

CONSTITUTIONALISATION OF THE ROLE OF TRADITIONAL RULERS IN NIGERIA: AN APPRAISAL

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Abstract

It cannot be overemphasised that traditional rulers are primarily the custodians of the traditions and cultures of their people. They also, play significant role in the settlement of disputes and promotion of national development through effective mobilization of the people in their domain to embark on various development programs for their common good. However, the Constitution of the Federal Republic of Nigeria 1999 (the Constitution) has no provision for the role of traditional rulers. Recently, the traditional rulers feel that the non-inclusion of their position and role in the Constitution diminishes their political significance as partners in progress with the Government. Therefore, the traditional rulers have been clamouring for their position and role to be clearly defined in the Constitution. The protagonists of the constitutionalisation of the role of the traditional rulers at various levels of Government contend that the idea is necessary in order to entrench the position of the traditional rulers as partners with government in the democratisation process. The idea has generated a serious debate as to whether indeed the position of and role of traditional rulers in Nigeria should be such matters that should be included in the Constitution, considering the modern democratic governance system which the country has adopted and is struggling to consolidate. The question is, whether a specific provision defining the constitutional role for the traditional rulers is not inconsistent with the idea of modern constitutional democracy especially, under a federal constitution. The article adopted the doctrinal methodology in analyzing the above question and argued that the *status quo* which maintains their traditional and apolitical position will rather sustain rather than undermine or diminish their significance. On the other hand, it will be inconsistent with the principles of modern democracy to establish another organ or institution of government with its new challenges but without special value addition to the democratic governance process at the federal level. Thus, relying on the customary law theory, the article concluded that the role of the traditional rulers being traditional in nature and in a country of diverse traditions and customs should be confined to their various domains under the various State laws. It is therefore recommended, that the informal albeit important peace building role of traditional rulers at the National level can be sustained without making it a constitutional matter with its necessary challenges.

Keywords: Constitution; Constitutionalisation; Democracy; Traditional Ruler

Introduction

Traditional rulership institution in Nigeria has a pre-colonial existence and remains part of the present day polity with diverse roles and influences. There are differences also in the role of traditional rulers in the various traditional societies in Nigeria during the pre-colonial era, the colonial era and the post-colonial era especially. Apart from the differences in their roles during the different epochs, there are also variations in terms of the form and extent of the powers and influences they have in their various domains. These variations are the necessary consequence of the plural character of the country in terms of culture and religion. Today, the development of the modern democratic governance system in Nigeria has in no small measure diminished their political authority without undermining their contribution as partners in progress with the Government.

For some time now, the traditional rulers have been expressing concern that their position in the present democratic system is not defined in the Constitution of the Federal Republic of Nigeria

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1999(as amended)¹ and that there is need for them to be assigned constitutional recognition and role. This has generated debate as to whether indeed they should be recognized and given a defined role to play constitutionally in the light of the democratic governance system which the country has since adopted and is seeking to consolidate. The question is, whether assigning a constitutional role for the traditional rulers is not inconsistent with modern constitutional democratic process and therefore, an antithesis of the idea of traditional or natural rulership. Put differently, to what extent can the traditional rulership system be integrated into the modern constitutional democratic politics which has been adopted under the Presidential Constitution of the Federal Republic of Nigeria?

The protagonists of the constitutionalization of the role of the traditional rulers at various levels of Government contend that the idea is necessary in order to entrench the position of the traditional rulers as partners with government in the democratization process. The protagonists predicate their argument on the view that the *status quo* which did not give the traditional rulers constitutional recognition or specific role undermines or diminishes their significance. On the other hand, the opponents of this view argue that it will be inconsistent with the principles of modern democratic system of government to establish another organ or institution of government in the Constitution with its new challenges, but without value addition to the consolidation of democracy. The point is that the role of the traditional rulers being traditional and customary varies from place to place and from community to community. This is even more so in a country of diverse traditions, customs and religion which should be confined to their various domains under the various State laws as it is being practiced presently. In other words, that the *status quo* which maintains their apolitical position will rather sustain than undermine or diminish their significance.

The article appraises the above issues and argues that the traditional institution is not one of the three main organs of government in a constitutional democracy and the emergence is not predicated on a democratic leadership selection process. Furthermore, their position does not fall within the federal governance architecture in a federal system of government which allows each level of government to retain its peculiar cultural or social identities. Therefore, their role should remain traditional, apolitical and confined to their ethnic social milieu in order not to complicate the federal system of government which Nigeria has adopted.

In order to drive home the above point, the article adopts the doctrinal methodology and examines the previous literatures on traditional rulership in Nigeria. It briefly examines the traditional rulership system in the various geopolitical zones and ethnic societies in the pre-colonial period, during colonial times and after independence. These were juxtaposed with the realities of modern constitutional democracy especially, under a federal constitution which Nigeria has adopted. The article concludes that the agitation for constitutional role for unelected traditional rulers whose role are essentially cultural and in some cases religious and whose impact is limited to their various ethnic domain is an anti-thesis of the Nigerian federal arrangement.

In dealing with the issues arising from the debate, the article is outlined in sections as follows: section 1 is this introduction; section 2 deals with brief explanation of the key concepts; section 3 examines the nature of traditional rulership in Nigeria in the pre-colonial era, colonial era and post-colonial era; section 4 analyses the reconcilability or otherwise of traditional rulership with the modern constitutional democratic system of government; section 5 is the concluding remarks on the issues analysed with recommendations.

¹ Hereinafter referred to as “the Constitution”.

Explanation of Key Concepts

Constitution

The concept of constitution has no precise connotation and as such can be variously explained.² A country's constitution, especially a written one is an indispensable factor in establishing the fundamental principles and the framework for the exercise of governmental powers and the rights of the citizens and their limitations. It establishes the various organs of government and the limits of their powers as well as the necessary democratic institutions to enforce observance of the rule of law. Thus, a constitution prescribes how government is constituted and lays the necessary foundation for constitutionalism and democracy to flourish. The relationship between constitution and democracy lies in the objective of ensuring that the rule of law guides the democratic process. It also provides limitation to the powers of both the government and the governed to ensure the promotion of democratic governance.

Constitutionalisation

Constitutionalisation is the act or the process of establishing a constitution over a state or organization such that its powers are subjected to the discipline of the constitutional procedures and norms contained in the constitution. The constitutionalisation process may take the form of the designing a new constitution or incorporating something (a new provision) into an existing constitution.³ In this article, the concept of constitutionalisation is taken to mean the later that is, the incorporation of the position and role of the traditional ruler as part of the provisions of the Constitution of the Federal Republic of Nigeria 1999.

Democracy

Democracy has become generally accepted as the best form of government and that "real democracy" will offer a ready solution to all the political, social and developmental problems. Because it has no fixed creed and because of its propaganda value all kinds of governance systems proclaim themselves democratic. Thus, it has been taken for granted that democracy is a universally accepted way of life but without a universally accepted definition. Accordingly, the concept has been variously defined and explained depending on one's context, circumstance or ideological inclination. In any event, democracy is presented as a form of government in which the power to govern is derived from the people either by direct referendum (direct democracy) or by means of elected representatives of the people (representative democracy).⁴

However, it has been popularly accepted that democracy as a concept can best be defined as "government of the people by the people and for the people".⁵ From the above definition, it is apparent that the epicenter of democracy is "the people", to whom sovereignty belongs and from whom government should derive all its powers and authority to govern. This implies that, the participation of the people in the democratic process is imperative, if they have to determine their political destiny by themselves. Thus, the hallmark of a true democracy is rule by the consent of the people, which must be determined by their affirmative votes in a free, fair and credible election in accordance with the constitution of a country, which in itself, must have been a product of a democratic process. Hence, democratic governance can only flourish in a governance system in which the leadership selection process is predicated on a democratic constitution.

² See OE Nwebo *Critical Constitutional Issues in Nigeria*, Owerri: Versatile Publishers (2011) 9.

³ <https://www.collinsdictionary.com/us/dictionary/english/constitutionalize> (accessed 10 July 2023); <https://academic.oup.com/book/11994/chapter-abstract/161241913?redirectedFrom=fulltext> (accessed 10 July 2023).

⁴ See OE Nwebo *Political Parties and Promotion of Constitutionalism and Democratic Governance in Nigeria: The Challenge of Internal Democracy* Owerri: Imo State University Press (1921) 17.

⁵ A. Lincoln, in his famous speech called *the Gettysburg Address a "monumental act"* (19 November 1863). available at: <<http://www.abrahamlincolnonline.org/lincoln/speeches/gettysburg.htm>>, accessed 5 May 2017.

Traditional Ruler

The question as to who traditional rulers are and their status in the Nigerian context have remained controversial. There is no precise or generally laid down definition of who is a traditional ruler. This is understandable, considering the reality of the Nigerian diversities in terms of the cultures and traditions of the various ethnic societies, the position or status of the traditional rulers and the role they play. Thus, there are more than 250 different ethno-cultural groups in Nigeria with their own systems of traditional rulership known by their different classifications, levels of authority, titles or stools, powers and influence. Some of the traditional rulers are known as Oba, Sarki, Alarm, Etsu, Attah, Eze, Sultan, Shehu, Emir, Obong, Obi, Tor or Olu and so on. The above differences make it difficult to define the phrase traditional ruler in clear and precise terms.

However, in general terms, a “traditional ruler” may be defined as the traditional head of an ethnic unit or clan who is for the time being the holder of the highest traditional authority within the ethnic unit or clan and whose title is recognised as the traditional ruler title by the Government of the State.⁶ The concept has also been defined as a person who by virtue of his ancestry occupies the throne or stool of an area, has been appointed to it in accordance with the customs and traditions of the area and whose throne has been in existence before the advent of the British in Nigeria.⁷

The obvious problem with the second definition is that a time frame was placed on when a traditional ruler can be so called. This implies that when the position of any ruler did not exist before the advent of colonialism, it was a mere creation. For these later rulers, some authors exclusively reserved the title "Chief" whereas the first group was referred to as traditional or natural ruler. In this article, traditional ruler is taken to include the natural rulers that existed before the advent of colonialism as well as the rulers appointed by the colonial administration or the succeeding Nigerian governments.⁸

Examination of Traditional Rulership in Nigeria

In this article, the various indigenous political governance structures in Nigeria are grouped into two main categories: those with centralised authority and those without centralised authority to highlight the complex situation of the traditional rulership systems in Nigeria. Thus, prior to the establishment of the British administration in what now constitutes Nigeria (which is a creature of the colonial masters) and even thereafter, there was no one governance, administrative or judicial system running throughout the country. The political, administrative and judicial structures were as complex as the country was diverse. Thus, in some jurisdictions, traditional rulers were monarchs or paramount authorities or natural rulers in their kingdoms or ethnic communities. As monarchs, they enjoyed a combination of political, administrative, judicial and spiritual leadership as well as being the custodians of all customs and traditions of their people. In short, to all intents and purposes they enjoyed the title of a king, though the title king in colonial times was exclusively reserved for the British monarch. In some cases they were regarded as the "father" of all citizens

⁶ <https://www.lawinsider.com/dictionary/traditional-ruler>

⁷ SJS Cookey et al *Traditional Rulers in Nigeria* (2010), Safari Books Ltd., Ibadan, 3. This was the definition adopted by the National Conference of traditional rulers in Kaduna in 1983.

⁸ In Nigeria, the systems of the traditional institutions differ as there are differences in terms of cultures and traditions and in terms of the various State Laws. For instance, under the “Imo State of Nigeria Traditional Rulers and Autonomous Communities Law No. 3 of 1999”, provisions were made for traditional rulers and allied matters. In that law, the concept of traditional ruler and “Eze” are used to mean the same. Thus, it provides that: “Eze” means a traditional or other head of an autonomous community who has been identified, selected, appointed and installed by his people according to their own tradition and usages, and presented to the Government for recognition. It made no difference between an existing Eze and a new one. However, an Eze to be properly so called must be recognized by Government. The same applies to many other States of the Federation in accordance with their State Laws.

of his community and sometimes referred to as “royal fathers”. In some other ethnic communities, the traditional rulers did not enjoy kingship powers in its plenitude and in some cases they did not even exist. Instead, there was different leadership or administrative structures under which certain ethnic nationalities were governed.

Thus, there are significant differences in the indigenous governance and leadership structures. Accordingly, the states which now constitute Nigeria could be broadly grouped into “centrally-organized” and “non-centrally organised states”. Dr. Elias in his book referred to these as “Chiefly” and “Chiefless” societies. In the centrally-organized States the Chief, Oba or Emir was always at the apex of the pyramid of the administrative and judicial authority. In other words, in the centrally-organized States, there was always a hierarchical administrative and judicial set-up with the Chief or the Oba or Emir at the apex of authority and the village head at the base of the pyramid.

Typical examples of centrally organized indigenous societies existed in the Hausa/Fulani (forming greater part of the Northern States), the Yoruba Kingdom (now constituting the Western States) and the Bini kingdom (now constituting part of Edo State. In the above societies, the chief, Oba or Emir as the case may be, was the administrative and judicial head, having final economic; and legal control over all the land within his jurisdiction.

The traditional rulers in the centrally organized societies are for the most part chosen through a combination of birth and the input of kingmakers, usually ethnically heterogeneous empires or a group of aristocratic families. These kingdoms have usually a clearly defined territorial foundation and are ethnically strongly homogeneous. Some of the centralized kingdoms are the result of conquest and expansion. Typical examples are the Sokoto Caliphate and the Kanem-Borno empires. The Sokoto Caliphate, under Usman Dan Fodio's leadership, conquered much of Northern Nigeria and established a highly developed and centralised Islamic political structure to rule the region. The Caliph in Sokoto established thirty emirates with numerous sub-emirates to govern the region. Some of the chiefly political formations are commonly found among the Yorubas in the south west of Nigeria, commonly described as a confederacy of kingdoms. They are also found in the Middle Belt (e.g. Aku of the Jukun), the South-East (e.g. Obi of Onitsha), and the South-South (e.g. Oba of Benin) representing traditional African monarchies in the pre-colonial times.

It is important to mention that in most of these centrally organised communities, there is another hierarchy of subordinate chiefs who are appointed by the traditional rulers themselves to assist in the day to day discharge of their duties. These categories of chiefs are in this article not qualified to be referred to as traditional ruler. Thus, there could be a delegation of power to some inferior chiefs and headmen in judicial and administrative matters. Disputes were usually settled by the village head and appeals usually lay to the chief or Oba or Emir, as the case may be. Criminal cases invariably went to the Chief either through the village-head or straight to the chief.

It must be noted, that there is a type of the centralised form of political organisation or Chiefdom composed of a recognised traditional rulers, appointed by the government, who wields authority over an area/district assigned to him. These chiefs did not emerge through ancestry but rather a creation of Indirect Rule and found particularly in the Middle Belt. In these chiefdoms, succession was by rotation among the ruling houses.

The prominent groups among the category of the non-centrally organized societies, that is, societies without centrally organised administrative and judicial set-up were the Igbo (now forming most part of the present South Eastern States and some part of Middle Belt especially the

Tiv and parts of the South-South especially, Delta and Rivers States. Their political systems are characterized by non-existence of hereditary rulers and officers. Sometimes, these societies are described as acephalous systems or segmented or "stateless societies". These societies are typified by the absence of an outstanding leader or central authority in that political power is diffused and exercised by heads of different segments or lineages of a political community over their subjects. The people were organized in units of clans, villages and kindreds or families. The Council of Elders performed Judicial and administrative functions in the various units.

Contrary to the eurocentric understanding of the Igbo traditional society which portrays it as acephalous or stateless, without a central or coordinating political authority. (Green, 1964:8) on the other hand, a more nuanced study of the Igbo traditional society shows that the Igbos had an indigenous political governance system that was decentralized and segmented (Uchendu 1965; Ejiofor, 1982, stride and Ifekaa, 1971) and which ensured effective decision, execution and adjudication processes. Thus, the Igbo political system for the most part, can be rightly described as democratic, publican or Segmentary, involving debate and representation followed by a final decision that is communicated to the sub-units for execution. This system has more or less survived the modern democratic system and indeed compatible with modern democratic governance system, in that it is essentially consultative, representative and participatory and adaptable.⁹ This is as against the position in centralized governance systems where the traditional rulers as monarchs exercised ultimate administrative and judicial authority.

From the foregoing, it could be seen clearly that long before the arrival of the British people and the establishment of their system of government and administration of justice, each of the territories which together now constitute Nigeria had their own governance systems, law making and Administration of Justice that worked very effectively for the natives. It is therefore not surprising that the colonial administration recognized it and wisely utilized the existing system to complement the governance of the various territories.

Thus, under the colonial era, the British administration effectively utilized the existing traditional rulership system to administer the local communities. The system was institutionalized as the policy of indirect rule by which local governance was left in the hands of the traditional chiefs who were empowered to collect taxes and dispense law and order under the guidance of the British officials. The British administration appointed traditional chiefs in those indigenous societies without centralized political set up to assist them in governing the locals. Indirect rule was very successful in the North and partially successful in the West where there were existing central authorities. However, the system was not successful in the non-centralised indigenous authority like the Igbos where indirect system experienced resistance.

In any case, it is apposite to point out that the basic difference between the indigenous administrative and judicial systems and that of the British governance system majorly lies in the absence of Separation of Powers in the indigenous societies. Both the Council of Elders in the non-centrally-organized States and the Chiefs, Obas or Emirs in Centrally organized combined both administrative, legislative and judicial powers and functions.

Analysis of the Role of Traditional Rulers in a Constitutional Democracy

Functions of Traditional Rulers

It cannot be overstressed, that the life of the Nigerian people is deeply rooted in their cultural

⁹ This conclusion is without prejudice to the minor exception found among the Igbos of Onitsha and Agbor who have kings. For instance, the Obi of Onitsha ruled his people with his Ndi Ichie (Red cap Chiefs).

values and tradition. In this regard, the role of traditional rulers in Nigeria as the custodians of the culture and tradition of their people cannot be overemphasized. Thus, in a number of situations, the traditional rulers have been recognised generally as men of great wisdom and knowledge who could advance the process of socio-economic development. Some have brought their initiatives to bear and acted pro-actively and sometimes when consulted to ensure that development plans in their domains were influenced by their input especially, at the local government level. In this way, their wealth of experience has been brought to bear on the formulation, execution and monitoring of development plans to the benefit of the people.

Prominent among the functions of the traditional rulers are the following:

Maintenance of Law and Order-Traditional rulers usually assist the government in maintenance of law and order in their communities as well as promoting peaceful co-existence of people of different religious, ethnic and social backgrounds;

Judicial Functions-The traditional rulers perform judicial functions by engaging in the settlement of disputes among members of their communities in accordance with their customs and traditions especially in disputes involving land matters and inheritance. They also play leadership role in the settlement of inter community disputes;

Peace Building-In periods of national crisis in Nigeria or inter-state crisis, traditional rulers on their initiative or on the request of government usually intervene to broker peace and stabilize the system, thereby promoting national unity and the corporate existence of the country;

Mobilisation of the People to Support Government Programmes-The people generally have more trust in their traditional rulers than government. This enables them to maintain a working relationship between the government and the people especially in communicating and supporting development programmes especially, in the areas of sanitation, health, agriculture political education and so on;

Community Development-The traditional rulers mobilise their people to engage in community development projects such schools, dispensaries, water and electricity in collaboration with the town union or community associations;

Adviser to Government-the traditional rulers in some states advise government at various levels on issues relating to customs and traditions of the people and law and order.¹⁰

Challenges of the System of Traditional Rulership

The roles and functions of traditional rulers as summarized above no doubt show that the traditional rulers are very relevant as veritable partners with government in the achievement of good governance in Nigeria. However, the traditional rulership institution is not without its own challenges. The challenges include but not limited to the following:

There is no uniform process of the emergence or selection of traditional rulers in Nigeria. Most of them emerged through inheritance or appointment without the participation of the subjects except

¹⁰ Various States in the Nigerian Federation have their own Chieftaincy or Autonomous Communities Laws and made provisions for the organization and roles of their traditional institution. For instance, under the Traditional Rulers and Autonomous Communities Law No. 3 of Imo State, the State and Local Government Councils of Ndi Eze (traditionals rulers) are established and assigned specific functions for the Councils and the Ezes (recognized traditional rulers respectively).

a select few kingmakers, contrary to the modern democratic process of leadership selection which is by means of general election. Thus, in most cases the selection processes are inconsistent with the modern Western democratic pattern which we have adopted; There are no uniform process of administration of the various ethnic groups or communities due to the differences in cultures and religions and the role played by the traditional rulers. Furthermore, the territorial jurisdictions of the traditional rulers differ in terms of size and the extent of their authorities over their subjects; In some geographical zones or States in Nigeria the number of traditional rulers are few ruling over large population while in some others the number is humongous ruling over few inhabitants. In fact, there is proliferation of traditional rulers in some states especially the south Eastern States to a scandalous proportion, leading to perennial conflicts, instability and infighting amongst traditional rulers for supremacy even amongst the members of a community seeking for new autonomous status; There is disparity on the mode of payment of traditional rulers. Some are paid salaries, allowances or stipends by the States or Local Governments or their communities as the case may be. Some argue that it should be the responsibility of the government, while others argue that it should be that of their communities. There is also disparity in terms of the sufficiency of the amount they are paid, with all the implications on the loyalty of the traditional rulers; The apolitical position of the Nigerian traditional rulers raises some problems. However, it is a known fact that most of the traditional rulers tend to be on the side of the government or party in power, even at the risk of being occasionally opposed by the majority of the people in their domain. It is also a known fact that some of them have been deposed on account of the political leaning of the traditional rulers;

Though generally the traditional rulers are respected as men of honour and integrity some of them are perceived as corrupt and as pursuing their selfish interests at the expense of the welfare of their people and as betraying the peoples' confidence by being more concerned with pleasing even bad government in power than with pursuing the interests of their people. Some-times, some of them have also been implicated in the commission of heinous crimes.

It cannot be denied that the role of traditional rulers differ in content according to the differences in the class or status, their jurisdictional coverage and ethnic value systems having regard to the plural character of the Nigerian state. Nevertheless, the continued existence of traditional rulers in the present democratic dispensation cannot be dispensed with. The question remains as to whether their role justifies making their position a matter for the constitution. Thus, the demand for a place in the Constitution needs to be juxtaposed with the above challenges and what the Nigerian contemporary democratic system requires, such that ultimately the country will have a realistic constitutional framework for the consolidation of democracy.

Traditional Rulership and the Democratic Governance in Nigeria

In retrospect, before Nigeria gained independence in 1960, the traditional rulers were part of the political process in one form or the other. The nationalists/political elites carried them along in the formation of political parties and the struggle for independence. However, the contention by a cross-section of nationalists and the emergent political parties was that the institution of traditional rulership was in direct conflict with democratic ideals as the system was gathering considerable momentum. After independence, the political elites continued to try to reduce the influence of traditional rulers in local decision-making. However, under the 1960 and 1963 constitutions roles were created for the traditional rulers. At the federal legislature some special class among them were members of the Senate.¹¹ The legislatures of the regions were composed of the Houses of

¹¹ See for example Section 34(ii) of the Constitution of the Federal Republic of Nigeria 1963 which made provision for the *ex-officio* membership of Senate for the Oba of Lagos and a Chief selected in such manner as may be prescribed by Parliament.

Assembly and the House of Chiefs.¹² Recall that this was under a parliamentary system of government in which there was fusion of legislative and executive powers. Thus, the traditional rulers enjoyed these competences and powers during the Nigeria's First Republic (1963-1966).

From 1960 to 1966, when the military seized power, the democratisation effort in Eastern and Western Regions had a significant adverse effect on influence of traditional rulers in local decision-making. In most parts of the Northern Region, however, the Emirs were still in control of their Councils as the democratisation effort appeared to be neutralised by their overwhelming influence. It is instructive to note that upon the assumption of political power by the military in January 1966 the role, influence and participation of traditional rulers in the governance of the country began to take a new shape. At both the federal and State levels they virtually had no significant role to play other than to merely support the military in power. At the local government level the traditional rulers played limited roles which has been aptly described in the following terms:

In the Northern States between 1966 and 1972 Customary/Native Courts were taken over by state governments, and Prisons and Police were taken over by the Federal Government. The nomenclature of Native Authority was dropped and the existing Native Authorities balkanised into independent local government units, but the Emirs were still influential in the decision-making process at the local level. New provisions were introduced for election of two-thirds of the membership of the Local Government Councils. In Western states (including the Mid-west), before 1966, the role of traditional rulers in local government had been essentially ceremonial. The situation was the same in parts of the Eastern States where traditional rulership still existed.¹³

The above was generally the position of the traditional institution until the introduction of the 1976 Local Government Reform which insulated them from politics and formally assigned advisory roles to them under the local government system which was an appendage of the state governments. This was not without strong opposition from the traditional rulers in the Northern part of the country, where traditional rulers where there is more or less dynastic traditional institutions, the traditional rulers continued to play a significant role in the decision making process at the local level. Thus, it appears that the problem of traditional rulers is more of a Northern problem where the existence of dual authority structure, the traditional and the secular is very pronounced.¹⁴ Against this background, the 1979 Constitution, did not even mention or provide any role for the traditional institution even in the local government as their role was merely advisory/ceremonial. The debate over the agitation of the traditional rulers for constitutional recognition of their role in local government probably led to the attempt under the ill-fated 1989 Constitution to spell out the functions of a Traditional Council at local government level. As was the case in the 1979 Constitution the 1999 Constitution did not mention or specify any role for the traditional authorities.

¹² For instance, Section 4 of the Constitution of Northern Nigerian Law, 1963 states that there shall be a Legislature for the Region, which shall consist of the Governor, a House of Chiefs and a House of Assembly. See also Section 4 of the constitution of eastern Nigeria and Western Nigerian Law 1963 respectively, which states that there shall be a Legislature for the Region, which shall consist of the Governor, a House of Chiefs and a House Assembly. Similar provision was made under the Constitution of Mid-Western Nigeria Act 1964.

¹³ Daniel Adetoritse Tonwe and Osa Osemwota "Traditional Rulers and Local Government in Nigeria: a Pathway to Resolving the Challenge" <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewiOrtr35N-CAxWWVUEAHZsGBXQ4ChAWegQIBxAB&url=https%3A%2F%2Fepress.lib.uts.edu.au%2Fjournals%2Findex.php%2Fcgjlg%2Farticle%2Fview%2F3728%2F3869&AOvVaw1flqfuvPbLz3rOvfqEuvLd&opi=89978449> usg=

¹⁴ As above.

The Constitution merely guaranteed the existence of local government system “under a democratically elected local government councils”, under a law of the state which shall ensure its existence and provide for the establishment, structure, composition, finance and functions.¹⁵ The contemporary position of the traditional institution in Nigeria is that the political arrangement did not assign any constitutional role to them. However, they are assigned nominal advisory roles in states and local government affairs under the various state laws, which are not fully respected. Hence, the debate over the agitation for constitutional recognition and assignment of role for the traditional rulers continues to reverberate thereby calling to question the need to resolve the conundrum of the retention of traditionalism and modernism *pari passu*.

The foregoing clearly indicates that in the pre-colonial era, traditional rulership systems effectively served the people as they were practiced in the various ethnic societies and groups in Nigeria before colonialism. The traditional rulership system also substantially served the administrative interest of the colonial administration during the colonial era as they played a significant and active role in the governance of local communities. However, controversy arises when juxtaposing their relevance under the present day modernizing polity with divergent opinions. In analyzing the controversy, three schools of thought have been identified.

According to Egwurube,¹⁶ there are three schools of thought in this regard with particular reference to a democratically elected local government system. One school contends that the institution of traditional rulership should be abolished, as it is an anachronism in a democratically elected local government system, guaranteed under Section 7(1) of the Constitutions. It is therefore, anomalous to have the parallel institution of traditional rulership which emerged on the basis of local customs and tradition governing with a democratically elected local government council based on competitive and participatory process. The abolitionists are therefore of the view that if the country is serious with the adoption of the democratic and participatory culture needed to quicken the pace of modernisation, then the traditional rulership system should be abolished to develop an enduring democratic culture. Though the position of the abolitionists is logical, considering the high degree of acceptance of traditional authorities particularly in the rural areas the traditional rulership cannot be easily abolished without negative effect on the democratic stabilization process. The second school of thought argues for the enhancement of the role of traditional rulers by allowing traditional rulers to participate in politics. The adoption of this strategy is bound to be clouded with a number of difficulties including the subjection of the traditional rulers to the rigors of the electoral processes thereby, undermining of their legitimacy and sacredness in the eyes of the citizenry. The third school of thought is the retentionists, which favours the retention of the traditional authorities as participatory local government actors in advisory and non-executive capacities. This option will not only ensure stability and continuity of emergent local government system based on democratic and participatory principles, but would also tap the strength of traditional authorities in the sphere of citizen mobilisation and acceptance of local government policies thereby, reducing potential acrimonies and confrontation between local government actors and traditional authorities.¹⁷

This article adopts the retentionists’ option which appears to be in line with the present federal arrangement as against the radical abolitionists’ option. The retentionist option is preferred because it integrates the traditional institution into the country’s contemporary local government system as

¹⁵ See Section 7 of the Constitution.

¹⁶ Egwurube, J. (1985) Traditional Rulers and Local Government under the 1979 Nigeria Constitution. In Aborisade, O. (Ed.) Local Government and Traditional Rulers in Nigeria. Ile-Ife: Unife Press. Cited in

¹⁷ See Daniel Adetoritse Tonwe and Osa Osemwota “Traditional Rulers and Local Government in Nigeria: a Pathway to Resolving the Challenge” generally note 13 above.

may be designed under the law of each state in keeping with the local circumstance. This will enable the system benefit from their wealth of experience, privileged position and acceptance with the people to contribute to the achievement of good governance and rapid development which modern democratic governance promises.

For the protagonists of constitutionalisation, due to the relevance of traditional rulers in the governance of the people, particularly in the grassroots, they should have formal constitutional role in Nigeria's present democratic process. They argue that the very essence of participatory democracy and inclusivity connotes the integration of institutions like the traditional rulership institution into the constitution in building a sustainable and the cohesive democracy which the legitimacy of Nigeria's traditional rulers provides especially, at the grassroots. While admitting that the role of monarchs and the nobility should be integrated into governance as a key component of participatory democracy, they need not be included in the federal constitutional framework as they are not and should not be imbued with legislative, executive or judicial mandate.

Conclusion and Recommendation

In determining whether the role of traditional rulers should be Constitutionalised as being suggested, or not, account must be taken of the fact that the traditional rulership systems in Nigeria are varied in terms of types, hierarchy, roles and authorities in their communities.¹⁸ In a federation, a single policy decision may not be able to accommodate these disparities. Thus, any policy thrust must take cognizance of the fact that laws are made to conform to the generally accepted way of life of the society where it is meant to apply. The patterns of traditional rule in the Nigerian communities are diverse in terms of tradition, authority, class and influence thereby raising challenges as already indicated above. For instance, as earlier alluded to, the Hausa/Fulani traditional society is characterised by a socio-cultural and religious unity anchored on their aristocratic system of government and politics with a highly centralised form of government in which the rulers had political, cultural and religious authorities. In general terms, the Yorubas owed cultural, political and spiritual allegiance to a common ancestor, *Oduduwa*. They traced their mythical origins to *Ile-Ife*, a place they still fondly refer to as the cradle of civilisation. Though their traditional political organisation is similar to what obtains among the Hausa/Fulani it is loosely centralised with semi-independent states under a monarch. In the case of the Igbo society and some other societies in some parts of the country, their traditional political organization is non-centralised and without an all-powerful monarch, with a few exceptions.

Traditional rulers have all along been recognized, respected and involved in the governance of the country, being part of the peace building process of the nation and the promotion of national development through effective mobilisation of their people for development programmes. However, taking into consideration the fact that their roles are majorly primordial-cultural, spiritual and religious, traditional rulers should remain as advisors of government in cultural matters and as representatives of people in various Commissions and Boards dealing with cultural matters and chieftaincy affairs and any Board for that matter when required. At a time when the country is tinkering with the idea of devolving power to the states and reducing the size of the existing federal institutions under a dwindling economy, it is antediluvian to seek to create a role for traditional rulers in a federal constitution, with all its challenges. If care is not taken, religious leaders and other "important" will also begin to seek constitutional recognition and role. Thus, any traditional ruler who desires an elective office or a special role in government has the constitutional right to resign his position and join the fray.

¹⁸ See generally SJS Coockey et al *Traditional Rulers in Nigeria* (2010), ch. 4, Safari Books Ltd., Ibadan.

Therefore, in a plural society like Nigerian, politics should be played within a federal constitutional framework or democratic arrangement which is conducive for the various nationalities to retain their diverse traditional systems while collaborating in areas of common interest. Accordingly, the article recommends, that in a true federal system of government, not all institutions of government should be provided for in the federal constitution particularly, institutions whose roles are local and therefore relevant to the people they serve and their role should be provided for by the law of that level of government. Thus, although the Constitution has no provision for traditional rulers, yet legally they are recognized and assigned roles at the States, local government and community levels where they hold sway. The traditional rulers as partners in progress under the various State laws which established Council of Traditional Rulers at State and local government levels with responsibilities. The statuesque should therefore be maintained to let sleeping dogs lie instead of opening the pandora's box.