

SUBNATIONAL CONSTITUTIONALISM: THE NIGERIA SOLUTION^{1*}

Abstract

The contemporary Nigerian state appears to encompass two separate levels of governance and leadership. Whereas, governance at the federal level seems to be an appreciably people-driven system, tailored along the line of democratic governance and the rule of law, the situation at the State levels appears to be in sharp contrast. The massive corruption, arbitrary rule and highhanded leadership by State Governors with autocratic tendencies to rule by law are some pointers. Given the fact that the structure of governance at the state levels is modeled along the structure of governance available at the federal level, it is curious that governance at the State levels have taken a path outside the rule of law, thereby gearing towards the undemocratic route. However, the view has been expressed that the difference in governance at the state levels and federal level is a direct result of the absence of subnational constitutionalism at the state levels and the seamless presence of constitutionalism at the federal level. Again, the view has also been maintained that the national Constitution, which is relatively autochthonous to the Nigerian state, has greatly aided governance at the federal level. The same cannot be said of governance at the State level. The paper therefore appraises the situation obtainable at the State levels with particular emphasis on the argument for the need for subnational constitutionalism and subnational constitutions which should be indigenous to each State and reflects the special aspirations of the people of the particular State.

Keywords: Federalism, Constitutionalism, Subnational Constitutionalism

1. Introduction

When one considers the level of democratic governance and adherence to the rule of law in Nigeria, one is likely to find a disparity between what is available at the federal level and the state levels. Whereas, there seem to be a sufficient level of awareness, obedience to the rule of law and fundamental democratic principles at the federal level, the reverse seems to be the case at the state levels where the highhanded leadership steadily carried out by State Governors, is obvious for all to see. The extent to which these State Governors override and dominate the various Houses of Assembly is conspicuous and there have been obvious situations where the State Governors ‘literally unseat’ Speakers of some Houses of Assembly in furtherance of their desire to completely override and dictate the activities of the Assembly. Again, the State Deputy Governors have not been spared from the autocratic and tyrannical tendencies of the State Governors. These several negatives coupled with the massive corruption overly present at the state levels have led to some obvious consequences which seem to be indices that may finally lead to the total collapse of the system. For instance, the incessant clamour for resource control by persons of the Niger Delta axis, the several yearnings for state creation by individuals in several states, the reignited push for secession by individuals crying for ‘Biafra’ in the South Eastern States of Nigeria, seem to be a direct fallout of the malign leadership at the state levels.

The above is particularly baffling with regards to the very fact that the structure at the state levels is modeled along the structure which is obtainable at the federal level. One therefore wonders why the system at the federal level seems to work better than the system at the state levels. However, the view has been severally expressed that the above negatives at the states levels is as a result of the obvious absence of subnational constitutionalism and subnational constitutions in the Nigerian federation. In support of this line of argument, proponents are quick to compare the federal level where there is an existing constitution and there seems to be the reality of constitutionalism. The Researcher undertakes a study into the meaning of federalism, in a bid to link the concept of subnational constitutionalism with the federal structure of governance. The attempts to answer the following questions: what is constitutionalism? What is subnational constitutionalism? What are the obvious merits and demerits of subnational constitutionalism? To what extent, if any, does the concept of subnational constitutionalism apply in Nigeria? To what extent, if any, can the concept of subnational constitutionalism help to ensure rule of law and democratic governance at the state levels? The research is concluded by proposing several recommendations along the line of subnational constitutionalism which will shape governance at the State levels.

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2. federalism, constitutionalism and subnational constitutionalism

In a bid to righteously undertake this work, it is only proper to first consider federalism as a system of government as opposed to unitary system. A critique of the concept of federalism is imperative owing to the fact that the idea of subnational constitutionalism is mostly associated with federal systems even though it may also be visible in a unitary system (where permitted). Nonetheless, there are divergent views on this point. While some scholars, such as Ronald Watts,² maintain that subnational constitutionalism, in fact, exists in certain unitary systems including China and Indonesia, other scholars, such as Jonathan L. Marshfield, have maintained that subnational constitutionalism is a derivative of federalism and can only exist within federal systems.³

Essentially, federalism is a system of government suitable for fragmented societies. Federalism is a principle of government structure which applies to systems consisting of at least two constituent parts that are not wholly independent but together form the system as a whole. The constituent units must have powers of their own and they must be entitled to participate at the federal level. There seems to be consensus to the extent of this minimal definition even though different scholars hold different views on the meaning and proper definition of federalism.⁴ A federal system of government often arises from the desire of a people to form a union without necessarily losing their identities.⁵ Again, it has been said that for a State to be regarded as a federal state, the federal government and the component regions (which maybe States, Provinces etc.) must have some degree of shared rule and self-rule. However, a critique of the setup of some unitary systems would reveal the fact that there is an existing degree of 'shared rule and self-rule' even in those unitary arrangements. This could be easily seen in any classical decentralized unitary system: China and Indonesia, for example. What then is the basic difference between such decentralized unitary system and a federal system? A review of the literatures on federal system and unitary system seems to lead to the reasoning that whereas the components units of such decentralized unitary system derive their authority from the central government, to the extent that the component units are not autonomous from the central government and the responsibility for all matters including the scope of jurisdiction assigned to subnational governments - and indeed their constitutions - rests with the central or national government.⁶ The federated units can enjoy substantial, constitutionally guaranteed autonomy over certain policy areas while sharing power in accordance with agreed rules over other areas.⁷ In summary, federalism could be conceptualized as a form of government which institutionalizes vertical distribution of power in such a way as to demarcate which, between national and subnational tiers, is competent or authorized to exercise defined powers within the framework of a written constitutional text.⁸ By the way, Nigeria operates a federal system although the way and manner in which federalism is being practiced in Nigeria, has been severally criticized, especially in relation to the fact that the basic principles of federalism are rarely applied.⁹ Wiseman once made the point that:

Many governments of quite different types wish to describe themselves as democratic. In some cases, the term has even been incorporated into the official name of the state ... although it is a noticeable paradox that in most cases where this happened (e.g. the German Democratic Republic, the Peoples' Democratic Republic of Yemen or the Democratic Republic of Congo) the states concerned appear significantly undemocratic.¹⁰

²Ronald Watts, 'The International Conference on Subnational Constitutional Governance'

<http://www.kas.de/wf/doc/kas_5112-1522-2-30.pdf?040728165259> accessed 19 June 2020

³Jonathan L. Marshfield, 'Models of Subnational Constitutionalism'[2011] (115) (4) *PENN ST. L. REV.*; 1169-70

<<http://www.pennstatelawreview.org/115/4/115%20Penn%20St.%20L.%20Rev.%201151.pdf>> accessed 19 June 2020

⁴Anna, Gamper, 'A Global Theory of Federalism: The Nature and Challenges of a Federal State' [2005] *German Law Journal*; 1299

⁵Dan Elazar, *The Politics of American Federalism*, (DC Health. 1969); Ronald Watts, *Administration in Federal System* (Hutchinson Educational. 1970)

⁶Ronald Watts, 'The International Conference on Subnational Constitutional Governance'

<http://www.kas.de/wf/doc/kas_5112-1522-2-30.pdf?040728165259> accessed 19 June 2020

⁷Elliot Bulmer, 'Federalism' [2017] < <https://www.idea.int/sites/default/files/publications/federalism-primer.pdf> > accessed 19 June 2020

⁸Edoba, Omoregie B., 'The subsidiarity principles and federalism fissures in Nigeria' [2013] *Journal of Constitutional and Parliamentary Studies*; 228 - 243 <<http://www.vanguardngr.com/2012/10/the-subsidiarity-principle-and-federalism-fissures-in-nigeria-1/>> accessed 22 June 2020

⁹ Ibid

¹⁰Wiseman, J. A, *Democracy in Black Africa, Survival and Revival*, (Paragon House Publisher. 1990); 4

To an extent, the above reasoning is true as it relates to federalism in Nigeria. Whereas Nigeria prides herself as a federal state and notwithstanding the very fact that even the Nigerian Constitution¹¹ expressly declared in section 2 (1) that the country shall be known by the name of ‘The *Federal* Republic of Nigeria’ (the italicised word is only for emphasis) yet, a rational analysis of the contemporary government set up in Nigeria would reveal that the Nigerian state, at best, is only a quasi-federal state and as would be discussed in the latter part of this work, the basic principles of federalism are rarely employed in the Nigerian federation. One therefore wonders the basis on which federalism in Nigeria is practiced. On its part, constitutionalism is the idea, often associated with the political theories of John Locke and the founders of the American republic, that government can and should be legally limited in its powers, and that its authority or legitimacy depends on its observing these limitations. According to Rosenfeld, constitutionalism is ‘a three-faceted concept’, as it requires imposing limits on governmental powers, adherence to the rule of law, and the protection of human rights.¹² Constitutionalism is the antithesis of arbitrary rule. Its opposite is despotic government, the government of will instead of law.¹³ Constitutionalism is the limitation of government by law and the whole process of arriving at the limitation.

Constitutionalism as a concept has been severally confused with the idea of ‘an existing Constitution’. This confusion which has continued to bedevil politicians and constitutional scholars alike revolves around constitutionalism and written constitutions. Olukoshi (1999)¹⁴ rightly deplore such confusion between constitutionalism as defined earlier and written constitutions, or between constitutionalism and the constitution-making process. Consequently, the wrong view has been severally expressed that in order for constitutionalism to exist, there must be the existence of a written constitution. The situation in Britain has been generally cited against this view. Although, Britain does not have a written constitution, constitutionalism is as much known in Britain as it is in democratic countries with a supreme constitution.¹⁵ Having considered the concept of constitutionalism, it is imperative to now delve into an appraisal of the concept of subnational constitutionalism. What then is Subnational constitutionalism? Subnational Constitutionalism relates to the fact that the Subnational units should be allowed to choose how the powers within the subnational unit structure will be organised and further limited. Subnational constitutionalism concerns those particular rules that relate to the subnational units’ ability to structure and limit their own power.¹⁶ There are at least three coherent justifications for subnational constitutionalism. First, it can deepen a federal system’s ability to accommodate multiple political communities within a single constitutional regime. Second, it can uniquely contribute to federalism’s liberty-protecting, check-and-balances function. Third, the Article argues that scholars have largely overlooked the possibility that subnational constitutionalism can improve the deliberative quality of democracy within subnational units and the federal system as a whole.¹⁷ It is seminal to note that even though the ideas of subnational constitutionalism and subnational constitution making have predominated recent constitutional discourse however, subnational constitutionalism and subnational constitution (where they exist) operate within the ‘space’ permitted by the National Constitution. To this end, in most countries of the World where subnational constitutionalism or subnational constitution exist, these subnational institutions cannot and must not contravene the provisions of the national constitution.

However, from the literatures on subnational constitutionalism, there are two noticeable arguments as it relates to the very subject. On the one hand, some scholars hold the view that before a state could be said to practice constitutionalism, such a state must permit the subnational regions to determine how the powers within the subnational region will be organized and further limited. To this end, these scholars have made the point that a federal system that establishes subnational government institutions and does not permit subnational units to alter or limit those institutions in any way does not provide for subnational constitutionalism. Subnational constitutions are, by definition, intended to reflect some degree of local input regarding the structure of subnational authority. A federal regime that does not allow for subnational input regarding the structuring of subnational authority, does not allow for genuine subnational constitutionalism. Thus, it has been maintained that constitutionalism cannot

¹¹ The Constitution of the Federal Republic of Nigeria, 1999

¹²Rosenfeld, M. ‘Modern Constitutionalism as Interplay between Identity and Diversity’, in Rosenfeld, M. (ed) *Constitutionalism, Identity, Difference, and Legitimacy: Theoretical Perspectives*, (Duke University Press. 1994); 27-28.

¹³McIlwain, .H. *Constitutionalism: Ancient and Modern*, (Revised Edition, Cornell University Press. 1947); 21-22

¹⁴Olukoshi, A. ‘State, Conflict, and Democracy in Africa: The Complex Process of State Renewal’, in Joseph, R. (ed), *State, Conflict and Democracy in Africa*, (Lynne Rienner Publishers. 1999); 453

¹⁵André Mbatia Mangu, ‘Constitutional democracy and constitutionalism in Africa’, <mercury.ethz.ch/serviceengine/Files/ISN/104121/.../Chapter1.pdf> accessed 19 June 2020

¹⁶The concept of subnational constitutionalism was well explained in Julio Pinheiro Faro Homem de Siqueira, ‘What is Subnational Constitutionalism?’ <http://www.stals.sssup.it/files/stals_Pinheiro.pdf> accessed 20 June 2020

¹⁷Jonathan L. Marshfield, ‘Models of Subnational Constitutionalism’; 1169-70

exist where a national authority crafts particularised constitutions for subnational units without any direct input from the subnational community. Furthermore, under the description of subnational constitutionalism proposed by this argument, those documents would not qualify as subnational constitutions because they are entirely derivative of the national community. Although they are 'constitutional' in the sense that they structure subnational authority, they are not 'subnational' because they do not derive any content or portion of their legitimacy from the input or endorsement of their respective subnational communities. This view seems to be reinforced by the argument in favour of autochthonous constitutions. According to Justice Niki Tobi:

In general terms, a Constitution is said to be autochthonous if it derives its force and validity from 'its own native authority' and here the expression 'Native authority' is not used in the context of a local government authority, but rather in the wider context of the people in their sovereignty. In other words, an autochthonous Constitution must be home-grown in the sense that it is home-made and not a product of Imperialism or colonialism. An autochthonous Constitution should be free from any imperial or colonial intervention... Once the entire constitution-making process is indigenous and home-made, the element of autochthony is fulfilled.¹⁸

Hence, the view has been expressed that in order to have the desired effect, a subnational constitution must be home-made. As such, a national constitution, like in the case of Nigeria, which purports to also 'act' as subnational constitution, is unlikely to be the outcome of the yearnings of the indigenous people of the sub-nations and therefore, such constitution, is unlike to be home-grown as it relates to the sub-nations. On the other hand, there is a counter-view that subnational constitutionalism could still exist even though the subnational regions are not permitted to regulate, organise and limit the powers of the subnational government and institutions. In other words, in states where the structures and powers of subnational regions are delimited in the national constitution, as against a separate document, the tenets of subnational constitutionalism can still reign supreme.¹⁹

My take on the above is tailored along both lines of argument. It is imperative to mention at this juncture that 'constitutionalism' as a concept does not necessarily depend on the existence of a constitutional document. To this end, constitutionalism can exist even without the existence of a constitution. Again, the existence of a constitution does not inevitably guarantee the presence of constitutionalism. In the same vain, in order for subnational constitutionalism to exist, there need not be the existence of a subnational document (constitution) which seeks to regulate and delimit the powers of the subnational government and institutions in the sub-nation. The very fact that a national constitution has expressly delimited and organised the powers in the sub-nation, is enough to inform the existence of subnational constitutionalism. However, this is not to undermine the very fact that the existence of a subnational constitution could work to ensure local impute in subnational governance. Hence, while i hold the view that subnational constitutionalism can exist without the presence of a subnational constitution, i also maintain that in an ideal situation, the sub-nations should be given opportunity to determine the limits and organisation of the subnational government and institutions through a home-made and home-grown subnational constitution.

Nigeria is one of those states where the national constitution makes provisions for the way and manner in which the subnational government and institutions should be structured. What is more? In the Nigerian case, the provisions concerning the states (governments and institutions) seem to be a direct replica of the provisions relating to the federal government and institutions albeit with the noticeable difference in the structuring of the legislative branch of government. Whereas Chapter V, Part I of the Constitution provides for a bicameral legislature at the federal level, Chapter V, Part II provides for a unicameral legislature at the states level. Again, the constitution seems to provide a uniform arrangement across the states of the federation. For example, in making the provisions for 'State Executive' in Chapter VI, Part II, the Constitution does not differentiate between the various states of the federation. To this end, when the Constitution stated in section 176 that 'there shall be for each *State* of the Federation Governor', the Constitution did not differentiate between the various states of the federation. This is also manifest in section 270 (1) of the Constitution which provides that 'there shall be a High

¹⁸I. Ayua, A. Guobadia and A. Adekunle (eds.) 'Nigeria: Issues on the 1999 Constitution'. in Taiwo Osipitan, *An Autochthonous Constitution for Nigeria: Myth or Reality?* (University of Lagos Press. 2004); 9.
<<http://allafrica.com/stories/200411290691.html>> accessed 22 June 2020

¹⁹Ronald Watts, 'The International Conference on Subnational Constitutional Governance'
<http://www.kas.de/wf/doc/kas_5112-1522-2-30.pdf?040728165259> accessed 19 June 2020

Court for each *State* of the Federation'. The material implication of this point is that, the Constitution has created a uniform administration in the entire thirty-six states of the federation and as such, it has exclusively limited (or entirely removed) the possibility of local impute in the structure of the subnational government and institutions within the federation.

Thus, the argument has been variously made that it is the absence of subnational constitutions that have led to a seeming absence of constitutionalism at the state level. It has therefore been maintained that the absence of state constitutions have resulted in the consistent improper and inadequate governance which is easily noticeable in the various states. One can effortlessly notice the highhanded leadership steadily carried out by State Governors. The extent to which these State Governors override and dominate the various Houses of Assembly is manifest for all to see. There have been obvious cases where the State Governors 'literally unseat' Speakers of some Houses of Assembly. There have been glaring cases where the State Governors 'influence' the members of some Houses of Assembly to impeach State Deputy Governors. These several autocratic and despotic tendencies which seem to be a recurrent event at the state level, lead one to wonder whether the states now practice Autocracy with the Governors as the Autocrats? This situation becomes more interesting when one points out the fact that although, the state administration is, to a large extent, a replica of the federal arrangement, the position of things seem to be different at the federal level. For example, notwithstanding the much publicised scuffle²⁰ between the then President Olusegun Obasanjo and Vice-President Atiku Abubakar, the former could not influence the National Assembly to impeach the latter. Given the fact that the system at the state level is modelled along the system at the federal level, why then does the system at the federal level seems to work better than the system at the state level? In the next segment of this work, we shall consider the likely reasons for the systemic failure at the state levels.

3. The Discourse

The situation mentioned above appears to only reiterate the rather irritating events which continue to emerge at the states of the Nigerian federation, a situation which has left many with distaste for the present administrative arrangements at the state level. The open clamour for resource control by persons of the Niger Delta axis, the numerous craving for (more) state creation by individuals in several states and the reignited push for secession by individuals crying for 'Biafra' in the South Eastern States of Nigeria are only few examples of the growing frustration with the present apparent inadequate governance at the state levels. However, as mentioned above, the argument has been made that this perceived inefficient governance can be addressed by a thorough application of the principle of subnational constitutionalism which would inevitably lead to legal limitations in the unbridled powers of State Governors, and effectively lead them to the realisation that their authority and legitimacy depends on their readiness to observe these limitations. Agreed, that in line with subnational constitutionalism, if the State Governors come to the consciousness that their powers depend on their willingness to adhere to the rule of law, the governance at the state levels would ultimately improve for the better however, in order to be effective, institutionalised and longstanding, this awareness must be consciously guided by the principles of checks and balances. This would eventually forestall authoritarian rule and save the people from autocracy.²¹ Otherwise, the likelihood is that the State Governors would continue to exercise unrestrained powers at the state levels. After all, who would challenge them? To this end, the legislative branch of government has the fundamental responsibility to forge a check on the powers of the executive branch. Hence, the legislative branch of government i.e., the Houses of Assembly at the state levels, possess the duty to check and balance the powers of the State Governors. In this respects, the national Constitution contains several provisions²² which seek to properly equip the Houses of Assembly with the right tools to regulate the powers of the State Governors. Nonetheless, the Houses of Assembly have greatly floundered in this aspect. Given the fact that the legislative branch at the federal level i.e., the National Assembly appear to have fared better as it relates to their duty to checkmate the executive branch at the federal level, one therefore wonders the reason(s) why the Houses of Assembly at the various states seem to

²⁰Jide Ajani 'The Story of Olusegun Obasanjo and Atiku Abubakar' [2013] <<https://www.vanguardngr.com/2013/08/the-story-of-olusegun-obasanjo-and-atiku-abubakar/>> accessed 22 June 2020

²¹*Myers v. USA* (1962) 272 US 52 where Justice Brandeis of the United States' Supreme Court famously justified this proposition by declaring that the principle of 'separation of powers was adopted by the Convention of 1887 not to promote efficiency but to preclude the exercise of arbitrary powers. The purpose was not to avoid friction, but by means of inevitable friction incident to the distribution of governmental powers among the three departments, to save the people from autocracy.'

²²For example, the power of impeachment provided under 188(1)-(11) of the Constitution, The Legislative power of oversight provided under sections 128 to 129 of the Constitution, Legislative power to confirm executive appointments as provided in section 192 (2) of the Constitution and etc.

have willfully and or negligently failed to carry out their constitutional duty of checkmating the State Governors. This systemic failure has certainly led to the absence of subnational constitutionalism in the Nigerian federation.

However, there are three views concerning the obvious systemic failure mentioned above. Firstly, it has been suggested that the failure of the State Houses of Assembly to adequately regulate the powers of the State Governors is a direct consequence of the structure of the legislative branch of government at the state levels. It has therefore been maintained that while the federal system is structured to accommodate a bicameral legislature by virtue of the provisions of Chapter V, Part I of the Constitution, the system at the state level is structured to accommodate a unicameral legislative branch of government by virtue of Chapter V, Part II of the Constitution. This difference in the arrangement of the legislative branch at the federal level and the state levels seems to be a plausible explanation of the noticeable different success rate between the National Assembly, made up of the Senate and the House of Representatives, and the State Houses of Assembly. This view appears to be strengthened when one understands that whereas the members of the Senate represent the states,²³ members of the House of Representatives represent the people.²⁴ This provision for bicameral legislative branch²⁵ at the federal level has ensured proper representation of the people in the National Assembly and sobriety in the passage of legislations. The same cannot be said of the State Houses of Assembly. Since the bicameral system seems to have worked better at the federal level, will it not be a better option for the state legislative structure? In particular, will the bicameral system not be genuine option for heterogeneous states of the Nigerian federation? Again, given the fact that in recent times, there have been indications of resettlement and influx of nonindigenous people to different parts of the country,²⁶ will the bicameral system not be a veritable option to cater for the interests of these migrants? Secondly, a lot of argument has been made in favour of proportional representation²⁷ as against the First Past The Post system which is presently employed in election into the Houses of Assembly. Here, the argument is that the more limited the number of representation, the greater the issue of underrepresentation and executive arbitrariness. Thus, given the fact that Nigeria is largely divided along ethnic, cultural and religious borders, is the present Single Member System best for the Nigerian federation? The view has been maintained that the present district magnitude for election into the State Houses of Assembly seems to play a negative role in discharging legislative duties at the state levels. Therefore, this second view holds that the collateral failure of the State House of Assembly is a result of underrepresentation of several district in the various states, a situation which is the effect of the applicable electoral system. These above three analyses have been raised as possible reasons for the failure. The third view rests on the two views stated above. This third string of argument is to the effect that the system at the State levels is bound to fail owing to the very fact that the states are not given the freewill to determine their administrative structure. Therefore, states and indeed, heterogeneous and deeply divided states which are in dire need of bicameral legislative branch of government and proportional representation, cannot effect the needed change due to the national constitutional burden.²⁸ These three views are concerns which have been made as to why the principle of subnational constitutionalism may presently be impossible in the Nigerian federal arrangement. Having stated the above, the above views logically launch this discourse into another seminal aspect of the work: subnational constitutions.

Having realised the negatives associated with the national constitution of the Nigerian federation which established a uniform state administration across the States of the federation, without special regard of the unique differences of the people constituting the several states of the federation, one is therefore tempted to emphasise the need for home-made, home-grown and home-processed subnational constitutions which will reflect the indigenous outlook and genuine needs of the several states of the federation. Again, from the available literatures

²³Hence, in accordance with section 48 of the Constitution, the Senate consists of three Senators from each State and one from the Federal Capital Territory, Abuja.

²⁴Therefore, in accordance with section 49 of the Constitution, subject to the provisions of the Constitution, the House of Representatives shall consist of three hundred- and sixty-members representing constituencies of nearly equal population as far as possible, provided that no constituency shall fall within more than one State.

²⁵Bicameral system ensures broad representation particularly in divided societies. It also ensures Improving scrutiny and review of legislation. It enables additional democratic checks and balances in the legislative process.

²⁶For example, large population of individuals belonging to the Igbo ethnic resident in Lagos State has caught the attention of a lot of individuals in Nigeria. Adeseye Ogunlewe, 'Igbos In Lagos State: My Experience By Senator Adeseye Ogunlewe' <<http://saharareporters.com/2013/08/22/igbos-lagos-state-my-experience-senator-adeseye-ogunlewe>> accessed 20 June 2020

²⁷UK Engage, 'What are the Advantages and Disadvantages of Using A Proportional Representation, (PR) Electoral System?' [2013] < <https://www.uk-engage.org/2013/08/what-are-the-advantages-and-disadvantages-of-using-a-proportional-representation-pr-electoral-system/>> accessed 22 June 2020

²⁸Therefore, even though it may be obvious to some states that governance would be more effective with the institution of a bicameral legislative branch, they will not be able to establish a bicameral legislature due to the provisions of section 90 of the Constitution which provides that there shall be a House of Assembly for each of the States of the Federation

on subnational constitution, there are certain benefits of enacting subnational constitutions. Firstly, subnational constitutions could help to establish the administrative arrangement and setup of the subnational government. In the United States for instance, although the federal constitution presumes the existence of state government, it makes no provision for its establishment.²⁹ State constitutions have therefore helped to set up the institutions necessary for, among other things, the creation, interpretation, and enforcement of state law. In other words, subnational constitutions in the United States have helped to structure governance at the state level of the United States of America. Secondly, subnational constitutions could help to regulate and forge basic constitutional precepts at the regional levels. These principles include rule of law, separation of powers, checks and balances, protection of fundamental human rights and etc. State constitutions are thus necessary to provide specific constraints on state government actions, and they have also developed into a meaningful template of individual rights.³⁰ For instance, it has been variously stated that states constitutions in the United States of America are an undeniably important source of positive law within the checks-and-balance scheme of American federalism.³¹ This is also the position with regards to Canada where Quebec has made optimal use of its subnational constitutional space, notably through the enactment of the Civil Code of Quebec and the Quebec Charter of Human Rights and Freedoms.³² Thirdly, subnational constitutions could help to adapt governance at the federating units along the line of the actual needs of the people constituting the particular federating unit. This is in line with the argument that in order to meet the aspirations of the people and establish an equitable society, the constitution should be autochthonous. Therefore, where the subnational constitutions of each state are direct fallout of the particular need of the people in that state, there is likely to be effect and good governance. For example, where the particular demographic makeup of each state is considered in drafting their subnational constitutions, the material effect is that proportional representation, which is generally said to be the best electoral system for deeply divided societies, may be adopted where the population in the particular state is deeply divided. Also, owing to the view that a legislative house with a moderate number could be easily influenced and the member could be effortlessly lobbied by the executive, where it has become obvious that the Governors of particular states are accustomed to controlling and arbitrarily override the House of Assembly, the subnational constitutions could be drafted in such a way to increase the representative capacity of the House of Assembly. Again, in relation to the particular need of the specific state, unicameral or bicameral legislative branch of government could be instituted. Fourthly, by enacting subnational constitutions, the necessary safeguards for constitutionalism could be established. For example, even though the principle of constitutionalism ought to guide the activities of State Governors, where the State Houses of Assembly are not properly equipped to checkmate the activities of the Governors, it is unlikely that the Governors would adhere to constitutionalism. Fifthly, through subnational constitutions, diverse interests could be well managed. Therefore, scholars have argued that subnational constitutions allows for increasing political flexibility for political actors to make concessions that they may not be able to make at the national level and through the provisions in the subnational constitutions, alternative political forums are provided to articulate subnational demands and legitimate dissent for minorities or subunits when specific accommodation and adaptation of the federation is required. For example, it has been argued that subnational constitutions have helped to manage the various nations which comprise Spain. Hence, subnational constitutions have been defended as a valuable contribution of Spanish constitutionalism to achieve accommodation of different nations in a state and as a way to creatively manage conflict with minority or internal nations.³³

4. Conclusion and Recommendations

In this paper, I examined subnational constitutionalism and subnational constitutions. I made the point that the general accusation of state governments of being massively corrupt, the several clamour for resource control by persons of the Niger Delta axis, the several yearnings for state creation by individuals in several states, the reignited push for secession by individuals crying for 'Biafra' in the South Eastern States of Nigeria are indices that the citizenry are frustrated with the perceived absence of subnational constitutionalism in the various states of the Nigerian federation. While I emphasised the collateral relevance of subnational constitutionalism, I also argued that an application of subnational constitutionalism may not be possible without a subnational constitution

²⁹Donald S. Lutz, 'The United States Constitution as an Incomplete Text', [1982] *496 ANNALS*; 23; Jonathan L. 'Marshfield, Models of Subnational Constitutions'; 1166

³⁰Robert F. Williams, 'In the Supreme Court's Shadow: Legitimacy of State Rejection of Supreme Court Reasoning and Result' [1984] *35 S.C. L. REV*; 353

³¹Jonathan L. Marshfield, 'Models of Subnational Constitutionalism'; 1169-70

³²Lawrence David, 'Subnational Constitutionalism and The Concurrent Protection of Religious Freedom: The Canada-Quebec Experience' <<https://www.jus.uio.no/english/research/news-and.../w2-david.pdf>. accessed 22 June 2020

³³César Colino, 'Constitutional Change Without Constitutional Reform: Spanish Federalism and the Revision of Catalonia's Statute of Autonomy', [2009] *Publius the Journal Of Federalism*; 265

which would work to set up a subnational arrangement that guarantees constitutionalism. Again, I made the point that were subnational constitutions are tailored along the specific needs of each states, unlike the uniform constitutional provisions for the thirty-six states presently obtainable, the logical effect is that subnational governance would experience a massive turn around especially with regards to the adherence with constitutional precepts and subnational constitutionalism. I examined the material benefits of instituting subnational constitutions. In scrutinising these benefits, I engaged in a comparative study and arrived at the conclusion that subnational constitutions would help to establish the administrative arrangement and setup of the subnational government. It could help to regulate and forge basic constitutional precepts at the regional levels. It could help to adapt governance at the federating units along the line of the actual needs of the people constituting the particular federating unit. It could also help to establish and emphasise the necessary safeguards for constitutionalism. Finally, at this juncture, it is imperative to posit that subnational constitutionalism and subnational constitution making seem to be the only way forward for the present Nigerian arrangement. I therefore do not believe that achieving resource control would be the finality of the several agitations of persons from the Niger Delta axis. Agreed, that by further creating new states along the line of ethnicity, religion, historical background and etc., the interests of minority groups could be guaranteed to some extent however, due to the burden which associated with state creation and the very fact that constitutionalism may still not be guaranteed in those new state, I also do not believe that state creation would ultimately guarantee effective state administration. Again, I do not believe that secession is the final solution to the perceived inadequate administration in the Nigerian federation and lastly, in order to succeed with the recent effort to combat corruption in Nigeria, there have to be state institutions established against corruption. Otherwise, the present top-down fight against corruption is bound to fail.³⁴

It is on the above premise that I now make the following recommendations. One, the National Constitution of the Federal Republic of Nigeria should be altered so as to accommodate subnational constitutions. Two, if the first recommendation is applied, that subnational constitutions should be created for the various states of the federation. These subnational constitutions should be a true reflection and a genuine breakdown of the specific needs of each state tailored along their historical background. Three, the present district magnitude for election into State Houses of Assembly should be reexamined and where it is clear that certain localities are underrepresented, the legislative seats allocated to such areas should be increased to ensure proportional representation. Therefore, the present Single Member System may not be the best for the Nigerian federation.

³⁴Therefore, the decision of the Supreme Court in *Attorney General of Ondo State v Attorney General of the Federation & Ors.* [2002] 9 NWLR (Part 772) that it is the Federal Government that has the power to combat corruption, has been variously criticised