic, linguistic and religious leaning of the President in Aso Rock and Governors in their different state government houses. This is because this work has discovered that the corruption which every leader promises to fight once elected into the position of leadership is just a by-product of the quasi-federal system of government, which the leaders are also victims of. This system exposes them to corrupt practices by putting in their hands enormous power and finance. What this work hopes to achieve is not to fight corrupt leaders but to change or restructure the prevailing system that exposes them to corrupt practices. The prevailing system not only enthrone corruption, but has brought a lot of dissatisfaction between ethnic nationalities as a result of discrimination, marginalisation and possible cultural eradication, which minorities are usually subjected to by the majorities. The resultant effect is mutual exclusion and suspicion that had pervaded the Nigerian cultural, socio-

political and economic landscape. Nigeria needs to learn from Ethiopia, that attained Federalism in 1994, thus, EshetuChole argues:

...Politically, the era of centralisation seems to have come to an end, and this is as it should be. A multi-ethnic, multi-lingual and multi-religious society such as ours cannot and should not be administered in a highly centralised manner. That people in their respective localities have the right to administer themselves, exercise a degree of command over their own resources, and develop their own cultures and languages must be taken as axiomatic.... But there must also be unity within diversity, and we have paid dearly for it. Let us hope that now we will not move to the other extreme and emphasize diversity at the expense of unity.⁴³⁵

The present unitary system has not only distorted the necessary ingredients for growth but it has also entrenched an entitlement mentality in the populace and among the federating units, making them less aggressive towards self-sufficiency. Research has shown that the bulk of the federating units (states and LGAs) in Nigeria are not sustainable and viable without federal allocations. What this basically implies is that if the federal government suffers any major economic sabotage in its revenue generation base, like what is usually seen in the activities of Niger Delta militia (Avengers etc.) and Muslim terrorist groups(Boko Haram and Herdsmen) especially in North Eastern Nigeria. In this situation the entire nation may likely run into trouble.

In summary, Nigeria is in crisis because it was built on a fraudulent and faulty foundation whose existence is now threatened by an unavoidable disintegration. Now, there is need to rebuild this foundation by restructuring the political system and entrenching true federalism that is based on principle of federalism as proposed by K. C. Wheare. As it stands, Nigeria is not practicing federalism in the real sense of the word.

⁴³⁵ C. Eshetu, "Ethiopia At the Crossroad", *Dialogue* (Addis Ababa, Ethiopia, 1994) as cited in Restructure Nigeria, "Memorandum of True Federalism, p. 5 retrieved 24th august, 2018 from <https://www.restructurenigeria.ng>. This is a document submitted by the 'Restructure Nigeria' community as response to the APC committee call on true federalism.

This work has established in its study of K. C. Wheare's work: *Federal Government* that the practice of federalism varies from country to country. While United States and Australia practice Territorial federalism, that is, the kind of federalism that does not recognise ethnonational or national groups for self-government rule; Canada and Switzerland practice Multination Federalism, that is, the kind of federalism in which the nations (linguistically) are recognised for self-government rule. Whichever kind of federalism, either the one that divides powers between general government and federating units that are territorially delineated, or the one that divides powers between the general government and federating units that are nationally, ethnically or linguistically demarcated, there is certain basic principle in all federal system that makes it easy to identify a country that is practicing federalism. That basic principle is what K. C. Wheare terms "federal principle," this he defines as "...the method of dividing powers so that general and regional governments are each, within a sphere, co-ordinate and independent of another."⁴³⁶ Thus, Wheare's proposition posits that the federal principle essentially entails a legal division of powers and functions amongst levels of government with a written constitution guaranteeing and reflecting the division. From the definition of federal principle, there are basic tenets drawn from it, and the basic tenets or elements of federalism according to K. C. Wheare form the template which Nigeria federalism shall be determined in order to make it work. The basic tenets according to Wheare are:

1. There must be at least two levels of governments and there must be constitutional division of powers among these levels of government.
2. Each level of government must be co-ordinate and independent of each other.

⁴³⁶ K. C. Wheare, *Federal Government*, p. 10

3. Each level of government must be financially independent. He argues that this will afford each level of government the opportunity of performing its functions without depending or appealing to the others for financial assistance.
4. There must be Supreme Court of the independent judiciary. He argues that in terms of power sharing. There is likely to be conflict, hence, there must be independent judiciary to resolve the case of each federating unit.
5. In terms of the amendment of the constitution, no level of government should have undue power.

Kenneth C. Wheare was of the opinion that once a country is able to satisfy these conditions, such country is said to practice true federalism. However, he maintains that the most fundamental and distinguishing characteristic of all federal system is that neither the central nor the regional government are subordinate to each other, but rather the two are co-ordinate and independent of other.

From the K. C. Wheare's perspective on federalism, one can conclude emphatically that Nigeria is not actually practicing or operating a federal system of government in the real sense of the fact. In short, federal structure has never resurfaced in Nigerian political system after what resembled it in 1960 Independence and 1963 First Republic constitution respectively. The fact is that federal structure has never existed in the post independent Nigeria, and the reason is obvious. Firstly, the federal government, ever since military incursion into her political space, has always assumed superiority over the state governments. In retrospect, 1960 independence and 1963 First Republic constitutions respectively divided powers equally between the central and regional governments. The regional governments were autonomous, independent and financially stable and sustainable. They have independent revenue bases, separate constitutions, foreign missions, primary and secondary education, and other social services, items well-articulated in the Residual List. This changed immediately

the military took over leadership of the country in 5th Jan. 1966. However, all the attempts of the state governments to revert to the status-quo in 2nd, 3rd and 4th Republic met great resistance, even from the civilian leaderships whom the structure favours. Now, this study wishes to illustrate how real federalism should be entrenched in the Nigerian multicultural society through constitutional amendments of 1999 Federal Constitution.

The task facing this research study is to envisage how the restructured or amended Nigerian Constitution should look like. Nevertheless, this study firstly adopted 20 tenets of “Restructured Nigeria Community”⁴³⁷ with little modifications as a principled guideline to achieving true federalism in Nigeria, as well as perpetuating its viability. These rules are what Nigeria political leaderships need to imbibe in order to make federalism work in Nigeria. But before listing these rules, this study wishes to make a declaration of intent, looking at the perspective it wants its form of federalism to adopt. The declaration will serve our first rule, and it is going to guide other rules. Its form of federalism is one that allows the people, ethnic nationalities and the local communities to come together and create their own autonomous governments as they deem fit. It is only after the various ethnic nationalities have created their own autonomous local, state/provincial and regional governments that they can come together to create the federal government for the whole federating units. As statistic establishes, there is nowhere in the world where the federal government creates the state governments; rather it was the pre-existing autonomous state governments that decide to come together to create the federal government (country), as well as decide what political and economic power(s) should be given to the federal government, and what to retain for themselves. This is the first rule that will guide other rules that highlight the basic principles of true federalism, which may likely position Nigerian federalism to an enviable height.

⁴³⁷ cited in Restructure Nigeria, “Memorandum of True Federalism, pp. 11, 12,13, retrieved 24th august, 2018 from <https://www.restructurenigeria.ng>.

However, these **twenty rules** highlight the basic principles of true federalism.

1. There should be two tiers of government recognized by the federal constitution; a federal and regional government. Each of them should have a separate constitution. The regional government should have the exclusive right to create another tier(s) of government as it wishes. This study suggests that provincial and municipal governments be established and recognised by the regional governments, while municipality becomes the last tier of government in replacement of the present local government system. Municipal government should therefore replace the existing local government tier of government. The constitutions must guarantee the autonomy of each tier of government. The municipal government should have full control over the most basic things that affect the community and the local people. Issues like basic education (management and funding of basic schools), security (community police), water, maintenance, health care, etc., should be the responsibilities of the municipal governments. Municipal Governments should also have the right to raise its own revenue through taxes to fund its needs. The Municipal government should be the most empowered tier of government.

2. The federal constitution should limit the federal government's responsibilities to only defence, monetary policy, foreign policy, immigration, customs and such related matters. All duties not given to the federal government should become the duties of the regional governments.

3. The federal constitution should be written by the representatives of the already existing autonomous communities that now wish to federate, or create a federal government. In the same manner, the regional constitution should be written by the representatives of the people, ethnic nationalities and communities that would make up the region.

4. Ownership of all federal owned assets and institutions that are no longer under federal jurisdiction should be transferred to the regions where they are located. Arrangement should

be made to ensure that there is a fair balance of payment for the transferred assets. Where the regions fail to offer a fair bargain for the new assets, the general public (private sector) should be invited to take ownership of the assets. Federal institutions (i.e. federal universities) capable of being autonomous should be declared as autonomous institutions and free from federal interference.

5. The federal government will no longer build hospitals, universities, rail lines, refineries, power stations, etc. These shall become exclusive duties of the regional governments and the private sector. The federal government duty shall be limited to the items listed in number 2 above.

6. The federal constitution shall forbid both the federal and regional governments from embarking on business ventures and shall limit their sources of revenue to only taxation and royalties.

7. The federal constitution should recognize the right of ownership of land and natural resources as belonging to communities and individuals and should therefore forbid both the regional and federal governments from upturning this inalienable right. The implication of this rule is that resource control will now be in the hands of individuals and communities and not the regional or federal government as it currently is. However, the federal constitution must guarantee the right of the regional and federal government to benefit from such resources through taxation.

8. The regional and federal governments should have two independent judiciaries with each having its own court of law up to Supreme level.

9. Right to secession (self-determination) should be enshrined in the federal constitution. Communities/towns should have the right to secede from a province or region and seek membership of another province or region within Nigeria while regions should have the right to secede from Nigeria and seek membership of another country or form an independent

country of their choice. The process of doing this must be by referendum and subject to federal confirmation.

10. Regional governments should be entitled to receive irregular annual grants from the federal government on specific needs (capital projects), and in the same fashion, provincial governments should be entitled to receive regular grants from their regional governments upon meeting certain conditions. So also municipal governments receiving theirs from their provincial government. There should be no more monthly allocations.

11. Parliamentary democracy should be adopted to replace the present presidential executive system of government. Two houses shall be maintained with different names and modality. Upper Chamber shall be called “House of the People”, and the second lower Chamber shall be called “House of the Federation.” (House of the Federation) shall contain the representatives of the ethnic nationalities each concentrated in a contiguous territory with significant population.

12. The federal constitution shall guarantee the decentralization and autonomy of the civil service, judiciary, and other arms and institutions of government.

13. The federal constitution shall recognize indigeneship and residency as qualification for occupying public offices in both regional and federal offices.

14. Taxation shall be the major source of revenue for both the federal and regional governments. Federal taxes shall be limited while regional government taxes shall be unlimited.

15. Both basic and tertiary education shall be the exclusive rights of the regional, provincial and municipal governments. The federal government shall have no business with building and managing basic or tertiary institutions. Power generation, transmission and distribution shall also be the exclusive right of the regional and provincial governments.

16. The federal constitution shall guarantee the autonomy and need for federal, regional, provincial, municipal police system. Federal regulations should be unlimited on matters of security, environment, economy, etc.

17. Issuance of licenses (whatever kind be it exploration or social license) should be the exclusive right of the regional governments while regulations of such licenses should be jointly done by both the regional and federal governments.

18. The federal and regional constitutions shall guarantee the autonomy of every tier of government in conducting its own elections. Each tier of government shall be solely responsible for the conduct of its own elections without external interference. The people of the communities, towns and cities that make up a province or region as case may be shall be solely responsible for electing the regional government officials in the same way the people of the regional governments shall be solely responsible for electing the officials of the federal government.

19. The federal constitution shall separate religion from the state and state from religion.

20. The federal parliament shall be structured in such a manner that a bill can only become law if and only if it receives support from a minimum of 1/3 representatives from each regional assembly and a 2/3 of the two chambers of federal House. After which electorates shall be allowed to vote it into law through referendum.⁴³⁸

The above tenets or principles are what this work considers fundamental principles of the true federalism as they are capable of addressing the lapses in Nigerian federal system of government. However, in a nutshell this study shall project the structural outlook of the constitutional amendments by expanding these viewpoints: division of power; levels of governments; forms of governments; legislature (bicameralism), Judiciary (Court of Law), land tenure system, Regional creation/merger; Fiscal Federalism/Revenue Allocation;

⁴³⁸ *Ibidem*

Resource Control; Federal, Regional and Community policing system; Criminal Law and Prison; Provision for Amendments; and Rights of Secession.

6.3.1 The Structural Outlook of the Proposed Nigerian Federal Government

1) Division of Power: the formal division of governmental powers and functions by constitution between/amongst the various levels of government in a multicultural Nigeria is the starting point and one of the most important characteristic principle of federalism. It is in fact the central idea of federalism. Going by the principle of federalism which asserts that each level of government must be independent and within a sphere co-ordinate with another, with subnational government having equal responsibilities, this study makes the following recommendations:

1. The Exclusive List shall be the sole responsibility of the government of the federation. The Government of the federation shall be responsible for military (defence), immigration, foreign affairs, central bank (currency, minting and coinage), and National Guideline.
2. The Residual List shall be the sole responsibility of the regional governments.
3. The government of the federation is not precluded from carrying out responsibilities on the residual List, but should not surpass supervisory or advisory role.
4. The primary duty of the regional government shall be the welfare of the citizens through the residual list.
5. The regional government shall be responsible for: rail ways, airports, seaport, agriculture, education, electricity generation, transmission and distribution, corporate licensing, vehicle licensing, driving licensing, electronic media licensing, communication licensing and regional police.
6. There shall be nothing like Concurrent List.

2) Dual Government: In any federation, there must be one level of government at the centre and another level of governments at the periphery. The one at the centre can be termed federal/central/national government while the peripheral government can be termed provincial/state/regional governments. According to the principle of federalism, these governments can be autonomous and independent of another, but co-ordinate with each other. Based on the principle of federalism the following recommendations can be made:

1. Federal Government:

- i. Federal government shall be an autonomous entity in its sphere independent, but co-ordinate with regional governments.
- ii. Its functions are contained in the Exclusive List, but performs supervisory role in some items in the concurrent list.
- iii. It has bicameral system of legislature with equal representations in both chambers (House of the People and House of the Federation).
- iv. It shall have judiciary system that runs from high court to Supreme Court.
- v. It shall have a federal police department with unlimited jurisdiction.
- vi. Other functions like defence, custom, currency/minting/coinage, immigration and foreign affairs/trade are its scope of influence.
- vii. It should have federal constitution for all federation.

2. Federating Units:

- i. Regional/state governments shall be autonomous and independent of federal government, and independent amongst each other.
- ii. In each region, there shall be other tiers of governments (provincial and municipal governments precisely). Municipal government shall be the last tier of government that base strictly on ethnic nationalities.

- iii. Regional, provincial and municipal government shall each have unicameral legislature. Municipal governments shall have judiciary that runs from customary to appeal court, while regional and provincial judiciaries shall each run from high to appeal court. Each arms of government shall be independent of another.
- iv. They shall be financially independent of another.
- v. Regions shall have premier elected by the regional parliament, provinces shall have governor that shall be elected by provincial parliament and finally, municipal shall have mayor which also shall be elected by municipal parliament.
- vi. There shall be regional, provincial and municipal police departments which shall be independent of each other, and their finance comes directly from each government's budget respectively.
- vii. Regional, provincial and municipal governments shall have their individual constitutions, independent of other tiers of regional government, and protected by federal constitution.

3) Legislature (Bicameralism): In most federation, there are always two houses of federal legislature that are independent of executive arms of government. Legislative arm of government is not exclusive to federal system of government, but every federation must operate it in order to function well in most multicultural societies. Based on principle of federalism, therefore, this study makes following recommendations:

1. The two chambers of the legislature shall strictly be the representative of the people.
2. It shall be bicameral, while the upper chamber shall be the protector of the people, nations, nationalities, and the lower chamber shall be protector of the federation.

3. The two chambers shall be constituted strictly on the principle of equality; the upper chamber shall be on regional line, while lower chamber shall be on ethnonational line.
4. The federal legislative house shall be bicameral while the regional (and other tiers under the regions like provinces and municipalities) shall each have unicameral legislative assembly.
5. Legislature in both federal and regional government shall be independent of the executive and shall be protected by the federal constitution. Their finances shall also come directly from the respective government's budget.

4) Judiciary (Law Court): This is an important arm of government in any federation, and it is not exclusive to federal system of government. Unitary system of government also has judicial arm because of the interpretative and adjudicative role it plays. Based on the principle of federalism, this study makes the following recommendations:

1. The autonomy or independence of judicial arm from other arms of government in all levels or tiers of government shall be guaranteed by federal constitution.
2. They play important role in the division of power, interpretation of constitutions and other adjudications, therefore shall be apolitical and independent.
3. They shall be responsible for admission of justice.
4. Federal, regional, provincial and municipal governments shall have independent judicial council and courts. They shall be independent of each other, though federal judicial council can play supervisory and advisory role to the lower judicial councils. Municipal court shall run from customary to appeal court, while regional and provincial courts shall run from high court to Appeal court, while federal court shall run from high court to Supreme Court. And the Supreme Court shall be the last court of the federation and the judgement giving therein shall be indisputable and final.

5. All regions must be properly represented in the federal council, and federal council must be voted-in directly by the people. It is the same in all tiers of regional governments. The election shall be based strictly on the principle of equality, and shall be ethnically based.

5) Forms of Government: K. C. Wheare has stated clearly that the federalism and autocratic dispensation bear no semblance whatsoever. Therefore, federalism thrives better in democratic dispensation. However, there are different forms of democratic system: Presidential Executive System presently practiced in United States; and Parliamentary System presently practiced in Canada. Due to her multicultural nature, the paper finds parliamentary system of government ideal for the proposed Nigerian federation. So, this study proposes parliamentary form of government as veritable democratic government for Nigeria. Based on the principle of federalism, this study makes the following recommendations:

1. Nigeria shall adopt parliamentary system of government. The Ethiopian system is recommended.
2. There shall be houses of parliament possessing both the legislative and executive powers.
3. The election of the members in both chambers shall strictly base on the principle of equality. Therefore, the various regions and ethnic nationalities that make up Nigeria shall be elected on an equal basis.
4. President and Vice shall be elected by House of the Federation and shall be the head of state.
5. The Prime Minister and his deputy shall be elected by combined houses of the People and of the Federation, and shall act as the chief executive; that is, the head of

government, chairman of the council of ministers and commander in chief of the armed forces.

6. There shall be the council of ministers comprising members of parliament and any other members as may be allowed by law.
7. The federal, regions, provinces and municipalities shall adopt the same parliamentary model in running their independent governments.
8. This work proposes that further study be carried out on Ethiopian, Canadian and Switzerland model for compatibility with Nigeria's heterogeneous society.

6) Electoral System and Political Party: These two are important attributes of any true federal democracy. Based on the federal principle, this study makes the following recommendations:

1. Electoral System:

- i. The federal and regional governments shall agree on the electoral guidelines.
- ii. Federal government will have nothing whatsoever to do with election and its conduction. Its job shall be limited to formulation of electoral guidelines, the extant law and the adherence to those laws.
- iii. Each region (and other tiers of each region) shall have the business of conducting election, and shall maintain the electoral council and office.
- iv. All municipalities within the province shall elect members that form provincial government. Similarly, all provinces and regions shall adopt the same modality in electing their representatives in regional and federal governments respectively.
- v. Each tiers of government shall be in charge of paying their representative their sitting allowance.

vi. The elections shall base strictly on the principle of equality and all ethnic nationalities shall equally be well represented.

2. **Political Party:** Political party in every federation shall be more than one, so that if one is in the government the other(s) will form strong opposition(s) to the one in the government. But this study is proposing two party politics for multicultural Nigeria for the sole purpose of having strong opposition like United States, Canada etc. Nevertheless, this work makes the following recommendations:

- i. There shall be two political parties for the singular purpose of having strong opposition.
- ii. There shall be direct primary election of both parties to elect better candidate to represent them in the main election.
- iii. The party with numerical majority in the parliament forms the government (the head of state and head of government respectively).
- iv. The two parties can form coalition in forming government if there is need for that.

7) **Land Tenure System:** In line with the principle of federalism which guarantees the autonomy of the federating units, this work makes this recommendation:

- i. Land and every resource that comes with it should belong to individuals and communities. This should be an inalienable right protected by the federal constitution.

8) **Region Creation and Merger:** This study strongly believes that the present thirty-six state structure is anti-federal, unviable, unsustainable and therefore redundant. To this end, this work suggests the return to regionalism but not the kind of 1960 (three regions) or 1963 (four regions) that overlooked or neglected a lot of ethnic minorities in political equation. More

regions should be created to incorporate more ethnic minorities. This paper adopts 10 regions of the Peoples' Constitution of Baron Roy (Facebook id).⁴³⁹ Thus, based on federal principle, this study makes the follows recommendations:

1. The people or ethnic nationalities shall create the regions before creating the federal government through referendum.
2. A region must have the required productive population sufficient enough to generate reasonable revenue to at least meet the recurrent expenditure of the institutions of the proposed region.
3. The initiator of the proposed region must show at least in theory, the viability and expected cash flow for the sustainability of the proposed new region.
4. The regions shall be ten in number, and they are:
 - i. Oodua Region (for all Yoruba Speaking people).
 - ii. Bendel Region (for the Benin Kingdom, Urhobo Kingdom, Esan Kingdom, Isoko Kingdom, Itsekiri Kingdom and their affiliates).
 - iii. Ala Igbo Region (for all Igbo speaking people)
 - iv. Atlantic Region (For the Izon Kingdom, Kalabari Kingdom, Ogoni Kingdom and Bonny Kingdom)
 - v. Calabar Region (comprising of Anang, Efik, Ibibio, Ogoja, Ugep and their affiliates)
 - vi. Benue Valley Region (Idoma, Tiv, Junkun, and all areas from Benue Valley along the Eastern shore of the River Niger to the Yola)

⁴³⁹ Baron Roy, "Peoples' Constitution, 2018." Baron Roy is a facebook id that has a lot series critiquing the socio-political and economic system of Nigeria. He wrote and proposed Peoples' Constitution as a perfect replacement of 1999 Nigerian federal constitution which he believes has a lot of contradictions against Nigeria multicultural nature.

- vii. Kainji Region (comprising of the Nupe, Ebira, Igala, Gbagi and all areas from Minna to Kotangora and to Lokoja).
- viii. Plateau Region (From the Easter Plateau to Southern Kaduna, Nasarawa and their affiliates).
- ix. Arewa Region (comprising of the original Hausa Bokwai States from Katsina to Kano, Zaria, Sokoto to Yaure).
- x. The Kanem Region (comprising of the old Kanem-Bornu Empire from Maiduguri to Hadeijia, Gombe and Bauchi).

On **merger**, the following preconditions for merger should be followed:

1. A people and/or ethnic nationalities can decide to merge their existing municipalities, provinces or regions through a referendum.
2. Upon the expression of such interest to merge, the merging municipalities, provinces, or regions shall conduct a referendum monitored by the federal government.
3. Prior to the conduct of the referendum, the initiator of the merger shall demonstrate, at least, in theory, how the merger shall be of economic and other benefit for the survival of the regions/provinces/municipalities.
4. The initiators of the merger must show, at least in theory, the proposed peaceful management of the region/province/municipality institutions under the merger arrangement.
5. Upon a successful and positive referendum, the new merged regions/provinces/municipalities shall gain national recognition and shall immediately be entitled to all federal benefits accruable to the regions/provinces/municipalities.

9) Fiscal Federalism/Revenue Allocation: Based on principle of federalism, this study makes the following recommendations:

1. There shall be two tier of government that should be recognised by the federal constitution. They should be federal government and regional governments.
2. Each tier shall have its own constitution. Therefore, there shall be federal constitution and different constitutions to different regions. Each region shall be divided into provinces and municipalities, and they shall have their constitutions separately.
3. The federal constitution shall limit itself to issues related to the federal government, while regional constitution shall limit itself to issues concerning the regional governments; for instance, the number of provinces that should constitute each region, and number of municipalities for each province. The number of representatives each municipality shall send to provincial parliament; so also the number of representatives each province should send to regional government. These can only to be codified in regional constitutions.
4. All responsibility not given to the federal government by the federal constitution shall be handled by the regional constitutions.
5. The creation of the provinces, municipalities or any community governments shall be the exclusive duty of the regional constitutions.
6. The study proposes municipal based government as the last tier of government, which can only be recognised by the regional constitution. Nevertheless, the autonomy of the last tiers of government shall be guaranteed by the federal constitution.
7. There shall be federal, regional and provincial police system. Each shall be restricted to its jurisdiction as stated in the federal, regional or provincial constitution as case may be. The various police stations shall be constructed to reflect their own ethnic

background and their various head shall be elected by the members of the police under the very unit.

However, this study's position on **Revenue allocation** are as follows:

1. The concept of monthly allocation shall be abolished and abrogated from the federal constitution, as it is inimical to competition, productivity and transparency.
2. Provision shall be made in the constitution on the issue of provision of annual grants to regions in need of such grants based on specific target, but not without strict safeguard against financial subordination.
3. Provision shall be made of federal constitution for collection and automatic redistribution of taxes generated to the redistributable account by the federal government for regional governments.
4. Community based government shall be granted regional constitutional rights to raise certain taxes within their domain so as to fund their responsibilities and budgets.
5. Critical institutions of the community based government like municipalities shall be given first line status in the regional budgetary process (e.g. community police, primary health care, basic school teachers etc.).
6. Provision shall be made in the regional constitution for the establishment of an institution that shall be responsible for the automatic redistribution of tax generated by the regional government on behalf of the municipal governments.

10) Resource Control: In line with the principle of federalism, this study makes the following recommendations:

1. National resource shall be owned by communities and individuals and not the regional or federal government. However, the regional and federal governments shall have the constitutional right to tax profits on national resource as follows: a) 40% of such tax

generated from profits of natural resources shall go to regional government where the resources are located; b) 20% of such tax generated from profits of natural resources shall go to the federal government; c) 20% of such tax generated from profits of natural resources shall go to the selected community/city/town government where the resources are located; and d) 20% of such tax generated from the profit of natural resource should go to federally controlled redistributable account to be used for funding of annual grant to all regions of the federation.

2. Licenses and permits of the award of exploitation activities of national resources shall be the exclusive duty of regional government, but federal government can only play regulatory role where necessary.
3. The owners of the resources (individuals or communities) must be allowed to participate in the licensing process and their interest must be protected all through the process.
4. There shall be a proper definition of what 'natural resource' means as related to resource control, derivation and taxes.

11) Dual Policing System: Kenneth C. Wheare alleges that policing system should be a collective responsibility of every tier of government in any federation. Federal, regional, provincial and municipal governments should have law enforcement agents such as police. And regional police should be independent of federal police; so also provincial and municipal police from regional and provincial police respectively. Though they are in a sphere coordinate and independent, there should be some level of co-operation amongst them especially in the sharing of intelligence. It is believed that the problem of insecurity in Nigeria can be addressed better when the local community have control over their own security. There are intelligent reports that most federal police in Nigeria have no cultural or

historical ties with the community they are posted to secure, therefore, they are ineffective and inefficient to be trusted with the security of the locals.

Hence, based on the principle of federalism, this study makes the following recommendations:

1. There shall be federal and regional police recognised by the federal constitution.
2. There shall be federal police department headed by Federal Chief Inspector of Police.
3. They shall be non-uniform police officers like that of the United States.
4. Federal police shall be composed of personnel drawn from different part of the country sourced along the ethnic line.
5. They shall be in charge of internal security especially on federal matter.
6. They shall enforce only the federal law
7. They shall be financed directly from federal budget.
8. There shall also be regional police department headed by Regional Chief Inspector of Police.
9. They shall be uniformed police officers.
10. Their personnel shall be drawn equally along ethnic line.
11. They shall be financed directly from regional budget.
12. They shall be in charge of internal security bothering on regional matters.
13. They shall enforce regional law
14. There shall be lastly municipal police also known as local community police.
15. They shall not be subordinate of regional police
16. Their activities will be covered by regional constitution, and be financed directly from municipal budget.

17. Though, they shall not be recognised by federal constitution, but their autonomy shall be guaranteed by federal constitution.

12) Prison and Criminal Law: Federal and regional governments have every right to make law as it concerns criminality or any other social vices. The regional law on crime must supplement or complement, but should not contravene federal law or constitution.

Different federations have different approach in provision and management of detention facilities such as prison. However, based on the principle of federation, the following recommendation is made:

1. Federal and regional governments can make law in order to secure their jurisdiction. None of their law should contravene the extant criminal law as contained in the federal constitution.
2. There shall be federal prison each in every region.
3. Federal prison shall be divided into three sections: Remand section for those yet to be sentenced; term section for those that have been sentenced and serving their terms; and finally, non-releasablerow for those condemned to life in prison. No capital punishment.
4. Regional government can establish prison if they are capable of sustaining it.
5. Regional prison shall be independent of federal prison authority, though the federal prison authorities shall be playing supervisory role as directed by federal constitution.

13) Secularity of Nigeria Federation: Secularity is simply the separation of state from religion in a multicultural set up. On the light of the principle of federalism, this study makes the following recommendations:

1. The Nigerian federation shall be a secular nation where there shall be no recognition of any religion as country's religion.
2. Religion shall be personal and no form of government agencies, or any official entity of the federation shall demand the religious leaning of any individual nor is the individual at liberty to tell.
3. There shall be no federal, regional, provincial government with more than one religious leaning to sponsor any religious worship or pilgrimage of any kind.
4. The governments shall not interfere in religious matters and religion shall not interfere in government affairs.

14) Provision for Continuous Constitutional Amendment: In a country where different autonomous and pre-existing nations decide to come together to form a union under one independent general government, with themselves independent federating units, there is always the need to continuously amend the treaty or contract that defines their co-operative existence in order to address some issues that may be straining the free running of their federation. In my chapter 3, Kenneth C. Wheare made it clear that reform is needed, and he made it an important condition in all federations. Nevertheless, this reform must be done within the ambient of the federal principle. In the light of the principle of federalism, this study makes the following recommendations:

1. There must be reform of the federal constitution at least once in every year.
2. The reform shall be carried out by the people (electorates) through referendum and be ratified by the federal and regional legislatures.
3. The federal constitution can be amended in the following manners:
 - a) When all regional councils by a majority vote, approve the proposed amendment.

- b) When the House of the People by a two-thirds majority vote, approves the proposed amendment; and
 - c) When the House of the Federation, by a two-thirds majority vote, approves the proposed amendment.
4. The constitutional amendment of any federation must be rigid in the sense that ‘no level of government shall have undue power on the amendment process’.

15) The Right of Secession: The right of secession is the rights exercise by the people, nation, or nationalities that make up a federation to voluntarily resign from the union. These group rights are activated when they discover that their self-determination rights are threatened. Wheare sees right to secession as desirable in the practice of federalism. In federation, the right of secession is permitted when the general government is subordinated to the regional governments or vice versa, and that is the end of federalism.⁴⁴⁰ Based on the principle of federalism, the following recommendations are made by this study:

1. The people, nation, or nationality must establish evidence that shows that their self-determination or self-government rights have been threatened.
2. Upon establishing a veritable and verifiable proof of that, referendum shall be conducted within the ethnic nationality for them to decide whether they want to remain in the union or to leave. These rights shall be granted:
 - a) When the demand for secession is supported by majority vote in the referendum;
 - b) When the government must have transferred its powers to the council of the nation, nationalities or people who has voted to secede; and when the division of asset and ratification of boundaries are effected in a manner prescribed by law.

⁴⁴⁰ K. C. Wheare, *Federal Government*, p. 86

These are the structural outlook of the new constitution which this study is proposing to the Federal Government of Nigeria in order to guide her in case she wishes to amend or change the 1999 Federal Constitution to reflect the principle of federalism.

6.4 Radical Restructuring or Complete Eradication of 1999 Federal Constitution: Hope for True Practice of Federalism

Based on the guidelines of the principle of federalism as defined in the great work of K. C. Wheare: *Federal Government*, is Nigerian 1999 Federal Constitution anything federal? Is it capable of addressing the issues plaguing her multi-ethnic or multicultural nature? Has her central government demonstrated any deliberate or accidental efforts towards true practice of federalism?

In retrospect, Nigeria before her recognition as a sovereign political entity or country, was a geographical area with multiple of ethnic, linguistic, cultural and religious groups independent and autonomous in their different spheres (kingdom, colony, fiefdom, dynasty, etc.), and being identified as a particular people (Igbo, Hausa/Fulani, Yoruba, Idoma, Efik, Tiv, Ibibio, etc.). These more than 350 ethnic or linguistic groups have their peculiar socio-political, economic, religious, cultural leanings and institutions that best suited and served their different desires, aspirations, needs, wants etc. and have distinguished them as different peoples, nations or nationalities. These different groups, rather than being a multicultural nation, were neighbours with social relationships bothering on trade, religion and marriage, which in daily basis bring them together in friendly collaboration. There was relative peace and tranquillity as there was no need of socio-political rivalries and economic battles over scarce material or natural resources.

Then between 18th and 19th century, Europe developed economic interest with Africa, and Nigeria in particular, leading to trade in many things, especially in the human resources (history of slave trade). But between 19th and 20th century, the European shifted their interest

from economic to political, leading to 19th century Berlin conference where African continent was partitioned and shared amongst themselves for colonization.

Before her amalgamation Nigeria was socio-politically and economically administered separately under northern protectorate, Lagos colony and southern protectorate. After 1914 amalgamation of northern and southern protectorates, Nigeria was fully recognised as a sovereign state, resulting to involuntary unification of pre-existing independent and autonomous ethnic or linguistic groups. Therefore, Nigeria is a multicultural nation with different peoples, nations and nationalities. By different peoples, nations and nationalities this study means:

“a group of people who have or share large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabits an identifiable, predominantly contiguous territory.”

The issue is that before the amalgamation, there was no historical evidence of the colonialists organising a conference with the local peoples or communities to discuss their union, merger, or amalgamation; nor, were they consulted or informed before marrying them together. That is the reason many scholars believed that the amalgamation was purely for economic and political interests of the British Government.

Politically, there was also never historical evidence that the British Lords had any discussion with the locals on which political system or structure to be adopted that can best suit and address Nigerian multicultural nature. They came and took over the economic and political affairs of the nation, became the executive, legislative and judiciary without involving or incorporating the locals in the governance, and ruled them indirectly. Thus, headed by Lord Lugard as the governor general, they first started with unitary system of government on culturally diverse people. By implication, there is/was no historical evidence(s) whatsoever that indicated that different peoples, nations, or nationalities, in collaboration with

colonialists, and after much deliberate consideration of their different desires and capacities to go into a federal union, decide to come together as a people with a new national identity – Nigeria; at least before the 1914 amalgamation took place. Never! And there was never a time the colonial masters in collaboration with the local people or communities adopted or deliberated on the kind of political system or structure to be adopted that best suited Nigerian multicultural nature.

However, history has it that the only attempt at entrenching true federalism is on MacPherson's 1951 and Lyttleton's 1954 Constitutions. Before constituting their constitutional amendments committee, the administrations made a wide consultation with some ethnic nationalists before the constitutions were drawn. According to the constitutions, Nigeria was divided into three regions in accordance to the three major ethnic groups: Northern mainly Hausa/Fulani, East mostly Igbo and West predominantly Yoruba. These regions were given full administrative, legislative and judicial capacities. History has it too that they enjoyed great autonomy and are independent of the central government.

Though their constitutions were deemed truly federal having been guided by the principle of federalism that divided power between two independent and co-ordinate levels of government; but they did not recognise many minority groups (more than 347 of them) in the socio-political and economic power equation. They lacked the blueprints and signatures of over 347 other ethnic or linguistic nationalities in Nigeria. Secondly, it is not the peoples, nations, nationalities of Nigerian that created the federation, rather it was the colonial masters that created the federation; therefore, the reason why most ethnic groups were neglected or overlooked in the political equation.

The 1958/1959 constitutional conference comprising virtually most ethnic elites seemed to have tried to address the imbalance but nevertheless failed. Though 1960 independent

constitution and subsequent 1963 First Republic constitution, which were the products of the 1958/59 constitutional conference, were adjudged the only federal constitution(s) ever existed, and the constitutional conference, was deemed to have direct input of the people. Nevertheless, it didn't recognise most ethnic groups for self-governance, but rather guaranteed the self-government rights of only three major ethnic nationalities, and defines other 347 minor ethnic nationalities in contradistinction to the three major ethnic groups: Hausa/Fulani, Igbo and Yoruba. But the fact is that Nigeria seemed to have gotten it right in matters of the principle of federalism, and the result was unprecedented. History established that Nigeria during these periods had unprecedented growth in all spheres of her socio-political and economic existence, as the federation was inclusive, competitive and cooperative. Most regions in that era were financially buoyant and viable that they were able to grant free education to her populace, human and infrastructural developments were unprecedented and spontaneous.

When the goings seem good, military struck with her January 5, 1966 military coup with May 24, 1966 unification decree 34, suspending federal democratic rule and 1963 First Republic Constitution. After this coup, there was political unrest leading to the unjustifiable killings of one particular ethnic groups who were thought carried out the coup. There was secession agitation by that group. There was 1967 civil war that lasted more than two years (30 months), in which about three million people were killed. The civil war ended in 1970 ushering in the military government of General Gowon. There was a wildcat creation of states and local government that as of 1999, 36 states with a federal territory and 774 local government councils have been created. There were successful and unsuccessful coups and counter coups that led Nigeria to having 2nd, 3rd and 4th Republics. The Nigerian 1999 Federal Constitution ushered Nigeria into the 4th Republic and unbroken democratic rule.

The issue at hand is that 1999 federal constitution did not result from collective will of the Nigeria nationalities. Rather, it was military creation under the chairmanship of the interim military president that ushered in the 4th Republic – General AbdusalamAbubakar. By implication, it was handful of people that decided the fate of whole nation of more than 180 million people of different ethnic nationalities. Baron Roy (a Facebook Id) called Nigerian 1999 Federal Constitution an illegal document. Truly, the document is anything but federal. It favours one section of the country, northern Nigerian to be precise. From the research findings, the following are many sins of Nigeria 1999 Federal Constitution:

1. The document was not made by, but foisted on, the people of Nigeria with different ethnic, linguistic, religious and cultural backgrounds.
2. The document was written and supervised by military dictator (Military rule bears no relation with federalism, see Chapter 4 above).
3. The document allots a lot of powers and functions to the central or federal government.
4. The document created states and local government as subordinate tiers of the federal government.
5. The document favours one region (northern) of the country over others.
6. The document bequeaths Nigerians with presidential system of government instead of parliamentary system of government that is less expensive and corrupt.
7. The document denies national minorities with genuinely equal representative and self-government rights
8. The document authenticated and recognised the states created illegal by military dictators.
9. The document entrenches rotational presidency and federal character, thereby enthroning mediocrity and incompetence.

10. The document approves monthly allocation thereby killing competition, fiscal federalism and responsibilities.

11. The document enthrones nepotism and corruption in Nigerian socio-political system etc.

Before the commencement of this study, it was this study's belief that Nigeria Constitution needs restructuring or amendments by simply legislative process, but the course of research has changed the narrative to complete eradication of Nigerian 1999 Federal Constitution on the logic that it was illegally constituted. That is, it is not a product of the peoples, nations and nationalities who are the stakeholders of the Nigerian federation. Therefore, there is need to have people's constitution that must have the blueprints and signature of all the ethnonational groups of the federation. Hence, the only hope of achieving this is by organising a constitutional change conference on ethnonational line.

6.5 The Organisation of Ethnonational Constitutional Conference: Only Hope of Obtaining People's Constitution

The first rule towards restructuring Nigeria is to allow the peoples, nations or nationalities to come together and create firstly their own local community government, then regional government as they deem fit, before finally creating federal government. From my research study of these federations: United States, Canada, Switzerland and Australia, there is nowhere amongst them, and possibly amongst the western democratic countries of the world, where the federal government created the state/regional government. However, it was the pre-existing autonomous peoples or communities that come together and create the independent federal government (country) and decide what and how political and economic powers and functions shall be given to it.

American for instance was a colony of British Government, who after gaining independent, decided to unite all the colonies into American confederation under the Confederation Article

of 1777, and later moved to federal system of government in Philadelphia convention of 1787(they see it as a move from inefficient to efficient system of government). Americans decided to come together under one independent national government in Washington D. C. and the colonies retaining some level of autonomy over certain issues as federating units. So also Switzerland who firstly confederated in 1874, and later embraced federalism to become a federation of four linguistic groups: German, French, Italian, and Romanish. The same is applicable to Canada and Australia. It was not the central government that created the states or regions; rather it was the people, ethnically or linguistically. That is why their constitutions are deemed the Peoples' constitution.

The best federal constitution Nigeria seems to have had is 1960 independent federal constitution, and subsequent 1963 First Republic Federal Constitution, which was written and endorsed by the people of ethnic and linguistic leanings through 1958/59 constitutional conference held in London. One may ask: Why does this study insists in allowing the people or ethnic or local community to constitute the proposed constitutional conference?My reasons are obvious, and they are;

This study believes that it is only the people that can guarantee the basic principle of federalism such as fiscal federalism, which is a system that guarantees the autonomy of ethnic communities (villages, towns, cities, etc.) in the generation of revenues, provision of fiscal responsibilities, and onward contributing to the central government in taxes, royalties and others. It is the people that guarantee the system that allows every single ethnic community in the multicultural Nigeria to operate as an independent government taking charge of the most basic things that affects their communities and its local people (maybe subgroups). Issues like basic education, primary health care, internal security (community policing), water, local taxes and other basic issues are solely under the control of the local

community government. It is also the people that can allow the system, in which the ethnic communities will be allowed to design their annual budgets, embark on taxation, explore their national resource, manage basic social amenities and pay royalties/taxes to the regional and federal government. The movement of this kind of government is known as bottom – top federal structure. In this way people rule and determine the system. In short, it is a system in which the ethnic local communities will have the right to hire and fire teachers in its public schools. It will have the power to determine what school fees in public school should be, or if it can afford to provide free education to its people. It will have full control of its own revenues generated to run the public services of the community. The communities that have the resource would be allowed to generate and distribute electricity within the community and also generate revenue through the process and provide employment to her people. The situation whereby the ethnic community will be a government owned by the people of the community, funded by a community and managed by the community. The above reasons this study infers should be the first catalyst of local development, grassroots governance that is missing presently in Nigeria 1999 Federal Constitution. Thus, Nigerian Constitution has made development nearly impossible.

For instance, under the present federal government system as reflected in Nigeria Federal Constitution, federal government virtually controls everything from the capital – Abuja. The local ethnic communities do not see the public schools in their communities as their property that should be protected, promoted and developed; likewise, security, environmental sanitation, taxation, maintenance and construction of public utilities and general public services. This is the reason why there is corruption and stealing in the public facilities or institutions, as some ethnic communities go as far as allowing and celebrating their indigenes that steal from the public purses – such as money meant for building and maintain roads, schools, and water systems, even if it is meant for the development of their communities. For

them, it is a federal government property and it belongs to nobody. Therefore, their sons are getting their share of national cake. This is as a result of the level of alienation the present system has conditioned the people into. Pathetic!

However, it is the people that will make sure that the communities are empowered by the constitution to have certain fiscal responsibilities to do certain things for their communities without the region/state and federal government's intervention. By entrenching such a system, there will be grassroots' development and participation in the business of the governance at all levels. There becomes a sense of communal ownership and responsibility towards government's efforts to develop local communities. As it is supposed, as long as the local community's survival hinges to the revenue sourced within the community, the leaders of the communities shall be accountable to the people or tax payers, and corruption will be very much less. In short, community based government has its mechanism to fight corruption and makes it more transparent to the people. Looking at Nigerian 1999 Federal Constitution and how it operates, it is an existential fact that it is easier to steal federal or state government's funds than to steal the funds of such local communities described above. If the existing Local Government Councils should be taken to mean the local community government described above, then their funding should not be coming from Abuja, rather it should be sourced directly from the taxes and revenues generated locally. This is the only way to enthrone accountability and commitment in the management of public funds.

This study has demonstrated how peoples' constitution should look like structurally, and the modalities through which people's constitution shall be achieved; that is, through organisation of ethnic based constitutional change conference. Now, the question is: what are the practical approach in constituting this conference and obtaining the People's Constitution? Chronologically, it shall take this procedure:

1. There must be popular movement comprising all the ethnonational groups demanding constitutional change. The peoples, nations and nationalities must coerce the National Assembly (both chambers) to legislate and make law that empowers state governments to conduct referendum amongst their electorates on “Yes” or “No” to constitutional change, after creating awareness or educating the voting public. The referendum shall be conducted within two weeks. Simple majority shall determine the vote. If ‘Yes’ to constitutional change becomes the majority, it shall be passed into law that the next democratic dispensation shall start with new constitution and restructured Nigeria.
2. When it remains three months to the expiration of the current political dispensation, the constitutional change committee shall be constituted by the president and be ratified by the joint houses of the National Assembly. This committee shall be drawn from different ethnic groups. They shall be mandated to organise and execute the constitutional change to reflect the peculiarities and particularities of the peoples, nations and nationalities; and must be done within three months before the expiration of the current dispensation. It shall be financed directly from federal budget.
3. The committee shall organise Constitutional Change Conference along ethnic line solely. The members shall not be comprised of traditional or political elites but commoners, especially intelligent middle class that can think and articulate meaningfully the interest and desire of their ethnonational groups. The gathering will not be to write the federal constitution since it is something that must be done in bottom-up procedure.
4. The constitutional change committee members shall start the work of constitutional change by firstly drawing the guidelines, modalities, and the procedures the constitutional change shall follow; such as: how federation should be structured, the

required number of representatives from each region, the number of chambers in federal level (bicameral) and regional level (unicameral), duration of tenure of all elective and selective posts, and any other matters of federal government.

5. They shall start by declaring the current constitution invalid, as well as drawing an interim constitution to guide the restructuring. They shall however partition the federation into regions (this study however proposes ten regions). They shall hence declare the constitutional change conference officially open.
6. All the members of the constitutional change committee shall proceed to their different regions with their members to conduct more rounds of conferences. The major purpose of the gathering under regions is to set rules and define the modalities on which the region shall be structured, such as: the number of provinces to be created in each region; the number of municipalities in each province; the number of representatives required in each provincial and municipality's parliament respectively; how premier, governors and mayors should be elected and the duration of their tenures; how judiciary and police should be constituted; and other matters of regional governments. They shall conclude the first conference by partitioning the regions into provinces and municipalities or whatever name(s) they deem fit in order to take governance to the grassroots. The members should be reminded that they have three months to form the government at the centre.
7. Every member of the constitutional change committee within the region shall move to their local communities and organise town hall meetings of all the electorates (towns and cities) and they shall elect their representatives and send them to their local community based governments (or municipalities). All the representatives of different towns and cities shall form the Municipal House of Assembly and vote to elect a

Mayor, and the Mayor shall be permitted to form the government of municipality. The house shall vote again to elect those to represent them in their province.

8. The entire representatives from the municipal governments shall form the Provincial House of Assembly. They shall vote to elect the Governor, and the Governor shall be allowed to form provincial government from the representatives of the Provincial House of Assembly. The Provincial House of Assembly shall vote again to elect those to represent them in the regional level.
9. All the representatives from the provincial governments shall form the Regional House of Parliament. The Regional House shall vote amongst themselves to elect the Premier, and the Premier shall be allowed to form the government of the region from the parliament. The Regional House of Parliament shall vote again to elect their representatives to the two chambers of Federal or National Assembly (either House of the People or House of the Federation).
10. The entire representatives from the regional governments shall form the two Houses of National Assembly. Those for the House of the People shall constitute the Upper House and those for the House of the Federation shall constitute the Lower House. Combined Houses of the People and of the Federation shall elect the Prime Minister as the Head of Government, and be allowed to form government from both houses. However, only the House of the Federation shall vote and elect the President as the Head of State and be allowed to form government within.
11. Apart from executive and legislative arms of government, judiciary shall also be an elective post for professional lawyers only. Since they are non-political, elections shall not be conducted on party system. Nevertheless, other elective posts shall be conducted under two political parties. So that when one government is in power the other can form strong opposition.

12. All the members of the committee of constitutional change shall be meeting intermittently and consecutively to do some kind of data collection and harmonisation.
13. At the expiration of the extant or present government under presidential executive system, all the government activities (executive, legislative and judiciary) shall be dissolved, and the interim constitution annulled. The new government constituted under parliamentary system shall peacefully take over the executive and legislative function. Election for judiciary post shall be conducted after the first one week the new government has taken over. The members of the constitutional amendment committee shall be mandated to harmonise the data collected, incorporate the necessary changes, and draft a new constitution in such a way to be read and understood by an average intelligent persons.
14. There shall be continuous collections, corrections and amendments of the new constitution in the next two years before the constitution will be formally inaugurated as Peoples' Constitution of the Federal Republic of Nigeria. After which the members of the constitutional amendment committee shall be dissolved.
15. The tenure of all the elective post in the federation shall be six years and another election shall be conducted to elect another representative of the people. The executive and judiciary posts shall be only one term of six years, but legislative post shall be indefinite.

These are the modalities the peoples' constitution supposed to adapt, and this work believes that it is a sure way, or something related to it that Nigerians can be proud of having a federal constitution that they can call their own, whose singular purpose is to entrench national unity.

6.6 Competitive, Co-operative and Inclusive Federalism: Panacea for Integral and Holistic Development, National Unity, Political Stability, and Peaceful and Egalitarian Existence of All the Cultural Groups in Nigeria

Every society ought to fashion its own system to make it adequate to the exigencies of government and eccentricities of the people. These exigencies and eccentricities we know must take into consideration, the peculiarities, history and particularities of the local conditions of the countries fashioning out the constitution. Apart from the fact that Nigeria, due to her multination setup, needs to fashion multination kind of federalism that will recognise her ethnic nationalities for self-government rights. Nigeria needs to have political stability and consistent democratic rule; she needs to have an integral and holistic growth in all sphere of her existence; she need to eliminate mutual exclusion and suspicion that is shredding her communal existence apart; and she needs to build peaceful and egalitarian existence amongst cultural, linguistic, ethnic and religious groups. The Federal principle, which guides the division of powers between two independent and co-ordinate levels of governments, cannot directly address the aforementioned problems alone. Therefore, apart from practising true federalism, Nigeria needs competitive, co-operative and inclusive federalism as panaceas for achieving egalitarian Nigeria where the aforementioned problems shall properly be addressed. These are my reasons.

Competitive federalism, according to Harry Schreiber,⁴⁴¹ is a concept often used in analysis of constitutional doctrine or working governmental practice. It is closely related to dual federalism and seems to be in contrast with co-operative federalism because of the inherent conflict between the national government and the states when applied in a polity.

However, findings established that the competitive federalism should not be between national government and regional government, because of the regulatory role general government

⁴⁴¹ <https://www.encyclopedia.com/politics/encyclopedia-almanacs-transcripts-and-maps/competitive-federalism>

plays in setting the rules of engagement. Thus, competitive federalism should mean that regional or local governments should compete with each other respectively.

Now, people choose which regional or local government to live under; investors choose which regional or local government to invest in, therefore government compete to win people or investors to their regional or local governments in order to improve the fortune of their locality. It is a common knowledge in the economic realm that economies which are based on competition between businesses are more successful than the ones without competition. This is applicable to government; as competitive government is good for the reason that it is good for business.

This study is very cognisance of the conflict inherent in competition. Socialists say that competition is the opposite of co-operation. This study deems this assertion very wrong. Rather, it argues that opposite of co-operation is conflict, and competition is the mixture of co-operation and conflict, and co-operation addresses the problem of conflict in competition. To eliminate conflict in a system where there is competition, one has to introduce co-operation to make the competition a healthy one. But what is co-operative federalism?

Cooperative federalism is the alliance amongst the federal, region, state and/or local governments in whatever issue for the betterment of people and federation. Co-operation is like articulating or setting the rule of engagement before competition begins so as to eliminate unforeseen conflicting situations or circumstances.

Cooperative federalism is a concept of federalism in which national, state and local governments interact co-operatively and collectively to solve common problems. It is a federalism concept where crucial sectors regarding welfare and uplifting of common masses are handled co-operatively by federal government, be it centre-state, or state-state, state to

local government e.g. public health, education, welfare policies are managed co-operatively. It is a way of dealing with things more effectively by co-operating.

Co-operative federalism implies the centre and state share a horizontal relationship, where they co-operate in the larger public interest. This is in contrast to arrangement where there is a strict separation of powers between the various levels of government. Co-operative federalism believes that the national, state and provincial governments are partners in governing. This offers the advantage of maintaining the sovereign of the states, by preventing interference from the federal government. It also helps in good implementation of the federal government's policies, by allowing the states to modify these plans to suit their local conditions. These foster better relations between the national and state governments, besides ensuring that no branches become too powerful.

Even if there is competitive and co-operative federalism in a government with multicultural setting without inclusive participation of all the stakeholders of the federation, there may not be necessary and needed economic and socio-political development. Thus, there is need to consider the concept of inclusive federalism having Nigerian multicultural nature in mind.

Inclusive federalism is a concept that sees to the equal participation of all the federating units in the development of the federation. Inclusive is an adjective, and its meaning can be understood in the descriptive form. Therefore, if you describe a group or organisation as inclusive, you mean that it allows all kinds of people to belong to or participate in it, rather than just one kind of person or people or group of people. Therefore, the word inclusive means to include others or another. When inclusive relates to people on an interpersonal level it means covering or including everyone. Another word for inclusive is non-discrimination.

Federalism being the principle of dividing powers and function between or amongst independent governments, inclusive federalism denotes that the division of power shall be

done in a way that federating units shall be considered equal participants to the wellbeing of the federation. That is, the power division shall be equal, inclusive and non-discriminatory. Nigeria being a multicultural country in which different ethnic nationalities (both majorities and minorities) are equal stakeholder, the division of power and function must incorporate these peoples, nations or nationalities in the equation symmetrically. Therefore, another concept for inclusive federalism in the light of Nigeria multicultural setting is ethnic federalism or ethno-federalism that advocate for the recognition of all the ethnonational groups for self-governance. Wikipedia, online dictionary, sees it as a kind of ethnic federalism; that is, a federal system of national government in which the federated states/units are defined according to ethnicity. Related terms are multi-ethnic federalism⁴⁴² and ethnofederalism⁴⁴³. Ethnic federalism has been created in attempts to accommodate demands for regional autonomy and to manage inter-ethnic tensions within a state. Thus, in an ethnic federation some or all of the federated units are constructed as far as possible to follow ethnic boundaries, providing ethnic communities with a measure of autonomy.⁴⁴⁴ Such a system may be considered in nations where ethnic groups are concentrated in geographical localities.⁴⁴⁵

⁴⁴² H. Testaye, “Multiethnic (Multination) Federalism in Plural Societies: Does it Make a Difference?” (2010), retrieved 11th September, 2018, from <https://www.wikipedia.org/wiki/inclusive-federalism>

⁴⁴³ D. Anderson Liam, “Ethnofederalism: The Worst form of Institutional Arrangement (2016), retrieved 11th September, 2018, from <https://www.wikipedia.org/wiki/inclusive-federalism>

⁴⁴⁴ Y. F. Testaye “Federalism, the Subnational constitutional framework and local government; Accommodating Minorities within Minorities”, *Perspective on Federalism*, Vol. 4, Issue 2, (2012), retrieved 11th September, 2018, from <https://www.wikipedia.org/wiki/inclusive-federalism>

⁴⁴⁵ D. Anderson Liam, *Federal Solutions to Ethnic Problems: Accommodating Diversity*, (Routledge, 2013), retrieved on 11th September, 2018 from <https://www.wikipedia.org/wiki/inclusive-federalism>

Contextually, my proposed federal system for multicultural Nigeria is bottom-up motion system. That is, the power and governance moving from local community government to the general or federal government. These local communities must exhibit their competitive edge or advantage amongst themselves especially in the investment pursuit, revenue generation, resource management etc. These competitive drives should be guided towards economic growth not just only for their very local communities, but for their provinces, regions and federal government at large. Therefore, in order to extend the economic growth and development to the national level, there is need for co-operation between or among some local communities, or some provinces or some regions. This cooperation helps to eliminate inherent conflict always experienced in competitive environment. The cooperation stands as a check and balance, as well as the set down rule of engagement between or amongst local communities, provinces or regions. To make their local communities, provinces or regions the destination of interest for investors from all over the federation or the world, competitive federalism must go hand in hand with cooperative federalism so as to forestall unavoidable conflict and anarchy that are bound to crop up in competitive setup. Co-operation implies inclusion, especially of all the stakeholder in the affairs of socio-political activities.

Inclusive federalism is very important because of its attribute of enthroning nation building and peaceful and egalitarian existence amongst the different multicultural groups in Nigeria. Inclusive federalism was first proposed by K. C. Wheare in his definition of federal principle when he argues that it is method of dividing power in such a way that general and regional government are in a sphere, co-ordinate and independent. Therefore, Nigeria being a multination of more 350 ethnic nationalities, inclusive federalism ensures that powers are divided between the independent general government and autonomous federated ethnic units, for self-government rule and autonomous existence. Through it, none of the group is marginalised or discriminated in the power equation.

One of the purposes of the study is to bring governance and development down to critical mass; that is, the local people and communities. Therefore, competitive federalism predisposes them to work hard by activating their competitive edge and advantage over others, and outsmarting them in investment pursuit, revenue generation and development of human, material and natural resource for economic prospects of her people, communities and her region. But in a situation where everyone is trying to outsmart another, there is bound to be conflicts, and unmanaged conflicts breed rivalries and violent clashes, and the aftermath effect is mutual exclusion and suspicion. In this situation everyone suffers loss. Here, cooperative federalism plays important role by setting the rules of engagement and making the competition a healthy one; which will inversely advance the economic prospect of the local communities, provinces, regions and the whole nation at large. Summarily, competitive, cooperative and inclusive federalism are the panaceas for the integral and holistic development of the nation, nation building, political stability, consistence democratic rule, and enthronement of peaceful and egalitarian existence of all the ethnic nationalities in Nigeria.

CHAPTER SEVEN EVALUATION AND CONCLUSION

7.1 Evaluation

Cultural diversity is one obvious characteristic of Nigeria state as they are composed of many ethnic nationalities. She is a country of more than 350 ethnonational groups who were involuntarily amalgamated by colonial masters. Thus, Umezina argues, “They are so constituted not from nature or fortuitously from historical accident but factitiously through profit-oriented colonial contrivance.”⁴⁴⁶ In Nigeria, between 1914 and 1915, British colonial administrators, after amalgamation of northern and southern protectorates, created three regional territories that explain ethno-genesis and later ethnic tensions. This reality cuts across not only Nigeria as a nation, but rather the length and breadth of the African continent. And it has created problems of governance and its attendant problems of under-development, social insecurity, ethnic crisis, political unrest, disease, hunger – that are being observed in diverse forms and degrees in many African nations. You can quite agree with me that our democratic predicaments, such as: ethnicity and tribalism, large scales of corruption, electoral irregularities, lack of nationalism or patriotism, neglect of rules of law, disregard for the fundamental human right, high rate of illiteracy, etc., are as a result of the ethno-political consciousness and xenophobic tendency among different ethnic groups, in which each view other with mutual exclusion and suspicion. Consequently, these trends pose the greatest challenge to the stability of this country as a political entity, and any attempt to establish or create a liberal democratic institution or dispensations in this situation is seriously and strongly undermined by violent nationalist conflicts. This issue has been blamed on lack of effective, nationalist and patriotic leaderships, but this study believes that structural defect of Nigeria political system is the principal cause of her cultural, economic and socio-political

⁴⁴⁶C. Umezina, ‘The Problem of Governance in Multiethnic African Nation’, Oguejiofor (ed.) in *Philosophy, Democracy, and Responsible Governance in Africa*, (Enugu Nigeria: Delta Publication Ltd., 2004), p. 216

instability. Hence, it sees federalism, which divides powers between two independent or co-ordinate governments, as a way forward.

In all liberal democratic institutions, federalism is one of the major mechanisms for accommodating cultural differences through protection of the civil and political rights of individual and groups as well as accommodating those national differences in a stable and morally defensible way. Kymlicka, in his attempt in devising measures to arrest these unavoidable and unforeseeable circumstances as they involve accommodating national and ethnic differences, forms three group-specific rights, namely: Special Representative Rights, Polyethnic Right, and Self-Government Right; among which self-government rights form the basis of this research study. Thus; what is self-government rights?

Self-government rights – are demands by component nations for political autonomy or territorial jurisdiction, so as to ensure the full and free development of their cultures and the best interest of their people. At the extreme, nation may wish to secede, if they think their self-determination is impossible with the large state. But one mechanism for recognizing the claims of self-government rights is federalism, which divides powers between the central government and regional units. In his definition of federal principle, K. C. Wheare believes that these two governments shall within a sphere, co-ordinate and be independent

This study has established that federalism is consistent with rights of ethnonational minorities for self-government in a multicultural set-up, but what is yet to be considered is the impact of those rights in the sense of community or fraternity, or what the liberal renamed as ‘common citizenship’. The liberals nurse the fear that these rights will undermine the sense of shared civic identity that holds a liberal society together. In truth, self-government rights are the most complete case of differentiated citizenship, since the demand poses a more serious challenge to the integrative function of citizenship because it reflects a desire to weaken the bond with the larger political community. However, self-government rights are consistent

with basic liberal principles of individual freedom and social justice, which if denied to a group, because of its impact to common citizenship in a multination state, will also be catastrophic in the sense that it will aggravate alienation among national minorities, and increase desire for secession. Therefore, there is need to devise a way of keeping multination state together without hampering the self-government rights of ethnonational minorities. In this situation, scholars believe that there are ties that still bind multination state together. Rawls sees the tie in shared value, that is, shared conception of justice, while others see it in shared identity, as it is what ties nations or nationalities in United States, Switzerland, and Australia etc. together. Since the basis of shared identity is in pride in certain national historical achievement, it seems not to work in Nigerian setting as her history is not a thing of pride to all. Because of the deficiencies of aforementioned ties in engendering lasting unity in the multicultural setting, Kymlicka suggests:

...if there is a viable way to promote sense of solidarity and common purpose in a multination state, it will involve accommodating, rather than subordinating, national identity. People from different national groups will only share allegiance to the larger polity if they see it as the context within which their national identity is nurture, rather than subordinated.”⁴⁴⁷

Buttressing Kymlicka, Charles Taylor suggests ‘deep diversity’, thus, he argues, “...we must accommodate not only a diversity of cultural groups, but also a diversity of ways in which the members of these groups belong to the larger polity.”⁴⁴⁸ This means that the members of a polyethnic and multination state must not only respect diversity, but also respect a diversity of approaches to diversity. To accomplish this, Taylor suggests that citizens might find it exciting and an object of pride to work together to build a society founded on deep diversity,

⁴⁴⁷*Ibid.* p. 189

⁴⁴⁸*Ibidem.* As Taylor puts it in the Canadian case, to insist that Quebecers should put Canada first ‘makes no sense to Quebec federalists... We belong to Canada by belonging to Quebec. If these allegiances get polarized to the point where one has to be put first, then our Canada has already been lost’ (Taylor 1991).

and so be willing to make sacrifices to keep it together.⁴⁴⁹ This, according to Kymlicka, is what inclusive federalism guarantees. But has 1999 federal constitution reflected the true and inclusive federalism?

Your assumption is as good as mine. After the 1914 amalgamation of southern and northern protectorates, colonialists first started administering the new geographical entity Nigeria on unitary structural basis. At a point, the unitary structural system was changed to federal political structure in order to address a structural imbalance in the governance. Federalism divides powers and functions between the independent general government in the middle and independent regional governments at the periphery with attended independent legislative authorities. This change was reflected in Richard's 1946, MacPherson's 1951, and Lyttleton's 1954 federal constitutional amendments respectively. Richard, who first initiated the federal reform, alleges that, "Nigeria must allow for unity-in-diversity, with separate region and legislators; this separation of power serves to prevent single ethnic group domination, and presents territorial politics as the only viable option for political advancement with each united by history of advantage and disadvantage." To show their resolve in addressing the structural imbalance, colonialists organized independent constitutional conference in 1958/1959 that has Nigerian ethnic nationalists as the participants, after which they granted Nigerians independence in 1960. This for me is a premeditated act to allow or make Nigerians the architect of her political system. The 1960 Independent Constitution and subsequent 1963 First Republic Constitution were the products of the conference. Despite their defects (such as recognising only three ethnonational groups: Hausa/Fulani, Igbo and Yoruba, while neglecting other 347 other ethnic nationalities in the three, and later four regional governments that were created) these constitutions were adjudged best federal constitution Nigeria has ever produced. The 1963 First Republic Constitution with its

⁴⁴⁹*Ibid.* p. 190

parliamentary democratic form of government ushered Nigeria into unprecedented economic growth as well as cultural and socio-political stability. But the problem is that the constitution was short-lived. The military in January of 1966 struck and suspended the federal structure, constitution and democratic rule through its unification decree 34. From 1966 till date, Nigerian leaderships have taken steady, open, bold, and retrogressive steps into Nigerian decadence. Can't we ask ourselves "the reason why nothing seems to be working in Nigeria; be it political and socio-economic immediately the federal structure was revoked, despite all concerted efforts invested towards its workability?" By jettisoning the federal structure established by its colonial masters, it has become obvious that Nigeria is putting square peg in a round hole, which can never fit together.

This study is trying to suggest federalism as a principled political structure that will make those ties that bind multicultural society together very effective. In this vein, therefore, this study is suggesting that Nigeria, as a clarion call of necessity, should or must discard the present political structure known as Unitary or Centralized political system as reflected in 1999 Federal Constitution and embrace instead the inclusive federalism that best suited her multicultural existence. Presently, Nigeria is practising unitary system of government in the guise of federalism. From my knowledge of federalism, Nigeria is trying to apply in its political structure, one of the forms of federalism called Centripetal or Decentralized Unitary political structure – which involves a polity where the central government grants the federating states a limited autonomy so as to make policies, generate internal revenues through taxation, while central government still makes major policies and controls the major resources like oil and other natural resources; revenue collection in airport, seaport, big industries, tertiary institutions and manufacturing firms located in all the federating states, and pays monthly allocation in return to the federating states, with the aim of integrating different units, sharing competencies, and the equalizing living conditions among the

different units. Nevertheless, the fact remains that Nigeria has missed the mark by totally migrating to pure unitary political structure as largely reflected in the present constitution.

What is the unitary system of government?

Unitary or **centralized** political system, in retrospect, is a system of government or organization in which the powers of the separate but dependent constituent parts are vested in the central government. That is, it is where a central government rather shares, delegates powers to state/regional governments, who are subordinated to it. However, Nigeria which is multination state cannot hinge its political order and stability in such political structure. If it is possible, why is it that there are continually clamours of Eastern Nigerians (Biafra) to secede from Nigerian federation, because they have for decades be subjected to economic marginalisation, religious pogroms, tribal conflicts or rivalry from mostly Muslim north at any slightest provocation (the issue of Boko Haram insurgents is no more recurrent, though they are still potent, but herdsmen killing maniac is still very fresh)? The fact remains that there is mutual exclusion and suspicion among national or ethnic groups and the result is usually war of each against all (begging Hobbesian 'state of nation'). These xenophobic tendencies exhibited among ethnic nationalists have made it impossible for liberal democracy to thrive. Therefore, unitary form of government where everything is controlled by the Centre, without any power to the constituent parts is very deficient, and has exacerbated serious rivalry among ethnic groups as in who or what tribe or ethnic nationality controls the enormous power at the Centre. This, of course, may as well bring about sacrificing meritocracy to mediocrity on the altar of political zoning, as each ethnic group clamour to present their own members without considering whether he or she merits or qualifies to head the position. This is typical in power sharing, such as, whose tribe shall produce the president or occupy any other big elective or selective posts. So, any ethnic group that succeeds in mounting the seat of Moses automatically exercises and maintains upper hand politically and

socio-economically over other ethnic groups; thus marginalization, exploitation, cultural imperialism and eradication, random violence and harassment motivated by group hatred or fear, set in. You can agree with me, however, that unitary political system or structure may work in any homogenous society, but in multination or multicultural societies. Looking at the scenario painted above, one can deduce that the primary intent of present constitution is to maintain the dominance of one region of the country over others. And everything was done constitutionally to maintain it, and that region of the country has fought and continues fighting till date to maintain the status quo. Nevertheless, this is what inclusive federalism needs to address. What is inclusive federalism?

The term **federalism** is most commonly employed to denote an organizational principle of a political system, emphasizing both vertical power-sharing across different levels of governance (centre – region) and, at the same time, the integration of different territorial and socio-economic units, cultural and ethnic groups in one single polity.⁴⁵⁰ In his federal principle, K. C. Wheare means that the division of power shall be legally and constitutionally done. However, Kymlicka alleges that,

One mechanism for recognizing claims to self-government is federalism, which divides powers between the central government and regional subunits (provinces/states/cantons). Where national minorities are regionally concentrated, the boundaries of federal subunits can be drawn so that the national minority forms a majority, guaranteeing its ability to make decisions in certain areas without being outvoted by the larger society.⁴⁵¹

Hence each region can have extensive jurisdiction over issues that are crucial to its survival, including control over education, language, holidays, culture as well as taxation and policy making decisions. And when the regions are organized on ethnic basis in order to ensure the self-government rights of ethnonational groups through federalism, then one can say that **inclusive federalism** is in vogue. Nigeria being a multi-ethnic state, the division of the power

⁴⁵⁰*Ibid.* p. 194

⁴⁵¹W. Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, (Oxford: Clarendon Press, 1995), p. 28

shall be done on the basis that ethnic nationalities are given the opportunity to govern themselves and control their revenue generations and resources, to the betterment of their community and the nation at large. The recurrent parlance that the unity of the country is non-negotiable is a premeditated effort to sacrifice ethnic differences on the altar of unity. But this study believes that there is strength in diversity. And the only way Nigerian can harness this strength is through inclusive federalism.

Nigeria, Umezina alleges, was a colonial contrivance. The military personnel and not the people, nations or nationalities, wrote the present 1999 Federal Constitution that favours a section of the country over others. Most attempts made by previous civilian governments (Obasanjo's Political Conference and Goodluck's National Conference respectively) to change the status quo, were adamantly fought against by that section of the country the constitution favours. The 1999 quasi-federal or unitary constitution has put Nigeria and Nigerians in life-support, but most leaders from that section of the country still see Nigerian Constitution as not the problem, and her unity as non-negotiable, despite the unanimous and deafening calls from every sections of the country for constitutional reform to true and inclusive federalism. Some Nigerian leaders of Northern extraction believe that restructuring to true and inclusive federalism that will ensure self-government rights to ethnic nationalities will breed disintegration or secession. Is that really the truth? This study disagrees.

As reiterated previously, this study argues that the group-specific self-government rights as federal political structure compensate for unequal circumstances which put the members of minority cultures at a systemic disadvantage in the cultural market-place, regardless of their personal choices in life. This is one of the many areas in which true equality requires not identical treatment, but rather differential treatment in order to accommodate differential needs. Though some liberals may allude that federalism in terms of self-government rights enthrone differentiated citizenship as Kymlicka emphasizes,

Self-government rights, therefore, are the most complete case of differentiated citizenship, since they divide the people into separate peoples, each with its own historic rights, territories, and powers of self-government; and each, therefore with its own political community. They may view their own political community as primary, and the value and authority of the larger federation as derivative.⁴⁵²

This implies that if citizenship is membership in a political community, then, in creating overlapping political communities, self-government rights necessarily give rise to a sort of dual citizenship, and to potential conflicts about which community citizens identify with most deeply. Therefore, this is the temptation of some liberals to ignore the demands of national minority for federal political structure, whether disadvantaged or not, and to avoid too many references to such groups in the constitution, and to insist that citizenship is a common identity shared by all individuals, without regards to group membership.

This study approaches the above claim in two different ways. Firstly, there is no democratic multination state that practices true federalism (like Switzerland, New Zealand, Canada, Belgium, etc.) in whose citizens take their political community as primary and larger federation as derivative. Never! Because they neither identified themselves as a citizen of Quebecois or Inuit etc. instead of Canadian; nor German, Italian, or French instead of Swiss; nor Flemish or French instead of Belgian, etc. For instance, the Swiss have a strong sense of common loyalty, despite their cultural and linguistic divisions. This is possible because the larger state first recognizes and respects different groups' identity and existence by ensuring their self-government rights for their self-determination in her federal constitution. As Kymlicka rightly points out, thus,

In Switzerland as in most multination states, national groups feel allegiance to the larger state only because the larger state recognizes and respects their distinct national existences. The Swiss are patriotic, but the Switzerland they are loyal to is defined as a federation of distinct peoples. For that reason, it is best seen as a multination state, and the feelings of common

⁴⁵²*Ibid.* p. 182

loyalty it engenders reflect a shared patriotism, not a common national identity.⁴⁵³

This is to prove that the members of these political communities show strong national consciousness and a strong sense of patriotism and commitment to the larger federal polity than to their different political communities. Secondly, the argument that group-differentiated citizenship enthrones dual citizenship is not feasible. It is not possible to eliminate the sense of distinct identity which underlies these groups' desire to form their own identities to national societies. If anything, attempts to subordinate or assimilate these separate identities by replacing it with a common identity have backfired, and would continue to backfire, since they are perceived by minorities as threats to their very existence, and to have resulted in even greater indifference or resentment. Rawls, buttressing the above statement, suggests that common citizenship promotes the political virtues of 'reasonableness and sense of fairness, a spirit of compromise and a readiness to meet others halfway'.⁴⁵⁴ But attempts to impose common citizenship in multinational states by subordination or assimilation, and not accommodation, do in fact threaten these virtues. Indeed, recent surveys of ethno-nationalist conflict around the world, of which Nigeria is predominant, demonstrated clearly that self-government arrangements diminish the likelihood of violent conflict, while refusing or rescinding self-government rights is likely to escalate the level of conflict. Therefore, accepting self-government demand of true federalism is likely to lead to a desire for ever-increasing local autonomy, and providing local autonomy reduces the likelihood of violent conflict, yet the resulting arrangements are rarely examples of harmonious co-operation between national groups. Hence, it becomes very difficult to witness ethnic or religious

⁴⁵³*Ibid.* p. 13

⁴⁵⁴*Ibid.* p. 185, also cited by Taylor, 'The Politics of Recognition', in Amy Gutmann (ed.), *Multiculturalism and the 'Politics of Recognition'* (Princeton: Princeton University Press, 1992a), p. 64

conflict or rivalry in a democratic multination state where true and inclusive federal political system is practised.

Therefore, in federal political arrangement the power will be divided and shared in such a way that Hausa, Igbo, Yoruba, Ibibio, Itsekiri, Igala, Tiv, etc., will exercise exclusive power to govern themselves as well as recognizing Nigeria as their country. And also the issue of Boko Haram terrorisms, herdsmen menaces, Biafra's secession agitations and Niger Delta militancy will be a thing of past if such political structure is in vogue. It becomes an indubitable fact that federal structure of government, rather than engendering secession, ensures full membership in co-operative scheme. Therefore, inclusive federalism can provide basis for social unity.

This study shows in the long run that in federal political structure in which each region is granted the limited self-government rights, citizens in that polity will have fairly strong sense of identity towards the other ethnic and national groups in the multination state, and they will find the prospect of sustaining their deep diversity inspiring and exciting. It is unlikely in a unitary political structure in which there is a usual and continuous conflict over political power and resources among different national groups. Thus, this creates a vague commitment to the value of cultural diversity, which by itself, may not generate a strong sense of identification with the existing multination state, or the particular groups that cohabit it. This gives credence and support to A. V. Dicey assertion that stable multicultural federation requires 'a very peculiar state of sentiment among its citizens, since they desire union, and must not desire unity, and what Henri Bourassa meant when he says that it goes with the development of a more general patriotism that unifies us, without fusing us.

As I reiterated in chapter six, federal political structure works efficiently and effectively in conjunction with "parliamentary system of government" than 'presidential executive system of government'. Federalism, which is a political structure where power is decentralized,

works effectively well in parliamentary system in which the critical mass represented by local community government as the last tier, elects and sends her representatives from the regional government to central government for proper and grassroots representation. The system which must be bicameral encourages proper checks and balances between the arms or tiers of governments. In which the two Houses of national assembly (House of the People and House of the Federation) come together to elect Prime Minister as the head of government; while, only House of the Federation elects president as head of state. In most federations the Parliament does not have space for rotation in order to enthrone qualification and merits. This study prefers parliamentary to presidential system of democratic government because of the way it equally divides powers between the centre and components units (critical mass of the grassroots' governance). Hence, the differences between them is that, firstly, in presidential form of democracy, president or presidency weigh enormous powers compared to the local government, but in parliamentary form of democracy, the regional government weigh equal power with the central government. Secondly, in presidential form, powers move from general to regional governments, while in the parliamentary, powers move from regional (that is, local people) governments to central government. Therefore, in presidential form of democratic government the federal system of government has prospect of becoming unitary system of government due to the tendency of general government to acquire more powers. So, this study proposes parliamentary system of government with a loose dose of deliberative democracy for Nigeria multination state – deliberative democracy being a system of government capable of embracing and confederating all the various interests' groups. It is a kind of political system that places a large emphasis on the value of deliberation, and deliberation here refers to processes of rational argumentation. This extreme kind of representative democracy will only be sustained by people participating in debate and discussion, intending to reach a reasonable consensus on the contested political issues. James

Bohman sums up the ideal of deliberative democracy well when he defines it as “a dialogical process of exchanging reasons for the purpose of resolving problematic situations that cannot be settled without interpersonal co-ordination and co-operation.”⁴⁵⁵ We may value this kind of democracy precisely because it allows diversity and disagreement to flourish. So, parliamentary system of government with little dose of deliberative democracy is what Nigeria as a multination state needs as it adopts inclusive federalism as its political structure.

The enthronement of true federalism would not only engender stable polity, but also it enhances economic growth. Federalism is a political structure that ensures financial autonomy of each federating units. Financial autonomy will increase the competitive advantage of each regions or states for the economic growth of her locality and her nations at large. In Nigeria, for instance, federalism will grant fiscal freedom to each federating units to raise revenue through tax, to control her natural and material resources, to control the seaport, airport and road and rail transportation in their regions, inversely, paying taxes and royalties to the central government. This fiscal right enables each regional/state/provincial/municipal government some reasonable impudence to ignite her competitive advantage towards prospering her different region/state/province/municipality, as well as for all the levels of government working to prosper and develop the general government in a co-operative scheme. Thus, co-operative and competitive federalism will help Nigeria Federal Government to eliminate state/regional government financial dependence (Monthly allocation) on federal government for sustainability and survival by granting them power to generate revenue and manage her resources. So, competitive and co-operative federalism become panacea for economic growth and advancement.

⁴⁵⁵ J. Bohman, *Public Deliberation: Pluralism, Complexity and Democracy*. (Cambridge MA: MIT Press, 1996), p. 27, as cited in Iain Mackenzie, (2009), p. 115

Finally, this study concludes this subchapter by stating that ineffective leadership is partly the cause of Nigeria many predicaments. After critical study into the root causes of Nigerian cultural, economic and socio-political predicaments, this study came to realize that leadership partly contributes to Nigerian stagnation. It is an established fact that Nigeria's many predicaments hinge on structural defects as reflected in unitary or pseudo-federal 1999 Nigerian Constitution. Though this paper argues that the only way out is to address the structural imbalance through constitutional change or restructuring, but one needs no doubt the obvious that the person that would carry out the change must be an effective leader with strong federal ideology. K. C. Wheare, however, was of the same opinion when he argues,

And here again, as with the desire for union itself, a great deal will depend on leadership. The factor which could produce a desire for federal union may be there but they may not come to the surface; or, if they do, they may be overcome by more effective leadership in favour of the unitary form of union.⁴⁵⁶

By implication, Nigeria is a typical example. In her existed all the factors which would have produced true federal system of government; factors like: having previous separate existence as distinct colonies, divergence of economic interest, difference of language, culture, religious and nationality, difference of social institutions, and where in addition to all these, had had in five decades ago a bitter civil war waged against a particular region (Biafra and Nigeria). None the less, the desire for unitary union was favoured over the desire for federal union. This results from the fact that Nigeria previous leaders (especially northern extracts) preferred the status quo. Therefore, there is need for an effective leadership to lead the necessary change in order to move Nigeria forward.

7.2 Conclusion

Most countries of the world result from 'association of states;' which has been formed for certain common purposes, but in which the member states retain a large measure of their

⁴⁵⁶ K. C. Wheare, *Federal Government*, (New York: New York University Press, 1964), p. 42

original independence. Most association of states like that of United States and Switzerland may have resulted into confederation with no, or weak, centre. With the decision of the association to institute a central government there is a great prospect of the association to migrate from an association of states guided by principle of confederation to another guided by principle of federalism, which United States meant when they say “they gathered for the purpose of rendering the article of confederation inadequate to the exigencies of the government and the preservation of the union.”⁴⁵⁷ Therefore, in a confederation where there is general government with little or no powers, there is general tendency for the general government to grow in power in equal capacity to regional governments. This is what takes place in most four federations K. C. Wheare used as cases of study. Typical example is United States’ migration from the Article of Confederation of 1777 to the Philadelphia Convention that birthed American Federal Constitution of 1787.

Even in all federal governments, there is still also this one general tendency for the general government to grow stronger at the expense of regional government. In short, Wheare claims that the general governments in all four federations have grown stronger. The bone of contention is what determines this increase in strength, having been cognisance of the fact that a lot of safeguards were established in most federal constitutions so that there may be no any arbitrary constitutional amendment that may gift the general government with excessive power compared to regional governments. Thus, K. C. Wheare argues, “...when it is said that there has been a tendency in federations for the general governments to increase in strength this does not mean that they steadily acquired from the regional government fields of jurisdiction which at the establishment of the federation were confided to the exclusive control of the regions.”⁴⁵⁸ Hence, what happened rather has been that general governments

⁴⁵⁷E. A. Obi, Issues in the Theoretical Foundations of Federalism,” in *Federalism and National Integration in Nigeria*, p. 2

⁴⁵⁸*Ibid.* p. 237

have developed more and more intensively the area which was assigned to them originally; areas like defence, foreign relation and trade and banking. This is not surprising at all, because when association was first initiated as a confederation and then federation, the general governments began with nothing. The regional governments theretofore had occupied almost the entire stage and had absorbed the greatest part of the political interest and energies of their peoples. But with the establishment of the general government it was inevitable that, as they began to exercise their allotted functions, they should gain in importance at the expense of the regional governments.

The defence; foreign relations and trade; and finance are the factors, though under jurisdiction of general government, that made it possible for federal government to increase in strength at the expense of states.

Since it is obvious that general government has gained more power, importance and strength over regional governments, what then should be the prospect of the federation? The prospect however is unitary government. How? From the way in which general governments have increased in importance and strength at the expense of regional governments that federal government is really no more than a stage toward unitary government. But the fact remains that “no federal government – used as illustrations in this work– has become a unitary government.”

It is a known fact that war, economic depression, growth of the social services and mechanical revolution in transport and industries are the contributory factors to the increase in strength of general government at the expense of the regional governments, as well as necessitating unitary control. It was believed that these factors impose financial strain which only the federal government have been able to bear. Consequently, war and economic crisis are the enemies of federal government. And peace and prosperity are in truth prerequisite for the successful working of the federal government. Therefore, the prospect of federal

government depends on one tendency – the tendency of the general governments to grow at the expense of the regional governments.

There is another tendency which runs in opposition of the tendency of general government. That is, a tendency of regional governments to grow strong in the sense of importance, in the self-consciousness and self-assertiveness. This tendency has gone side by side with the growth in importance of the general government, and it has obviously been stimulated by it. In this case regional governments have felt so unjustly treated or marginalised by the general government that they have talked of resigning or breaking out of the federation (1966 Biafra secession agitation). This increase in power of the general government is believed to have been the reason of the secession movement in most federations. This is because most regional government imagined that the reason which originally led the regions to make a federal, and not a unitary union have by now entirely ceased to operate. Thus, when the desire to safeguard the distinct language, culture, race, religion, and the historical identity as a distinct government could not be secured in the union, the only option is to resign from the federation. This is the reason most ethnic nationalities in a regional government insist that federal principle be embodied in the federal constitution and be protected by it – Quebec is a case study. But it is a fact that federalism, in spite of these modifications from the original status of the regions, has strong forces which still operate to maintain their independence and to resist the imposition of uniformity and unitary state.

The issue of the tendencies and prospects in the federal system of government is nothing but an argument on how to preserve and sustain federalism over the prevailing unification threats those tendencies portend to it. Therefore, this paper concludes by asking: Is it worthwhile to preserve federal system of government? Yes, it is!

Contemporary scholars in politics has often argued against federalism that it is out of date because, in a world where economic, and indeed, social life is becoming more and more a

single whole, federal government preserves hard and fast regional divisions. Where unity is the predominant characteristic and tendency of life, where a world unity is so ardently desired, federalism offers multiplicity and plurality.⁴⁵⁹ Against this, K. C. Wheare answers, and this study concurs; thus, “Mere unity is no virtue in itself (in a world with overwhelming diversities).”⁴⁶⁰ He argues further,

Federal Government, after all, does not stand for multiplicity alone. It stands for multiplicity in unity. It can provide unity where unity is needed, but it can ensure also that there is variety and independence in matters where unity and uniformity is not essential.... Within this unity there is room under federalism of each region to govern itself in its own way. This exercise in self-government is sufficiently valued to be worth the cost it entails.⁴⁶¹

Therefore, one of the urgent problems in the world today is to preserve diversities either where they are worth preserving for themselves, or where they cannot be eradicated even if they are not desirable, and at the same time to introduce such a measure of unity that will prevent clash and facilitate co-operation. To this end federalism is only one way of reconciling these two ends, and it is what this paper has been trying to show all these while; and also in what circumstances federalism is likely to succeed in a country with different cultural/ethnic, language and religious groups like Nigeria.

⁴⁵⁹*Ibid.* p. 244

⁴⁶⁰*Ibidem*(the bracket is mine)

⁴⁶¹*Ibidem*

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