

**DELIBERATIVE DEMOCRACY AND PROBLEMS OF DEMOCRATIC
GOVERNANCE IN NIGERIA**

by

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Abstract

Problems of democratic governance in Nigeria are traceable to the impact of colonialism on, the prevalence of identity politics in, and the skewed structure of Nigeria's constitutional framework. Previous scholars who have inquired into these problems had mostly concluded by either recommending the alteration of Nigeria's constitutional composition or proposing the (re)enactment of the Nigerian constitution. However, both proposals had proven futile, as previous attempts to actualize them had resulted in several ethnoreligious conflicts - including the ongoing Boko Haram menace in northern Nigerian and the Biafra secession agitation in eastern Nigeria - both of which continue to undermine the prospect of genuine nationhood in Nigeria.

Analyses of these challenges reveal bottlenecks that neither constitutional amendment(s) nor alteration of Nigeria's constitutional order could address. For instance, the theme that runs through the Boko Haram menace and the Biafra secession agitation is the dissatisfaction of marginalized Nigerians with the governance of Nigeria and its political economy. Against this backdrop, this thesis examines and proposes means through which the voices of marginalized Nigerians could henceforth become central to the norms and integral to the tactics that the Nigerian government would subsequently rely on to govern.

In democratic and political theories, only deliberative democracy - which emphasizes inclusivity and civic dialogue in the decision-making process - has the potential to actualize the above-noted aspirations. Deliberative democracy intermittently achieves said inclusivity by strategically manipulating and maneuvering civil discourse to ensure that participants in public spheres reach agreements that express and reflect their collective desires. Despite the potential of deliberative democracy to address Nigeria's endemic democratic governance problems, several challenges undermine its fruition. These challenges *inter alia* encompass governance practices of elite domination,

corruption prevalence, and the unwillingness of the Nigerian government to accommodate and encourage civil disobedience of Nigerians. Conceptualizing how and modifying the precepts of deliberative democracy to address these problems is this thesis's overall objective. To guarantee that subsequent democratic decisions in Nigeria would produce fair and just outcomes for all Nigerians, this thesis concludes by arguing that confluence and not consensus should be the ultimate aspiration of deliberative democracy in Nigeria.

Lay Summary

Nigeria has several democratic problems that hinder Nigerians, particularly those marginalized, from actualizing their socio-economic and political aspirations. To address these problems, researchers often recommend enacting a new constitution or altering Nigeria's current constitutional make-up. Previous attempts to realize these recommendations had precipitated several ethno-religious and political conflicts that have continued to undermine Nigeria's democracy. Aware of these shortcomings, this thesis urges for neither. Instead, it conceives means through which Nigerians, particularly those marginalized, could participate in the governance of Nigerians and its political economy. Doing so could foster a sense of belonging amongst marginalized Nigerians, which could consequently reduce the dissonance between them and Nigerian elites on issues of Nigeria's democratic governance. In conceiving this recommendation, this thesis established that Nigeria's existing constitutional order is amenable to this form of democratic governance, thus further undermining the relevancy of the recommendations of previous researchers noted above.

Preface

This thesis is an original and independent intellectual product of the author, Oluwaseun O. Ajaja. Parts of Chapter two have been published as “Oluwaseun O. Ajaja, "Unearthing the Principles of Deliberative Democracy within the Framework of the Extent 1999 Constitution of the Federal Republic of Nigeria" (2020) 41. Unilag Law Review 71 -105.”

Table of Contents

Abstract.....	iii
Lay Summary.....	v
Preface	vi
Table of Contents	vii
Acknowledgments	ix
Dedication	xi
1. General Introduction	1
1.1. Research Questions	1
1.2. Background and Objectives of this Research.....	16
1.3. Literature Review of Deliberative Democracy Relevant to this Thesis.....	22
1.3.1. The Originalists	26
1.3.2. The Progressives.....	30
1.4. Objectives of this research	36
1.5. Proposed Methodologies.....	37
1.5.1. Qualitative (Historical, Archival, and Textual Analysis) Research Methodologies	37
1.5.2. Doctrinal Research Methodology	40
2 Deliberation Principles within the Framework of the 1999 Constitution of Nigeria	42
2.1. Introduction.....	42
2.2. Deliberation Principles within the 1999 Constitution of Nigeria.....	43
2.2.1. Public Reasoning / Public Justification Principle.....	45
2.2.2. Limitation Principle	51
2.2.3. Entrenchment Principle	64
2.3. Reflections on the Deliberation Principles within Nigeria’s Constitutional Framework....	73
2.4. Conclusion.....	77
3. Governance Practices that currently undermine Democratic Governance and could hinder the potential of Deliberative Democracy in Nigeria	78
3.1. Introduction.....	78
3.2. Analysis of Governance Practices that could negatively impact the potential of Deliberative Democracy in Nigeria.....	80
3.2.1. The Problem of Elite Domination	80
3.2.2. Prevalence of corruption in Nigeria	87
3.2.3. Unwillingness to Accommodate Civil Disobedience and Protest	92
3.4. Conclusion.....	96
4. Institutional Means that could ensure the Potential Vibrancy of Deliberative Democracy in Nigeria.....	97
4.1. Introduction.....	97
4.2. Criticism of Consensus as Deliberative Democracy’s Ultimate Objective	101

4.3.	Benefits of Confluence as Deliberative Democracy’s Ultimate Aspirations	103
4.4.	Conceptualizing Institutional Means to Guarantee the voices of Marginalized Nigerians in the Nigerian Public Sphere	106
4.4.1.	Institutional Group Representations.....	111
4.4.2.	Citizens’ Jury	114
4.4.3.	Nigerian Citizens’ Assembly.....	116
4.5.	Framing the Subject of Deliberation	117
4.6.	Conclusion.....	119
5.	General Conclusion.....	120
	Bibliography	127

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I must also note that the generous funding and support that I received from the UBC Faculty of Graduate and Post-Graduate studies and Allard Hall ease the burden of and contributed to the success of my graduate studies. Similarly, the research assistant jobs that I had availed me with the opportunity to engage seasoned experts researching deliberative democracy, federalism, constitutionalism, unconventional negotiations, and human rights. The outcomes of our conversations further influenced my research and by extension, this thesis.

As this thesis progressed, I submitted draft manuscripts for publication in prominent journals. The feedback and critique from the anonymous reviewers who read my manuscripts improved my understanding of and challenged some of my conceptions about problems of democratic governance in quasi-liberal constitutional orders like Nigeria. To these anonymous reviewers, I say thank you.

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I am equally reminded of the beauty and importance of friends - both old and new - too numerable to mention, who made my experience at UBC, Vancouver, and Canada memorable. In them, I found laughter, happiness and solace, especially during the period when the uncertainty of 2020 raged on. I cannot quantify my appreciation for their love, encouraging words and continuing support. Finally, I say thank you to my family, particularly my parents and siblings – Omolola, Olamilekan and Oluwapelumi. Their faith in and love for me never wavered, and for that, I remain eternally grateful.

Dedication

Oluwafunmilayo Adedoyin Deborah Ajaja

Mum, Mentor, Conscience, Confidant, and Best friend

Thank you for all you do and did for me.

+

Oluwadumininu & Oluwafiadunsiayemi, Ajaja

Inspiration, Source of Joy, and Hope

Thank you for the laughter you bring and the wounds you have healed

1. General Introduction

1.1. Research Questions

Presently, is the Nigerian constitutional order amenable to genuine engagement between the Nigerian government and marginalized Nigerians¹ (hereafter referred to as Nigerians) on governance issues? What democratic practices constrain deliberative democracy's potential in Nigeria? To thrive alongside Nigeria's extant mode of governance, which norms of deliberative democracy must be reconceived? These research questions, which, in summary, inquire into the potential of deliberative democracy to address Nigeria's democratic governance problems, are queries that this thesis will address. Scholars who previously researched the challenges of democratic governance in Nigeria had either recommended enacting new constitutions² or altering Nigeria's extant constitutional make-up.³ However, the failure of both proposals to actualize the socio-economic and political aspirations that Nigerians crave reveal their ineffectiveness and inadequacy.

Since Nigeria negotiated and attained independence from Great Britain in 1960, the extant 1999 constitution (as amended) is Nigeria's fifth constitutional enactment. Yet, due to the lacklustre commitment of successive Nigerian governments to democratic ideals, the prevalence of

¹ By marginalized Nigerians, I refer not only to those who live in extreme poverty but also to those who are powerless to confront existing injustices that they experience daily. Their powerlessness is tied to the skewed structure of Nigeria's constitutional order that frustrates attempts at demanding accountability from the government and seeking justice for injustices suffered. These marginalized Nigerians generally earn less than 5.5 USD a day, and they comprise about 90% of all Nigerians. See <<https://www.macrotrends.net/countries/NGA/nigeria/poverty-rate>> accessed on May 22, 2020.

² Julius Ihonvbere, "How to Make an Undemocratic Constitution: The Nigerian Example" (2000) 21:2 Third World Quarterly 343–366; Tunde I Ogowewo, "Why the Judicial Annulment of the Constitution of 1999 Is Imperative for the Survival of Nigeria's Democracy" (2000) 44:2 Journal of African Law 135 - 166.

³ Ignatius Akaayar Ayua & CJ Dakas, "Federal Republic of Nigeria" in John Kincaid & Alan G Tarr, eds, *Constitutional Origins, Structures, and Change in Federal Countries* (Montreal and Kingston: McGill-Queen's University Press, 2005) 241; J Isawa Elaigwu, *Nigeria: Essays in Governance and Society*, 1st ed (London: Adonis & Abbey Pub, 2012).

undemocratic governance practices (three of which I will discuss in chapter three of this thesis), and several unresolved socio-economic issues,⁴ the voices of Nigerians remain peripheral to the norms that the Nigerian government prescribes and incidental to Nigeria's democratic governance and practices.⁵ Resultantly, Nigerians have continued to clamour for a more equitable and engaging process to the governance of Nigeria⁶ and its political economy.⁷ These incessant agitation of Nigerians - which *inter alias* are consequences of identity politics⁸ in and elite domination⁹ of Nigeria's socio-economic and political space - are evidence that mere constitutional (re)enactment is incapable of addressing Nigeria's governance problems.¹⁰ Equally noteworthy is that said identity politics and elites' domination of Nigeria's governance framework are traceable to the aftermaths of colonialism.

When the British government formally began administering the territorial area now known as Nigeria in 1900, it divided said territorial area into three distinct administrative units: the Colony of Lagos, the

⁴ Micheal Ogbeyi, "Political Leadership and Corruption in Nigeria since 1960: A Socio-Economic Analysis" (2012) 1:2 *Journal of Nigeria Studies* 1–25; Dele Babalola, *The Political Economy of Federalism in Nigeria*, 1st ed. 2019 ed, Federalism and Internal Conflicts (Cham: Springer International Publishing : Imprint: Palgrave Macmillan, 2019).

⁵ Dhikru Adewale Yagboyaju & Adeoye O Akinola, "Nigerian State and the Crisis of Governance: A Critical Exposition" (2019) 9:3 *SAGE Open* 1–10. For a detailed analysis of the history of Nigeria, see Toyin Falola & Matthew M Heaton, *A History of Nigeria* (Cambridge, UK ; New York: Cambridge University Press, 2008).

⁶ Walter Idada & SO Uhumwuangho, "Problems of Democratic Governance in Nigeria: The Way Forward" (2012) 3:1 *Journal of Sociology and Social Anthropology* 49 - 54.

⁷ Oliver Owen, "Revenue and Representation: The Political Economy of Public Participation" in Carl Levan & Patrick Ukata, eds, *The Oxford Handbook of Nigerian Politics* (Oxford University Press, 2018) 472.

⁸ Rotimi Ajayi, "The Anticolonial Struggle in Nigeria" in Carl Levan & Patrick Ukata, eds, *The Oxford Handbook of Nigerian Politics* (Oxford University Press, 2018) 88, 93.

⁹ Adekunle Amuwo, "Between Elite Protectionism and Popular Resistance: The Political Economy of Nigeria's Fractured State since Juridical Independence" (2010) 28:4 *Journal of Contemporary African Studies* 423 - 442.

¹⁰ Sulaimon Adigun Muse & Sagie Narsiah, "The Irony of Democracy in Nigeria" (2015) 6:3 *Journal of Sociology and Social Anthropology* 409 - 414. The authors of this article highlighted challenges that undermine Nigeria's democracy governance. These problems are reinforced by Nigeria's grundnorm, democratic practices and governance styles. What is equally instructive is that the machinery that ought to entrench democracy in Nigeria are also the ones undermining it.

Protectorate of Northern and the Protectorate of Southern Nigeria.¹¹ While the Colony of Lagos and the Protectorate of Southern Nigeria had diffused political governance structures of limited governments based on diverse traditional beliefs; the governance framework of the Protectorate of Northern Nigeria was centralized in the Sultan of Sokoto who was also the spiritual head of the several predominantly Muslim communities that comprised that Protectorate.¹² As a theocracy, the Sultan wielded absolute powers, and in exercising said powers, appointed Emirs (local traditional rulers) to govern the respective communities that comprised the Northern Protectorate.¹³ The Northern Protectorate's centralized governance structure made it more amenable to the British colonial government's indirect rule.¹⁴ In contrast, the diffused governance framework and diverse spiritual beliefs of the several communities that comprised the Protectorate of Southern Nigeria were unamenable to the British colonial government's indirect rule.¹⁵

To express their dissatisfaction with the British colonial government's (the colonialists) attempt, via indirect rule, to impose a centralized governance structure on them, most of the diverse communities that comprise the Protectorate of Southern Nigeria continually challenged the colonialists on most governance and administrative issues.¹⁶ Although the colonialists were dissatisfied with the activism of the diverse communities that comprise the Southern Protectorate of Nigeria, the latter's proximity to the trade route of the Atlantic Ocean and other water bodies made it a necessary evil that the

¹¹ J Isawa Elaigwu, *The Politics of Federalism in Nigeria* (London: Adonis & Abbey, 2007), 23 - 24.

¹² Owen, *supra* note 7, 474 - 475.

¹³ J A Burdon, "The Fulani Emirates of Northern Nigeria" (1904) 24:6 *The Geographical Journal* 636.

¹⁴ Owen, *supra* note 7, 474 - 475.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

colonialists had to engage adeptly.¹⁷ Aided by its decentralized governance framework, communities in the Protectorate of Southern Nigeria - relying on the principles of capitalism and their proximity to the Atlantic ocean - successfully engaged in foreign trade, and subsequently became more affluent than the centralized governed and landlocked Protectorate of Northern Nigeria.¹⁸

Since the Southern Protectorate was more financially buoyant than its Northern counterpart, the colonialists - purely for financial reason, and in response to the British Government's directive that its overseas territories must become financially independent - decided in 1914, to amalgamate the Northern and Southern Protectorates, to create the entity called Nigeria.¹⁹ Through amalgamation, the colonialists relied on taxes imposed and other revenues generated in the Southern Protectorate to administer the entirety of Nigeria.²⁰ To date, this administrative procedure remains the norm of Nigeria's political economy, and its continued reliance contributes to the mounting enmity on issues pertaining to resource control and governance of Nigeria.²¹ I attribute this reasoning to the fact that the diverse communities in the then Southern Protectorate of Nigeria continue to believe, and rightly so, that they, and not the communities in the Northern Protectorate of Nigeria, should be controlling, or in the least, exerting visible influence on Nigeria's political economy and oil wealth.²²

¹⁷ Ajayi, *supra* note 8, 93.

¹⁸ *Ibid.*

¹⁹ Owen, *supra* note 7, 473.

²⁰ *Ibid.*

²¹ Babalola, *supra* note 4; Owen, *supra* note 7.

²² Muhammad Kabir Salihu, "Essays on the Political Economy of Development in Nigeria" (2017), online: <[http://www.research.lancs.ac.uk/portal/en/publications/essays-on-the-political-economy-of-development-in-nigeria\(57b851f7-c43c-48e6-b2c0-7b850a29e66a\).html](http://www.research.lancs.ac.uk/portal/en/publications/essays-on-the-political-economy-of-development-in-nigeria(57b851f7-c43c-48e6-b2c0-7b850a29e66a).html)>. In this unpublished thesis, Salihu explained the consequences of northern Nigeria's continuing towering influence and control of Nigeria's political economy.

Moreover, because financial consideration was the basis for the amalgamation of Nigeria, the colonialists continued to govern the Colony of Lagos, as well as the Northern and Southern Protectorate of Nigeria, as distinct administrative units.²³ The colonialists subsequently side-stepped the governance framework that existed in the respective communities that comprised the Southern Protectorate.²⁴ They did so to stem the rising tides of anti-colonial activism taking hold in said communities.²⁵ To replace these side-stepped governance structures, the colonialists arbitrarily elevated to positions of authority some indigenes of those communities, who were more amenable to indirect rule.²⁶ The elevation of these indigenes, whom many southern Nigerians viewed as illegitimate, set the stage for elites' domination of Nigeria's socio-economic and political space. Sadly, said elites' domination not only continues to exist today but has become a stranglehold on the prospect of entrenching good governance in Nigeria.²⁷

To counter and promptly challenge the arbitrary elevation of these indigenes, many young Nigerian nationalists from communities in the Southern Protectorate, who had travelled to the United States and Europe to study and work, returned and began to clamour for increased representation of Nigerians (including the disempowered traditional rulers) in Nigeria's governance.²⁸ Their increased agitation led the colonialists to enact the Richard Constitution of 1939, which formally divided Nigeria

²³ Elaigwu, *supra* note 11, 23 - 24.

²⁴ Owen, *supra* note 7, 474 - 475.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ SO Obiajulu, EA Obi & VC Iwuoha, *Government and the Politics of Nigeria: The Struggle for Power in an African State* (Onitsha, Nigeria: Book Point Educational Limited).

²⁸ Elaigwu, *supra* note 11, 26.

into three regions: the northern, eastern, and western.²⁹ While the northern region retained the centralized composition it had when it was a protectorate, the colonialists divided the Southern Protectorate into the eastern and western regions. Upon its creation, said western and eastern regions established bi-cameral legislatures comprising a House of Assembly and a House of Chiefs.³⁰ Membership of the latter was exclusively made up of prominent traditional rulers, whom the colonialists had side-stepped in the administration of the Protectorate of Southern Nigeria.³¹

The division of Nigeria into three ethnic-based regions encouraged the formation of ethnic-based political parties - Action Group (Western Region), National Council of American and Cameroon (Eastern Region), and the National Peoples Congress (Northern Region). Each of these political parties was led by the purported leaders of Nigeria's Nationalism - Chief Obafemi Awolowo QC SAN GCFR of the Action Group, Dr. Nnamdi Azikiwe of the National Council of American and Cameroon, and Sir Ahmadu Bello of the National Peoples Congress.³² While the trio remains the personification of Nigeria's nationalism, their political views, aspirations and contributions to Nigeria's developments and socio-economic emancipation were mostly ethnocentric.³³ As a result of the predominance of ethnic identities in the anti-colonial struggle, the foundation of the Nigerian state was not genuinely collaborative. Said lack of collaboration undermined and continues to constrain the prospect of Nigeria attaining genuine nationhood. Commenting on this, Ajayi noted that:

²⁹ *Ibid.*

³⁰ William Cyrus Reed, *The Role of Traditional Rulers in Elective Politics in Nigeria* (Bloomington, Ind: African Studies Program, Indiana University, 1982), 9 - 21.

³¹ *Ibid.*

³² Ajayi, *supra* note 8, 95 - 96. It is instructive to note of the trio, only Ahmadu Bello was knighted by the colonialists.

³³ *Ibid.*

"The post-independence entity known as Nigeria was largely a reflection of the pattern of the nationalist struggle, led by the prominent political titans mentioned earlier. In particular, the trio of Ahmadu Bello, Obafemi Awolowo, and Nnamdi Azikwe, who were the foremost nationalist leaders, were equally ethnic irredentists who derived their legitimacy largely from their primordial cocoons. The fierce loyalty of the various tribal enclaves to these leaders robbed them of any pan-Nigerian outlook and accentuated further the rising wave of centrifugal rather than centripetal forces in the nation's body politic. It was such that even the initial Pan-African disposition inherent in Azikwe's early (p. 99) political life soon gave way to various primordial cleavages characteristic of Nigerian politics, as his political exploits were confined to his Ibo-speaking enclave of eastern Nigeria."³⁴

By creating the regions and permitting the regions to self-govern, the colonialists hoped the regions - particularly those of western and eastern Nigeria - would self-disintegrate, and in doing so, underscore the need for the colonialists to take over their administration.³⁵ However, the administrative and visible socio-economic successes recorded by the western and eastern regions of Nigeria - both of which had always been unamenable to colonial rule - led the British Government to replace Sir

³⁴ *Ibid*, 98.

³⁵Rita Kiki Edozie, "Nigeria's Non-Western Democracy: A Postcolonial Aspiration and Struggle with Opportunity, Conflict, and Transformation" in Carl Levan & Patrick Ukata, eds, *The Oxford Handbook of Nigerian Politics* (Oxford University Press, 2018) 424, 426 – 429.

Macpherson with Sir Lyttleton as Nigeria's Governor-General. After assuming office, Sir Lyttleton imposed what became known as the Lyttleton constitution of 1954 on Nigerians, and said constitution - which unduly favoured the Northern region in terms of representation in the newly established Nigerian House of Representatives - further entrenched identity politics in Nigeria, as it sowed the seed of disharmony among the regions.³⁶

In hopes of ensuring that their respective ethnicities had more than a fair share of the proverbial national cake, the government of the respective regions embarked on an insidious political game that further deepened the divide and distrust that the Lyttleton constitution sowed into Nigeria's governance structure and political economy.³⁷ Relying on the shortcomings of the Lyttleton constitution, the ethnic-based political parties that governed the respective regions encouraged the unquestionable loyalty of the ethnicities they represented.³⁸ However, in truth, the leaders of these ethnic-based political parties were simply interested in holding on to political power. And to achieve their selfish goals, these leaders - unknowingly acting as pawns of the colonialists³⁹ - became convinced that securing the unwavering fealty of the ethnicities they represented through the "fear and distrust of the other regions" was the optimal way to ensure their continued relevance in the administration of Nigeria and its political economy.⁴⁰ Sadly, said approach to the governance of Nigeria, which undermines the "... feeling of commonality, a consciousness of common belonging or common

³⁶ Ajayi, *supra* note 8, 100.

³⁷Kiki Edozie, *supra* note 35, 426 – 429.

³⁸ Ajayi, *supra* note 8, 98.

³⁹Kiki Edozie, *supra* note 35, 426 – 429.

⁴⁰ Ajayi, *supra* note 8, 100.

identity among [Nigerians]"⁴¹ remains rite to date. Ajayi succinctly summarized the effect of identity politics that the colonialists inbred into Nigeria thus:

"Ironically, the seeds of distrust and acrimony sown in the anticolonial struggles have remained major characteristics of Nigerian society. Today, what Nwosu (1977) calls "various legitimated authorities"—ethnic, tribal, religious, personality—are competing with the central authority for legitimacy. Reminiscent of the events that preceded the civil war between 1967 and 1970, the power and authority of the state have come under severe assault at these numerous pressure points today, with the Boko Haram insurgency ravaging the north and the threat of eastern secession led by the Indigenous Peoples of Biafra."⁴²

To date, neither the independent constitution of 1960, the republican constitution of 1963, the federalist-presidential constitution of 1979, the short-lived 1993 constitution, nor the extant 1999 constitution - with its several amendments - that Nigeria subsequently adopted has addressed the impact of identity politics and the overbearing influence that Nigerian elites bear on Nigeria's governance. Hence, the recommendations of previous researchers to alter or enact a new constitution as a means to address Nigeria's democratic governance problems are futile, or at best, faulty.

Similarly, the proposition that altering Nigeria's existing constitutional make-up could potentially rectify Nigeria's democratic governance problems, is a mirage. Since the adoption of the Lyttleton

⁴¹ Aleyomi 2015, 109, cited in *Ibid*, 100.

⁴² *Ibid*.

constitution of 1954, which unduly concentrated political power in the more docile Northern region of Nigeria as a reward for its amenability to colonial rule, the notion of federalism in Nigeria had been skewed.⁴³ Ever since, subsequent attempts at altering Nigeria's constitutional make-up to attain a semblance of Wheare's notion of federalism⁴⁴ had *inter alia* resulted in a civil war⁴⁵ and precipitated several incidental ethnoreligious conflicts⁴⁶ - including the ongoing Biafra secessionist agitation in the eastern part of Nigeria,⁴⁷ the Boko Haram insurgency in the northern part of Nigeria,⁴⁸ and the Fulani herdsmen mayhem in western Nigeria - all of which continue to hinder Nigeria's genuine nationhood.⁴⁹

Besides, from 1966 to 1999 - with the exception of the brief democratic rule that lasted from October 1, 1979, to December 31, 1983 - Nigeria mostly practiced military federalism.⁵⁰ This unique blend of federalism purports to share political power and control of Nigeria's political economy between the Nigerian federal military government and the military administrators of Nigeria's federating units.⁵¹ In

⁴³ *Ibid.*, 98.

⁴⁴ KC Wheare, *Federal Government* (London, England: Oxford University Press, 1964), 10.

⁴⁵ Falola & Heaton, *supra* note 5, 175 - 180.

⁴⁶ AN Nkemdili, "Governance Failure, Poverty and Ethno-Sectarian Conflicts in Nigeria: Implications for Sustainable Development." (2013) 15:4 *Journal of Sustainable Development in Africa* 99–115; Haldun Canci & Opeyemi Adedoyin Odukoya, "Ethnic and Religious Crises in Nigeria: A Specific Analysis Upon Identities (1999 - 2013)", (29 August 2016), online: *African Center for the Construction Resolution of Dispute* <<https://www.accord.org.za/ajcr-issues/ethnic-religious-crises-nigeria/>> accessed on March 21, 2020.

⁴⁷ Chudi Offodile, *Politics of Biafra and the Future of Nigeria* (Place of publication not identified: LULU Publishing SERVICES, 2016).

⁴⁸ William Hansen, "Boko Haram: Religious Radicalism and Insurrection in Northern Nigeria" (2017) 52:4 *Journal of Asian and African Studies* 551–569; J Tochukwu Omenma, Ike E Onyishi & Alyious-Michael Okolie, "A Decade of Boko Haram Activities: The Attacks, Responses and Challenges Ahead" (2020) *Security Journal*; Olumuyiwa Babatunde Amao, "A Decade of Terror: Revisiting Nigeria's Interminable Boko Haram Insurgency" (2020) *Security Journal*.

⁴⁹ T Edoh, "The Upsurge of Ethno-Religious Sentiments and the Future of Democracy in Nigeria." (2001) 1:2 *Nigerian Journal of Political and Administrative Studies* 79 - 92.

⁵⁰ Elaigwu, *supra* note 11, 11 - 18.

⁵¹ *Ibid.*

reality, as is the norm in military dictatorships, the Nigerian central military government held all political powers and simply appointed military administrators to administer Nigeria's federating units.⁵² Unfortunately, this military federalism style of governance, which reminisces the governance framework of the then Northern Protectorate of Nigeria, became susceptible to manipulations and ripe for elites' domination.⁵³

Moreover, the relationship between the Nigerian military administration and Nigerian elites became symbiotic, with the former relying on the latter and *vice versa* to protect their respective and collective interests. For instance, while the Nigerian military government relied on Nigerian elites to continue dominating Nigeria's political space, the latter trusted the former to secure and guarantee the latter's continued control of Nigeria's economy.⁵⁴ Soon, the distinction between the latter and the former became blurred, as their increasing interdependence, which negatively impacted the governance and political economy of Nigeria,⁵⁵ bred and continues to breed political corruption within Nigeria's quasi-liberal constitutional framework.⁵⁶ Although the military had ceased governing Nigeria since 1999, the military federalism they practiced remains rife, and the continued practice of said military federalism in the democratic governance of Nigeria is one of the ironies of Nigeria's democracy.⁵⁷

⁵² *Ibid.*

⁵³ Owen, *supra* note 7, 474 - 475.

⁵⁴ Elaigwu, *supra* note 11, 11 - 18.

⁵⁵ Jean-François Maystadt & Muhammad-Kabir Salihu, "National or Political Cake? The Political Economy of Intergovernmental Transfers in Nigeria" (2019) 19:5 Journal of Economic Geography 1119 - 1142.

⁵⁶ God'stime Osariyekemwen Igiebor, "Political Corruption in Nigeria: Implications for Economic Development in the Fourth Republic" (2019) 35:4 Journal of Developing Societies 493 - 513.

⁵⁷ SC Agunyai, "Emerging Governance Crisis in Twenty-First Century Nigeria" in Adebunsi Isaac Adeniran & Lanre Ikuteyijo, eds, *Africa Now! Emerging Issues and Alternative Perspectives* (Cham: Palgrave Macmillan, 2018) 211, 211 - 213.

The identifiable losers of the continued practice of said military federalism are marginalized Nigerians,⁵⁸ who continue to live under a political atmosphere where elites' domination is prevalent, corrupt practices are endemic, and constraint exists on the avenue through which they could express their dissatisfaction with or genuinely participate in the governance of Nigeria.⁵⁹ Thus, unless addressed, the proposal that altering Nigeria's constitutional make-up could address Nigeria's democratic problems and governance issues would remain unsuccessful. And its futility would continue to exacerbate the growing dissonance between marginalized Nigerians and Nigerian elites – represented by the Nigerian government - on Nigeria's democratic governance.

In place of the recommendations to enact a new constitution for or alter Nigeria's constitutional composition to attain a semblance of KC Wheare's notion of federalism,⁶⁰ noted in the preceding paragraphs; I contend in this research that adopting the precepts of deliberative democracy into Nigeria's constitutional framework could address Nigeria's endemic democratic governance problems. While deliberative democracy would not immediately rectify the ethnoreligious tension or address the negative impact of colonialism on Nigeria's extant democratic governance, it could proffer solutions to the bottlenecks that constrain marginalized Nigerians from participating in the governance of Nigeria. In doing so, marginalized Nigerians would become better positioned to conceptualize policies that would assist them in actualizing their socio-economic and political aspirations under a clime that is welcoming to inquiries about the tactic that the Nigerian government relies on to govern.

⁵⁸ Maystadt & Salihu, *supra* note 55.

⁵⁹ Taiwo Akanbi Olaiya, “Proto-Nationalisms as Sub-Text for the Crisis of Governance in Nigeria” (2016) 6:2 SAGE Open 1 - 13.

⁶⁰ Wheare, *supra* note 44, 10.

It is crucial to note that marginalized Nigerians cut across ethnicity and religion. Their marginalized stance, though political, best expresses itself and is aptly captured in socio-economic terms.⁶¹ According to the World Poverty Clock, approximately 90% of the Nigerian population⁶² earn less than 5USD daily.⁶³ Said 90% of Nigerians are those who are most impacted by the failure of democratic governance in and the political economy of Nigeria. As previously explained, neither constitutional amendment(s) nor alteration of Nigeria's governance framework to attain a semblance of Wheare's notion of federalism⁶⁴ could address their marginalization.⁶⁵ To me, only deliberative democracy can.

By relying on the lens of deliberative democracy, the norms that the Nigerian government would subsequently impose would most probably be an outcome of coordination and cooperation between Nigerians and Nigerian elites - represented by the Nigerian government. Consequently, incorporating the ideals of deliberative democracy into Nigeria's existing governance framework could reduce the mounting dissonance between Nigerians and the Nigerian government on Nigeria's governance issues. Accomplishing this idea of governance would require re-comprehending problems of democratic governance in Nigeria beyond the analysis of the impact of identity politics, skewed federal structure and colonialism on Nigeria's governance framework, to conceptualizing how the precepts of deliberative democracy could be modified to encourage and permit the voices of marginalized

⁶¹ Ogbeidi, *supra* note 4, 1 - 2.

⁶² <<https://www.macrotrends.net/countries/NGA/nigeria/poverty-rate>> accessed May 22, 2020.

⁶³ Currently, according to the World Poverty Clock, about 102,000,000 Nigerians, which comprises about 50% of Nigeria's population live on less than 2 USD a day. <<https://worldpoverty.io/>> accessed May 22, 2020. See also the report by CNN Bukola Adebayo, "Nigeria Overtakes India in Extreme Poverty Ranking", *CNN* (26 June 2018), online: <<https://www.cnn.com/2018/06/26/africa/nigeria-overtakes-india-extreme-poverty-intl/index.html>> accessed May 23, 2020

⁶⁴ Wheare, *supra* note 44, 10.

⁶⁵ Olaiya, *supra* note 59.

Nigerians to participate in Nigeria's governance. That analysis would ultimately extend to conceptualizing institutional means that would guarantee that the voices of marginalized Nigerians would henceforth be genuinely heard when issues of democratic importance are discussed in the Nigerian public sphere. Said analysis and conceptualization are imperative because they are the means through which deliberative democracy could become operational in Nigeria's quasi-liberal framework.

By deliberative democracy, I refer to the growing democratic ideology that emphasizes citizen-driven governance under an atmosphere of transparency, equality, and commonality,⁶⁶ where norms are moulded as a by-product of reasoned arguments amongst citizens of a particular constitutional order,⁶⁷ the outcome of which the government of such constitutional order cannot discard without public justification.⁶⁸ This democratic concept - which relies on the force of the better argument⁶⁹ rather than private concerns, predispositions, or views that are unlikely to scale public justification hurdles⁷⁰ - does not detract from the skewed and ineffective participatory democratic governance that Nigeria currently operates.⁷¹ Instead, it would reinforce Nigeria's extant democratic practices by ensuring that

⁶⁶ Thomas Christaino, "The Significance of Public Deliberation" in James Bohman & William Rehg, eds, *Deliberative Democracy: Essays on Reason and Politics* (Cambridge, Mass: MIT Press, 1997) 243, 244.

⁶⁷ Graham Smith & Corinne Wale, "Citizen's Juries and Deliberative Democracy" (2000) 48:1 *Political Studies* 51-65, 56.

⁶⁸ Joshua Cohen, "Democracy and Liberty" in Jon Elster, ed, *Deliberative Democracy* Cambridge Studies in the Theory of Democracy (Cambridge, U.K. ; New York: Cambridge University Press, 1998) 185 - 231.

⁶⁹ Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, 1 mit press paperback ed., 4. printing ed, translated by William Rehg, Studies in contemporary German social thought (Cambridge, Mass.: MIT Press, 1996), 89, 103. For explanatory notes on Habermas's Force of a Better Argument, see Amy Allen, "The Unforced Force of the Better Argument: Reason and Power in Habermas' Political Theory" (2012) 19:3 *Constellations* 353-368; Ferry Victor, "What is Habermas's 'Better Argument' Good For?" (2012) 49:2 *Argumentation and Advocacy*, online: <<https://www.questia.com/read/1G1-332892402/what-is-habermas-s-better-argument-good-for>> accessed May 29, 2020; Robert E Ferrell & Joe Old, "The Force of the Better Argument: Americans Can Learn Something from Jurgen Habermas and 'Deliberative Democracy'" (2016) 06:03 *OJPP* 215 - 238.

⁷⁰ See the ingenious analysis made by Dietlind Stolle, Marc Hooghe & Michelle Micheletti, "Politics in the Supermarket: Political Consumerism as a Form of Political Participation" (2005) 26:3 *International Political Science Review* 245, 269.

⁷¹ Agunyai, *supra* note 57.

the voices of all Nigerians, become central to the norms that the Nigerian government prescribes and integral to democratic governance that Nigeria will subsequently operate.

By incorporating the precepts of deliberative democracy⁷² into Nigeria's democratic governance, the Nigerian government would become duty-bound to justify its governance tactics continually and publicly to Nigerians. This approach to governing Nigeria would ensure that the legitimacy of the democratic practices of the Nigerian government extends beyond adherence to procedural and substantive rules alone. Instead, the legitimacy of such democratic practices would henceforth be determined by the degree to which they remove hindrances that frustrate Nigerians, particularly those marginalized, from participating in and demanding accountability from the Nigerian government on the latter's governance tactics and democratic practices. Consequently, Nigeria's democracy would be more engaging and continually amenable to help Nigerians, especially those marginalized, pursue and actualize their socio-economic and political aspirations. In doing so, deliberative democracy would have succeeded - without the need for constitutional amendments or the altering of Nigeria's quasi-liberal constitutional order, as other researchers have suggested - in rectifying Nigeria's extant endemic democratic governance challenges.

Notwithstanding the potential of deliberative democracy to address Nigeria's democratic governance problems, several challenges constrain its fruition in Nigeria. Before critiquing these challenges, it is pertinent to summarize the background and explain the objectives of this research. After that, I will review the dominant thoughts on deliberative democracy that are relevant to this research. Finally, I will briefly discuss the research methodologies that I will rely on to actualize this thesis' objectives.

⁷² Simone Chambers, "The Philosophic Origins of Deliberative Ideals" in Andre Bächtiger et al, eds, *The Oxford Handbook of Deliberative Democracy* (Oxford University Press, 2018) 54.

1.2. Background and Objectives of this Research

As previously summarized, problems of democratic governance in Nigeria are vestiges of colonialism, wherein the process of imposing norms was structured to perpetuate arbitrariness and orchestrate instability in Nigeria's collective decision-making process. Arbitrariness in governance and instability in the collective decision-making process was the premise upon which the British Colonial government founded and administered Nigeria.⁷³ Based on this faulty foundation, Nigeria's extant governance framework and democratic practices generally reinforce systematic inequalities that distinguish marginalized Nigerians from Nigerian elites.⁷⁴ Said reinforced systematic inequalities further ensure that marginalized Nigerians are continuously subjugated to the whims and caprices of Nigerian elites.

Since colonialism was all about the exploitation and suppression of a foreign group of people in a mostly not comprehended terrain,⁷⁵ the colonial invaders relied on and modified the existing societal structures that the colonized people in the respective communities that now comprise Nigeria trusted to achieve this purpose.⁷⁶ Said modification permitted the nominal participation of some Nigerians in the governance of Nigeria but subjected them to the overarching dictates of the colonialists.⁷⁷ To maximize the exploitation of societies inhabiting pre-colonial Nigeria, the colonialists introduced the

⁷³ For a detailed analysis of the effect of colonialism on the socio-economic, political and governance development of African countries, including Nigeria, see Rodney, W. *How Europe Undeveloped Africa*, (Tanzania: Tanzania Publishing House, 1972).

⁷⁴ Kiki Edozie, *supra* note 35, 426 – 429.

⁷⁵ David Williams, “Liberalism, Colonialism and Liberal Imperialism” (2018) 45:1 East Central Europe 94 - 118.

⁷⁶ For a detailed analysis of how the British, through colonialism exploited and destabilized norms of governance of pre-independent Commonwealth states, particularly those in Africa, see Hakeem Yusuf, *Colonial and Post-colonial Constitutionalism in the Commonwealth: Peace, Order and Good Government*, Routledge research in constitutional law (Milton Park, Abingdon, Oxon: Routledge, 2014).

⁷⁷ Falola & Heaton, *supra* note 5, 115 - 118.

concept of divide and rule,⁷⁸ which abruptly challenged and undermined the norms of the respective communities that comprise pre-independent Nigeria.⁷⁹

By rewarding collaborators who assisted the colonialists to appropriate and dismantle the norms of the respective pre-independent Nigerian communities with unmerited economic privileges and socio-political status,⁸⁰ the colonialists further upturned the balance of power that existed in those communities.⁸¹ These collaborators subsequently became poised to replace and indeed did replace the colonialists after they (the colonialists) departed Nigeria in 1960.⁸² Soon after Nigeria's independence, these collaborators clashed with the traditional power-holders who were the legitimate custodians of societal norms and dispensers of justice in the perception of most Nigerians.⁸³

Said clash resulted in civic unrest that culminated in a civil war.⁸⁴ The war subsequently led to several successive coups,⁸⁵ which replaced democratic governance in Nigeria with military dictatorships.⁸⁶ Governance of Nigeria under military dictatorships limited the avenues for Nigerians to inquire into and seek justification from the Nigerian government on prevalence governance issues that Nigeria

⁷⁸ Felix S Bethke, "The Consequences of Divide-and-Rule Politics in Africa South of the Sahara" (2012) 18:3 Peace Economics, Peace Science and Public Policy, online: <<https://www.degruyter.com/view/journals/peps/18/3/article-peps-2012-0002.xml.xml>> accessed June 3 2020.

⁷⁹ Falola & Heaton, *supra* note 5, 115 - 118.

⁸⁰ *Ibid* 112 - 114

⁸¹ *Ibid* 136 - 157.

⁸² *Ibid* 136 - 157.

⁸³ *Ibid* 167 - 172.

⁸⁴ *Ibid* 175 - 179.

⁸⁵ *Ibid* 172 - 175, 212 - 234.

⁸⁶ Abiola Ojo, *Constitutional Law and Military Rule in Nigeria* (Ibadan: Evans Brothers Limited, 1987).

confronts.⁸⁷ Since a society ruled by usurpers (military dictators) is unlikely to genuinely allow a framework that relies on collective reasoning, citizens' involvement in policy formulation, and accountability to thrive, governance by these usurpers negatively impacted Nigeria's democratic precepts.

When democracy returned to Nigeria in 1999 after decades of military dictatorship,⁸⁸ Nigerians were ecstatic because they believed their voice would henceforth become central to governance and democratic practices in Nigeria.⁸⁹ The non-realization of these aspirations strained the already fragile relationship between Nigerians and the Nigerian government.⁹⁰ Consequently, Nigerians intensified their belief in the illegitimacy of Nigeria's democratic governance for being disproportionately skewed in favour of Nigerian elites.⁹¹ By illegitimate, I do not merely denote the intermittent failure of the Nigerian government to adhere to existing procedural and substantive rules that regulate Nigeria's democratic governance and practices.⁹² Instead, I refer to the inability of the Nigerian government to govern in a manner that inspires Nigerians, particularly those marginalized, to pursue and actualize their socio-economic aspirations under a political climate that accommodates diverging opinions and welcomes queries into the Nigerian government's governance tactics and democratic practices.⁹³

⁸⁷ Etim O Frank & Wilfred I Ukpere, "The Impact of Military Rule on Democracy in Nigeria" (2012) 33:3 Journal of Social Sciences 285 - 292.

⁸⁸ Falola & Heaton, *supra* note 5, 209 - 242.

⁸⁹ Ogowewo, *supra* note 2, 135 - 140.

⁹⁰ Muse & Narsiah, *supra* note 10, 51.

⁹¹ Yagboyaju & Akinola, *supra* note 5, 7.

⁹² Elijah John Okon, "The Rule of Law in Nigeria: Myth or Reality?" (2011) 4 Journal of Politics and Law 211, 211 - 212.

⁹³ Agunyai, *supra* note 57, 211-213.

Unearthing the rationale for this tactic to the governance of Nigeria would require comprehending hindrances that constrain subjecting democratic governance in Nigeria to public justification hurdles. That analysis would extend to critiquing the rationale behind the pervasiveness of elite domination, corrupt practices, and unwillingness to accommodate civil disobedience in Nigeria's governance practices. These governance practices, which suppress the voices of Nigerians from contributing to Nigeria's governance, weaken Nigeria's democracy.⁹⁴ Therefore, its continued reliance as a governing tactic is a misnomer.⁹⁵

As a panacea, and in furthering the ideals of deliberative democracy, I propose in this research that Nigeria's democratic governance and decisions regarding its political economy ought to be the reflective aftermath of the collective reasonings of all Nigerians, particularly those marginalized. Actualizing this recommendation would require the Nigerian government to liberalize the Nigerian public sphere to ensure egalitarian access to political power in Nigeria. Having liberalized the Nigerian public sphere, subsequent governance acts and democratic practices of the Nigerian government would likely be the aftermath of the coordination and cooperation of all Nigerians. Hence, the outcome of decisions reached under such a framework would more likely reflect the socio-economic and political aspirations of all Nigerians and consequently be accorded more legitimacy by Nigerians.⁹⁶

However, many factors hinder deliberative democracy's feasibility. Questions arising from these incumbrances query the rationale for deliberative democracy's broad appeal. Such questions further

⁹⁴ Idada & Uhumwuangho, *supra* note 6, 411.

⁹⁵ Hakeem Onapajo & Dele Babalola, "New Clamour for 'Restructuring' in Nigeria: Elite Politics, Contradictions and Good Governance" (2019) 18:4 African Studies Quarterly 41 - 56, 43.

⁹⁶ Yagboyaju & Akinola, *supra* note 5, 7 - 8.

challenge the notion that the people themselves can make laws.⁹⁷ In this thesis, these queries encompass analysis of the viability of deliberative democracy in Nigeria, where unwillingness to accommodate civil disobedience, overbearing elite domination, and corruption undermine Nigeria's democratic governance. These queries also extend to conceptualizing how to actualize the ideals of deliberative democracy, including the pursuit of consensus in public spheres, as Habermas conceived.⁹⁸ Aware of the peculiarity of Nigeria's quasi-liberal constitutional order - where liberal democratic ideals essential to deliberating in public spheres exist in principle but are hardly complied with in practice - I will propose in chapter four of this thesis, and in furtherance to Young's contributions,⁹⁹ that the ultimate objective of deliberative democracy in Nigeria should be confluence.¹⁰⁰ The pursuit of confluence within the framework of the public sphere that I will conceptualize in chapter four of this thesis is more attuned to actualizing the fair and just outcomes aspirations that Rawls conceived for deliberative democracy.¹⁰¹

In summary, this thesis has five chapters. The first chapter is this introduction. In the second chapter, I will analyze the three deliberative principles that exist within the framework of the Nigerian 1999

⁹⁷ Frank Michelman, "How Can the People Ever Make the Laws? A Critique of Deliberative Democracy" in James Bohman & William Rehg, eds, *Deliberative democracy: essays on reason and politics* (Cambridge, Mass: MIT Press, 1997) 145.

⁹⁸ Jürgen Habermas, *Communication, and the Evolution of Society*, translated by Thomas McCarthy (Boston: Beacon Press, 1979).

⁹⁹ Iris Marion Young, "Communication and the Other: Beyond Deliberative Democracy" in Seyla Benhabib, ed, *Democracy and Difference: Contesting the Boundaries of the Political* (Princeton, N.J: Princeton University Press, 1996) 120; *ibid*, Iris Marion Young, *Inclusion and democracy*, Oxford Political Theory (Oxford ; New York: Oxford University Press, 2000); Iris Marion Young, "Activist Challenges to Deliberative Democracy" in James S Fishkin & Peter Laslett, eds, *Philosophy, Politics and Society* (Oxford: Blackwell Publishing Ltd, 2003) 102; Iris Marion Young & Danielle S Allen, *Justice and the Politics of Difference*, paperback reissue ed (Princeton, N.J: Princeton University Press, 2011).

¹⁰⁰ Alison Kadlec & Will Friedman, "Deliberative Democracy and the Problem of Power" (2007) 3:8(1) *Journal of Public Deliberation* 1 - 25, 13 - 15.

¹⁰¹ John Rawls, *A Theory of Justice* (Cambridge, Mass: Belknap Press of Harvard University Press, 1971), 42 - 44.

constitution. I will embark on that analysis to establish that the ideals of deliberative democracy that Habermas and Rawls conceptualized, whose ultimate goal is to ensure that democratic decisions reached in public spheres produce fair and just outcomes for all, exist in some form in Nigeria's extant quasi-liberal constitutional framework. In doing so, I will undercut the argument that altering or enacting a new constitution of Nigeria is the sole means of addressing Nigeria's democratic governance problems. In the third chapter, I will identify and propose recommendations to bottlenecks of governance practices that constrain the vibrancy of the deliberative principles that I will analyze in chapter two of this thesis. As I will subsequently establish, these governance practices have negatively impacted Nigeria's democratic governance.

Relying on inherent limitations of the principles of deliberative democracy as conceived by Habermas and Rawls, I will argue in chapter four of this thesis that the goal of deliberative democracy in Nigeria should be confluence and not consensus. In articulating this viewpoint, chapter four of this will explain the shortcomings of pursuing consensus and, after that, highlight the benefit of jettisoning it for confluence. Subsequently, that chapter will conceptualize institutional means that could guarantee that the voices of marginalized Nigerians would not be lost during deliberations in the Nigerian public sphere. As previously mentioned, said institutional means are a response to the inability and incompatibility of Habermas' ideal speech situation¹⁰² and communicative action theories¹⁰³ to guarantee that deliberations in the Nigeria public sphere would produce fair and just outcomes for all Nigerians. The fifth chapter is the conclusion of this thesis.

¹⁰² See Jürgen Habermas, *Reason and the Rationalization of Society*, reprint ed, translated by Thomas MacCarthy, *The Theory of Communicative Action Jürgen Habermas*. Translated by Thomas MacCarthy; Vol. 1 (Boston: Beacon Press [u.a.], 2007).

¹⁰³ Jürgen Habermas, *Lifeworld and System: A Critique of Functionalist Reason*, 1. digital-print ed, translated by Thomas MacCarthy, *The Theory of Communicative Action Jürgen Habermas*. Transl. by Thomas MacCarthy; Vol. 2 (Boston: Beacon, 2005).

1.3. Literature Review of Deliberative Democracy Relevant to this Thesis

In the past decades, few political theories have intrigued researchers like deliberative democracy. Its potential to solve problems associated with democratic governance and practices, especially in times of political crisis,¹⁰⁴ has endeared it to political theorists, public law researchers, and public policy analysts.¹⁰⁵ Their respective research has extended the prospect and limits of deliberative democracy¹⁰⁶ beyond the purview of political theory¹⁰⁷ to an analysis of our historical perspectives on democratic governance¹⁰⁸ and our environment's sustainability.¹⁰⁹ Research into deliberative democracy now encompasses politics of reconciliation,¹¹⁰ deliberative constitutionalism,¹¹¹ non-verbal deliberations,¹¹² and critical theory.¹¹³ The emerging and expanding pieces of literature on deliberative democracy led

¹⁰⁴ Archon Fung, "Afterword: Does Deliberative Democracy Have a Role in Our Time of Political Crisis?" (2020) 16:1 *Journal of Deliberative Democracy* 75 - 76.

¹⁰⁵ Selen A Ercan & John S Dryzek, "The Reach of Deliberative Democracy" (2015) 36:3 *Policy Studies* 241 - 248.

¹⁰⁶ James S Fishkin & Jane Mansbridge, eds, "The Prospects and Limits of Deliberative Democracy" (2017) 146:3 *Daedalus* 6 - 13

¹⁰⁷ Joshua Cohen, "Deliberation and Democratic Legitimacy" in James Bohman & William Rehg, eds, *Deliberative Democracy: Essays on Reason and Politics* (Cambridge, Mass: MIT Press, 1997a) 67, 75.

¹⁰⁸ Justin Reedy et al, "Deliberative Democracy and Historical Perspectives on American Indian/Alaska Native Political Decision-making Practices" (2020) 7:1 *Humanities and Social Sciences Communications* 16.

¹⁰⁹ Marit Hammond, "Sustainability as a Cultural Transformation: The Role of Deliberative Democracy" (2020) 29:1 *Environmental Politics* 173 - 192.

¹¹⁰ Duncan Ivison, "Deliberative Democracy and the Politics of Reconciliation" in D Kahane et al, eds, *Deliberative Democracy in Practice* (Vancouver: UBC Press, 2010) 115.

¹¹¹ John Worley, "Deliberative Constitutionalism" (2009) 2009:2 *Brigham Young University Law Review* 431–480; Hoi L Kong & Ron Levy, "Deliberative Constitutionalism" in Andre Bächtiger et al, eds, *The Oxford Handbook of Deliberative Democracy* (Oxford University Press, 2018) 624.

¹¹² Ricardo Fabrino Mendonça, Selen A Ercan & Hans Asenbaum, "More than Words: A Multidimensional Approach to Deliberative Democracy" (2020) *Political Studies* 003232172095056.

¹¹³ Marit Hammond, "Deliberative Democracy as a Critical Theory" (2019) 22:7 *Critical Review of International Social and Political Philosophy* 787 - 808.

one prominent researcher to ponder about deliberative democracy, quizzing whether it is nothing more than a falsifiable theory.¹¹⁴

Deliberative democracy's research frame lens¹¹⁵ is broadly classifiable into - originalists and progressives. These originalists and progressives largely agree that decisions reached as an aftermath of reasoned collections of competing and, in certain instances, conflicting arguments expressed while deliberating in the public sphere are the optimal means through which such decisions could produce fair and just outcomes for all.¹¹⁶ The similarities of the conceptual lens of deliberative democracy with liberal constitutional orders' practices of democratic governance justification - secured through limited governments and buoyed by an almost immutable constitutional foundation¹¹⁷ - encouraged researchers to rely on liberal constitutional lenses to research deliberative democracy.¹¹⁸ And it is these similarities that inform my perception that deliberative democracy is a liberal idea, developed by liberal theorists, and, generally researched from liberal lenses. Nevertheless, in chapter two of this thesis, I

¹¹⁴ Diana Carole Mutz, "Is Deliberative Democracy a Falsifiable Theory?" (2008) 11:1 Annual Review of Political Science 521 - 538.

¹¹⁵ Gabriel Bianchi, "Introducing Deliberative Democracy: A Goal, a Tool, or Just a Context?" (2008) 18:1 Human Affairs, online: <<http://www.degruyter.com/view/j/humaff.2008.18.issue-1/v10023-008-0009-1/v10023-008-0009-1.xml>> accessed June 3 2020.

¹¹⁶ Shelley Boulianne, "Building Faith in Democracy: Deliberative Events, Political Trust and Efficacy" (2019) 67:1 Journal of Political Studies 4 - 30.

¹¹⁷ For an analysis of the theoretical foundation of liberal constitutional orders see Christopher Wellman, "Liberalism, Samaritanism and Political Legitimacy" (1996) 25:3 Philosophy and Public Affairs Journal 211 - 237.

¹¹⁸ Joseph Bessette, "Deliberative Democracy: The Majority Principle in Republican Government" in Robert A Goldwin & William A Schambra, eds, *How democratic is the Constitution?* AEI studies ; 294 (Washington, D.C: American Enterprise Institute for Public Policy Research, 1980) 102. Joseph Bessette is generally credited with coining the phrase "deliberative democracy." His research, as well as that of John Rawls (see John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993); John Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: Harvard University Press, 2001).) and Jurgen Habermas (see Thomas A McCarthy, *The Critical Theory of Jürgen Habermas*, 2. print ed (Cambridge: MIT Pr, 1982); Habermas, *supra* note 69.) laid the foundation upon which deliberative democracy evolved and continues to evolve. While Habermas conceptual lens was steeped in German Republicanism, both John Rawls and Joseph Bessette relied on the liberal constitutional order to conceptualize the precepts of deliberative democracy.

will inquire into and critique the precept of deliberative democracy within the framework of Nigeria's quasi-liberal constitutional order (the 1999 constitution) to analyze the public reasoning, limitation, and entrenchment deliberative principles.

By originalists, I refer to researchers led by Habermas and Rawls, whose research focuses on intellectualizing the framework within which and factors necessary to theorize the precepts of deliberative democracy so that the outcomes of democratic decisions would be fairer and more just for all. The research interests of these originalists encompass describing how, enhancing the utility of, and expanding the areas within which deliberative democracy could become applicable. In realizing these aspirations, originalists have expanded research of deliberative democracy to *inter alia* social choice¹¹⁹ and expertise.¹²⁰

As the precepts of constitutionalism and liberal democratic governance decline globally, these originalists have turned their research interest and focus to separation of powers,¹²¹ legislative processes,¹²² popular constitutionalism,¹²³ federalism,¹²⁴ and other incidental constitutional subjects,¹²⁵

¹¹⁹ David Miller, "Deliberative Democracy and Social Choice" (1992) 40:1 Political Studies 54 - 67.

¹²⁰ M Brown, "Expertise and Deliberative Democracy." in Stephen Elstub & P McLaverty, eds, *Deliberative Democracy: Issues and Cases* (Edinburgh: Edinburgh University Press, 2014); F Fischer, *Democracy and Expertise: Reorienting Policy Inquiry* (Oxford: Oxford University Press, 2009).

¹²¹ Danny Gittings, "Separation of Powers and Deliberative Democracy" in Ron Levy et al, eds, *The Cambridge Handbook of Deliberative Constitutionalism*, 1st ed (Cambridge University Press, 2018) 113.

¹²² Gabrielle Appleby & Anna Olijnyk, "Constitutional Deliberation in the Legislative Process" in Ron Levy et al, eds, *The Cambridge Handbook of Deliberative Constitutionalism*, 1st ed (Cambridge University Press, 2018) 88.

¹²³ Gideon Sapir, "Popular Constitutionalism and Constitutional Deliberation" in Ron Levy et al, eds, *The Cambridge Handbook of Deliberative Constitutionalism*, 1st ed (Cambridge University Press, 2018) 311.

¹²⁴ Robyn Hollander & Haig Patapan, "Deliberative Federalism" in Ron Levy et al, eds, *The Cambridge Handbook of Deliberative Constitutionalism*, 1st ed (Cambridge University Press, 2018) 101.

¹²⁵ JI Pretorius, "Deliberative Democracy and Constitutionalism: The Limits of Rationality Review" (2017) 29:2 Southern African Public Law 408 - 440.

such as pluralism and consensus,¹²⁶ as well as political parties.¹²⁷ However, the liberal conceptual lens that the originalists relied on to conceive the precepts of deliberative democracy largely failed to address inherent structural injustices that exclude marginalized members of liberal constitutional orders from participating in public spheres.¹²⁸ Thus, retheorizing some of the precepts of deliberative democracy - in what has been termed a new wave¹²⁹ - to accommodate those excluded from public spheres became the primary objective of the progressives.¹³⁰

In actualizing said objective, progressives challenged the legitimacy of the liberal undertone of deliberative democracy.¹³¹ Said challenge subsequently revealed structural hindrances that inadvertently excluded and continue to exclude marginalized members of liberal constitutional orders from genuinely participating in public spheres as Habermas had conceived.¹³² By conceptualizing solutions to address said challenges, progressives hope to restructure public spheres to accommodate all persons, especially those marginalized in the decision-making process.¹³³ In doing so, progressives

¹²⁶ José Luis Martí, “Pluralism and Consensus in Deliberative Democracy” (2017) 20:5 *Critical Review of International Social and Political Philosophy* 556 - 579.

¹²⁷ Sergiu Gherghina, Sorina Soare & Vincent Jacquet, “Deliberative Democracy and Political Parties” (2020) 19 *European Political Science* 200 - 211.

¹²⁸ Paolo Spada & Matt Ryan, “The Failure to Examine Failures in Democratic Innovation” (2017) 50:03 *APSC* 772 - 778; Robert Talisse, “New Trouble For Deliberative Democracy” (2017) 12:1 *ateliers* 107 - 123.

¹²⁹ Michelman, *supra* note 97; Caludia Chwalisz, *A New Wave of Deliberative Democracy* (2019).

¹³⁰ Christopher F Karpowitz, Chad Raphael & Allen S Hammond, “Deliberative Democracy and Inequality: Two Cheers for Enclave Deliberation among the Disempowered” (2009) 37:4 *Politics & Society* 576 - 615.

¹³¹ John Parkinson, “Legitimacy Problems in Deliberative Democracy” (2003) 51 *Political Studies* 180 - 196.

¹³² Habermas, *supra* note 98. See also Habermas, *supra* note 69, 486.

¹³³ James D Fearon, “Deliberation as Discussion” in Jon Elster, ed, *Deliberative Democracy*, 1st ed (Cambridge University Press, 1998) 44, 49.

hope that the outcomes of deliberations in such public spheres would be fairer and more just,¹³⁴ thus fulfilling deliberative democracy's ultimate aspiration.¹³⁵

It is crucial to note that researchers of deliberative democracy are not all firmly entrenched as either originalists or progressives. Instead, said classification is an expression and function of the conceptual lens that informs the research and contribution(s) of deliberative democrats. Thus, some publications encompass the perceptions of deliberative democracy as conceived by the originalists and progressives. One example is "Democracy and Disagreement".¹³⁶ Gutmann and Thompson who authored that publication first contended in furtherance of the perceptions of the originalists that reciprocity, accountability, and publicity are the necessary preconditions of deliberative democracy.¹³⁷ Subsequently, they *inter alia* argued, in alignment with progressives, that the consensus aspiration of deliberative democracy is infeasible.¹³⁸ In the following subsections of this thesis, I expanded further on the contributions of the originalists and progressives to deliberative democracy.

1.3.1. The Originalists

John Rawls and Jurgen Habermas are the progenitors of deliberative democracy, and their respective contributions to its development are innumerable. They both agreed that the primary focus of deliberative democracy is to liberalize the public sphere by theorizing a framework that would permit

¹³⁴ John S Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, and Contestations*. (New York: Oxford University Press, 2000), 2 – 6.

¹³⁵ Rawls, *supra* note 101, 42 - 44.

¹³⁶ Amy Gutmann & Dennis Frank Thompson, *Democracy and Disagreement* (Cambridge Mass.: The Belknap Press of Harvard University Press, 2000).

¹³⁷ *Ibid* 14 - 15.

¹³⁸ *Ibid* 18 - 19. Both authors further elaborated their thoughts on deliberative democracy in Amy Gutmann & Dennis Frank Thompson, *Why Deliberative Democracy?*, student ed (Princeton University Press, 2004).

egalitarian access to power.¹³⁹ To Rawls, this equality is achievable if power holders govern in a manner that produces fair and just outcomes for those within the framework of their authority.¹⁴⁰ In contrast, Habermas theorized that rational communication between society members geared toward attaining mutual understanding,¹⁴¹ rather than the selfish pursuit of individual goals,¹⁴² is the best way to secure the agreement of all persons who are deliberating on societal issues in public spheres.¹⁴³ Habermas believed that consensus in public spheres is attainable if participants rely on “ideals speeches” and allow the “forces of better arguments” to prevail during deliberations in public spheres.¹⁴⁴

According to a recent publication,¹⁴⁵ Elster¹⁴⁶ and Mills,¹⁴⁷ have independently expanded on the contributions of Habermas and Rawls. In Elster and Mills’ respective contributions, which was coincidentally published in the same year, the authors independently argued that instead of perceiving issues of common concern to democratic governance through the narrow lens of self-centred interest,

¹³⁹ Thomas McCarthy, “Kantian Constructivism and Reconstructivism: Rawls and Habermas in Dialogue” (1994) 105:1 *Ethics* 44 - 63, online: <www.jstor.org/stable/2382168> accessed June 3, 2020.

¹⁴⁰ Rawls, *supra* note 101, 42 - 44. In a subsequent work, Rawls expanded on his initial contribution by theorizing the notion of justice as fairness as the barometer for measuring just conduct. See Rawls, *supra* note 118. For additional analysis of that publication, see Robert Van der Veen, “Justice as Fairness and Bad Luck” (2019) 22:3 *Critical Review of International Social and Political Philosophy* 253 - 268.

¹⁴¹ Habermas, *supra* note 103.

¹⁴² Habermas, *supra* note 102.

¹⁴³ Habermas, *supra* note 69, 486.

¹⁴⁴ Allen, *supra* note 69; Ferrell & Old, *supra* note 69.

¹⁴⁵ Ian O’Flynn & Ron Levy, “Deliberative Constitutional Referendums in Deeply Divided Societies” (2020) 53:1 *UBC Law Review* 205 - 240.

¹⁴⁶ Jon Elster, “Deliberation and Constitution Making” in Jon Elster, ed, *Deliberative Democracy* (Cambridge: Cambridge University Press, 1998) 97.

¹⁴⁷ John Stuart Mills, “Considerations on Representative Government” in John Stuart Mills, ed, *On Liberty and Other Essays* (Oxford: Oxford University Press, 1998) 203.

participants in public spheres ought to embrace broader and more encompassing views of such issues.¹⁴⁸ Mills contended that a person called upon to participate in public spheres has a duty:

"while so engaged, to weigh interests not his own; to be guided, in case of conflicting claims, by another rule than his private partialities; to apply, at every turn, principles, and maxims which have for their reason of existence the common good: and he usually finds associated with him in the same work minds more familiarized than his own with these ideas and operations, whose study it will be to supply reasons to his understanding, and stimulation to his feeling for the general interest. He is made to feel himself one of the public, and whatever is for their benefit to be for his benefit."¹⁴⁹

Similarly, Elster noted that by liberalizing the public sphere and subjecting the political views of participants in such public sphere to the hurdles of public justification, the pursuit of such participants' selfish-interest(s) would become more complex to achieve.¹⁵⁰ Resultantly, such participants would be forced to subject themselves to a "consistency constraint" on issues deliberated on.¹⁵¹ Such subjection implies that participants must continue to expound on their views, even if such views become personally disadvantageous because failure to do so would expose such participants as opportunists.

¹⁴⁸ O'Flynn & Levy, *supra* note 145, 216.

¹⁴⁹ Mills, *supra* note 147, 255.

¹⁵⁰ Elster, *supra* note 146, 104.

¹⁵¹ *Ibid.*

The contributions of Habermas and Rawls,¹⁵² as expanded on by Mills and Elster, are instrumental to this thesis. For instance, Rawls' proposal of conceptualizing power in terms of justice, which Young later expounded on,¹⁵³ is the premise upon which I intend to contend that confluence and not consensus should be the ultimate objective that deliberative democracy ought to aspire for in Nigeria. Similarly, Habermas' emphasis on mutual understanding, as expanded by Mills, is the basis upon which I will argue throughout this thesis that the governance and democratic practices of the Nigerian government would only be legitimate if their execution enhances cooperation and coordination between Nigerians and the Nigerian government. Also, Elster's "consistency constraint"¹⁵⁴ - which potentially assures that the Nigerian government does not arbitrarily undermine the pursuit of Rawls's fair and just outcomes in Nigeria for selfish reasons - is one of the premises upon which I will critique the deliberation principles discussed in the next chapter.

Although Habermas, Rawls, Mills, and Elster laid the foundation upon which deliberative democracy evolved, their respective contributions were excessively abstract. Without altering the theoretical foundation that Habermas¹⁵⁵ and Rawls¹⁵⁶ conceived, Cohen, Gutmann, and Thompson attempted to extract deliberative democracy from its excessive abstractness. In prescribing some of the integral features that they deemed essential to the evolution of deliberative democracy, Cohen, Gutmann, and

¹⁵²For a detailed analysis of Rawls' notion of deliberative democracy, see Angela D White, *A Rawlsian Idea of Deliberative Democracy* (Doctor of Philosophy, The University of Western Ontario, 2011) [unpublished].

¹⁵³ Iris Marion Young, "Justice, Inclusion, and Deliberative Democracy" in Stephen Macedo, ed, *Deliberative Politics: Essay on Democracy and Disagreement* (New York: Oxford University Press, 1999) 151; Young, *supra* note 99; Iris Marion Young, *Responsibility for Justice*, Oxford Political Philosophy (Oxford ; New York: Oxford University Press, 2011).

¹⁵⁴ Elster, *supra* note 146, 104.

¹⁵⁵ Allen, *supra* note 69; Ferrell & Old, *supra* note 69.

¹⁵⁶ Rawls, *supra* note 101, 42 - 44. See also Rawls, *supra* note 118. and Van der Veen, *supra* note 140.

Thompson relied on the conceptual lens of the United States' liberal constitutional order that nominally grants equal access to power. While Cohen claimed that deliberative democracy must be committed to liberty and equality to attain fruition,¹⁵⁷ Gutmann and Thompson asserted that reciprocity, accountability, and publicity are the necessary preconditions for deliberative democracy.¹⁵⁸ The dearth of these liberal constitutional concepts within Nigeria's quasi-liberal constitutional order poses a challenge to the potential of deliberative democracy in Nigeria.

1.3.2. The Progressives

As earlier noted, the objective of progressives was not to alter the fair and just outcome aspirations of deliberative democracy but to challenge the liberal assumptions that the originalists relied on in conceptualizing the precepts of deliberative democracy. Further to this aspirational goal, this subsection identifies the diverse and relevant contributions of progressives like Dryzek, Mutz, Young, Benhabib, and Hammond to deliberative democracy, and by extension, this thesis's objectives.

Challenging the assumption of the liberalness of liberal constitutional orders, Dryzek argued that governments of liberal constitutional orders constitute significant hindrances to addressing problems associated with ensuring equal access to power in democratic settings.¹⁵⁹ The distrust that Dryzek has for governments informs his reasoning that government institutions are generally unwilling to create an enabling environment within which the ideals of deliberative democracy could thrive. He attributes this unwillingness to the apprehension that deliberative democracy's emphasis on the process rather

¹⁵⁷ Cohen, *supra* note 68.

¹⁵⁸ Gutmann & Thompson, *supra* note 136, 14 - 15.

¹⁵⁹ Dryzek, *supra* note 134, 2 - 6.

than the outcome of decisions might reveal injustices that some government institutions have committed and are likely still committing.¹⁶⁰

By shifting the focus of deliberative democracy from outcome to the process, which slightly contradicts Rawls' fair and just outcomes approach, Dryzek sought to address limitations inherent in how the originalists conceived and theorized deliberative democracy. Although Dryzek's research relies on the United States' liberal constitutional order,¹⁶¹ government interference, he identified, which was evident in Trump's administration, also reflects governance practices that compound problems of democratic governance in Nigeria.¹⁶² These problems hinder the vivacity of Nigeria's extant participatory democracy and could hamper the potential of deliberative democracy in Nigeria's quasi-liberal constitutional order. Relying on Dryzek's emphasis on the process rather than outcomes of decisions in democratic societies, chapter three of this thesis identifies and critiques three prevalent governance practices that continue to undermine Nigeria's democratic governance, which practices could also constrain the potential vibrancy of deliberative democracy in Nigeria.

In what could be perceived as a direct challenge to Cohen, Gutmann, and Thompson's contributions, Mutz admonishes deliberative democracy to evolve and alter its liberal principles to accommodate the uniqueness of different constitutional orders. Since deliberative democracy ought to focus on the process rather than the outcome of decision-making, then only those principles that ensure the effectiveness of deliberations in respective constitutional orders should be fixed.¹⁶³ The others ought

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*

¹⁶² Yagboyaju & Akinola, *supra* note 5, 1-5.

¹⁶³ Mutz, *supra* note 114, 531.

to be modified to accommodate differences in respective constitutional orders where deliberative democracy might be applied.¹⁶⁴

Relying on the United States' liberal constitutional order, Mutz also explored the conflict between participatory democracy and deliberative democracy by asking two questions. First, whether deliberative democracy that ought to focus on the process of decision making and participatory democracy that concentrates on the outcome of democratic decisions can co-exist. Secondly, within what context would they coexist?¹⁶⁵ In answering these questions in a subsequent publication,¹⁶⁶ Mutz reasoned that deliberative democracy would only co-exist with participatory democracy if Americans are simultaneously enthusiastic about political affairs and amenable to opposing political views.¹⁶⁷ Mutz further noted that the continued enthusiasm of Americans towards participatory democracy could only be sustained if their voices remain central to the prescription of norms and integral to the tactics that the government of the United States adopts in governing.¹⁶⁸

It is important to note that the liberal constitutional order of the United States that Mutz relied upon in her research generally permits equal access to power and the American public sphere for all Americans. In contrast, such access is a fleeting notion in Nigeria's quasi-liberal constitutional order. Rather than encourage the enthusiasm of Nigerians about governance issues, the Nigerian government

¹⁶⁴ *Ibid*, 535.

¹⁶⁵ Diana Carole Mutz, *Hearing the Other Side: Deliberative versus Participatory Democracy* (Cambridge ; New York: Cambridge University Press, 2006), 1 – 3.

¹⁶⁶ Diana Carole Mutz, “Reflections on Hearing the Other Side, in Theory and in Practice” (2013) 25:2 *Critical Review: A Journal of Politics and Society* 260–276. Accessed from <<https://core.ac.uk/download/pdf/219381218.pdf>> accessed November 15, 2020.

¹⁶⁷ *Ibid*, 262 - 264.

¹⁶⁸ *Ibid*, 265 - 266.

deliberately complicates attempts to query its activities.¹⁶⁹ In doing so, the Nigerian government dissuades political activism that is integral to unearthing the genuine needs of Nigerians, bubbling beneath the surface of the Nigerian constitutional order. The consequences of these governance practices, which I will elaborate on in chapter three of this thesis, undermine the potential applicability of deliberative democracy alongside the skewed participatory democracy that Nigeria operates.

In her contribution, which closely aligns with Mutz's perception of deliberative democracy, Benhabib challenged the presumed superior status of western liberal culture, principles, and concepts. She argued that the goodwill that deliberative democracy has garnered, premised on its perceived broad inclusion of all persons, irrespective of their socio-economic standing or political affiliation, might erode if cultures and precepts other than western culture and precepts are not included in theorizing equitable access to power in public spheres.¹⁷⁰ Benhabib further contended that the clashes of cultures that emanate from the presumed superiority of western culture - including its (western culture) ideals of governance - could be remedied by continuously "re-imagining the boundaries between us [western culture] and them [other cultures]."¹⁷¹ Benhabib's contribution is crucial because it provides the theoretical lenses for examining and addressing issues surrounding access to the Nigerian public sphere by marginalized Nigerians, whose worldview is notionally distinct from that of Nigerian elites.

¹⁶⁹ Ademola Azeez, "Contesting 'Good Governance' in Nigeria: Legitimacy and Accountability Perspectives" (2009) 21:3 *Journal of Social Sciences* 217 - 224.

¹⁷⁰ Seyla Benhabib, *The Rights of Others: Aliens, Residents and Citizens*, The John Robert Seeley lectures 5 (Cambridge ; New York: Cambridge University Press, 2004), 21.

¹⁷¹ Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton, N.J: Princeton University Press, 2002), 9.

To Young,¹⁷² the notion of equality and mutual respect identified as core features of deliberative democracy is incomplete because said concepts do not account for oppressed groups in liberal constitutional orders that researchers have excluded. In an earlier publication, Young specifically asked whether it is reasonable, in an ideal world, to trust that the elites who ordinarily control and dictate the government's socio-economic policies, and by doing so, exert immense control over political discourse would genuinely encourage the liberalization of public spheres?¹⁷³ Even if it is, would the voices of those marginalized be genuinely heard under such an arrangement? Should their voices be heard, would it translate into meaningful changes in government policies? Finally, if all of the preceding were to become achievable miraculously, discussion in the public sphere on governance issues would remain intricately linked to and based on existing structural injustices, which itself would limit genuine deliberations.¹⁷⁴ Young's submission and further contributions¹⁷⁵ highlight the injustices that deliberative democracy inadvertently perpetuates against marginalized members of liberal constitutional orders.¹⁷⁶ Her arguments are heightened in quasi-liberal constitutional orders where democratic principles and ideals exist in theory but are hardly complied with in practice by such constitutional orders' governments and elites.

Moreover, and according to Young, the arguable egalitarian promises that are responsible for the injustices that deliberative democracy unintentionally perpetuates also hinder attempts at theorizing and developing practical solutions capable of rectifying the identified structural injustices for the

¹⁷² Young, *supra* note 153. See her expositions at 3 – 42.

¹⁷³ Young, *supra* note 99, 102 - 104.

¹⁷⁴ *Ibid*, 108 - 115.

¹⁷⁵ Young, *supra* note 153.

¹⁷⁶ Young, *supra* note 99, 27 - 36.

collective benefit of all.¹⁷⁷ Like Mutz's research, reliance on Young's contributions would address the likely inability of Habermas' force of better argument¹⁷⁸ and ideal speech situation¹⁷⁹ to produce fair and just outcomes in the Nigerian public sphere. Said inability is *inter alia* traceable to the prevalence of elites' domination, corrupt practices, and the Nigerian government's unwillingness to permit civil disobedience to its democratic decisions. In chapter three of this thesis, I will discuss and analyze these governance practices.

Finally, with his critical theory, Hammond argues that deliberative democracy is best researched as a balance between theories that guarantee that power and power-holders are accountable to the public and those that ensure that the citizens are critical of each other when they query the government's democratic practices and governance.¹⁸⁰ Hammond's critical theory - which builds on and improves Rawls' contributions to deliberative democracy¹⁸¹ - is essential because it analyzes power and access to power in a way that enhances coordination and cooperation of all participants in the public sphere. In doing so, decisions reached under such conditions would be fairer and more just as Rawls envisaged. Hammonds critical theory further posits that those marginalized ought to be encouraged to participate in framing policies that could emancipate them from extant democratic governance practices that currently subjugate them.¹⁸² Reliance on Hammond's critical theory would help conceive means of

¹⁷⁷ Young, *supra* note 99, 108 – 115.

¹⁷⁸ Habermas, *supra* note 69, 89 - 103. For explanatory notes on Habermas's Force of a Better Argument, see Allen, *supra* note 69; Victor, *supra* note 69; Ferrell & Old, *supra* note 69.

¹⁷⁹ Habermas, *supra* note 102.

¹⁸⁰ Hammond, *supra* note 113, 778.

¹⁸¹ Rawls, *supra* note 101, 42 - 44.

¹⁸² Hammond, *supra* note 113, 788.

liberalizing the Nigerian public sphere to accommodate the diverse and silenced voices of marginalized Nigerians during deliberations on Nigeria's governance issues in the Nigerian public sphere.

1.4. Objectives of this research

While progressives identified stratified inequalities in liberal constitutional orders that undermine the potential of deliberative democracy to produce fair and just outcomes for all, they did not explore challenges that arise from arbitrary access to public spheres in constitutional orders that do not have liberal undertones. Consequently, the task of filling this gap became the objectives of researchers from quasi-liberal and illiberal constitutional orders, who mostly focused their attention on the People's Republic of China.¹⁸³ However, the peculiarity of the Chinese government's "democratic" governance framework renders *sui generis* the findings of these researchers on the potential of deliberative democracy in constitutional orders that do not have liberal undertones.¹⁸⁴ Resultantly, there is a need to intensify inquiries into the potential of deliberative democracy to address problems of democratic governance of quasi-liberal and illiberal constitutional orders, specifically those of countries from Africa,¹⁸⁵ Latin America,¹⁸⁶ Asia and the Middle East.

¹⁸³ Baogang He, "Western Theories of Deliberative Democracy and the Chinese Practice of Complex Deliberative Governance" in Ethan J Leib & Baogang He, eds, *The Search for Deliberative Democracy in China* (New York: Palgrave Macmillan US, 2006) 133; Ethan J Leib & Baogang He, *The Search for Deliberative Democracy in China* (New York: Saint Martin's Press Inc., 2006); Wei Zhou, "In Search of Deliberative Democracy in China" (2012) 8:1 *Journal of Public Deliberation* 1; Beibei Tang, Tetsuki Tamura & Baogang He, "Deliberative Democracy in East Asia: Japan and China" in Andre Bächtiger et al, eds, *The Oxford Handbook of Deliberative Democracy* (Oxford University Press, 2018) 790.

¹⁸⁴ Greg Distelhorst, "The Power of Empty Promises: Quasi-Democratic Institutions and Activism in China" (2017) 50:4 *Comparative Political Studies* 464 - 498.

¹⁸⁵ Emmanuel Ifeanyi Ani, "Africa and the prospects of deliberative democracy" (2013) 32:3 *South African Journal of Philosophy* 207 - 219.

¹⁸⁶ Thamy Pogrebinschi, "Deliberative Democracy in Latin America" in Andre Bächtiger et al, eds, *The Oxford Handbook of Deliberative Democracy* (Oxford University Press, 2018) 828.

Although researchers are beginning to increasingly critique the potential of deliberative democracy to thrive in quasi-liberal (and illiberal) constitutional orders, these researchers inadvertently omit describing or theorizing how the precepts of deliberative democracy could be modified to enhance, guarantee, and encourage the participation of such constitutional orders' marginalized members.¹⁸⁷ One paper that attempted to research this issue focused on the federalist perspective of deliberative democracy¹⁸⁸ and skipped the analysis of democratic governance and associated problems of arbitrary access to the public sphere in quasi-liberal constitutional orders. The continued failure to address this gap in the literature constrains the potential of deliberative democracy and casts doubt on its ability to produce fair and just outcomes for all, as the originalists conceived.¹⁸⁹ This thesis's objective is to fill this gap in the existing literature on deliberative democracy, and in doing so, expand the frontiers of deliberative democracy to an area less researched.

1.5. Proposed Methodologies

To actualize this thesis's objective, I will rely on the quantitative and doctrinal research methodologies. The following sub-sections summarize their utility to this research.

1.5.1. Qualitative (Historical, Archival, and Textual Analysis) Research Methodologies

The qualitative research methodology is usually employed to deduce relevant information and obtain essential data to analyze research question(s).¹⁹⁰ It is a broad research methodology that comprises

¹⁸⁷ For example see Andrew Osehi Enaifoghe, "Deliberative Democracy through Citizens' Participatory Democracy: A Model for Africa Political Process" (2019) 10:1 Journal of Social and Development Sciences 11 - 21.

¹⁸⁸ JE Ugarriza & D Caluwaerts, eds, "Federalist Deliberative Democracy in Nigeria" in *Democratic deliberation in deeply divided societies: from conflict to common ground*, 1st ed (Basingstoke, Hampshire: Palgrave Macmillan, 2014) 225.

¹⁸⁹ Rawls, *supra* note 101, 42 - 44; Habermas, *supra* note 69, 486; Mills, *supra* note 147, 255; Elster, *supra* note 146, 104; Gutmann & Thompson, *supra* note 136, 14 - 15; and Cohen, *supra* note 68.

¹⁹⁰ Lisa Given, *The SAGE Encyclopedia of Qualitative Research Methods* (2455 Teller Road, Thousand Oaks California 91320 United States: SAGE Publications, Inc., 2008).

several sub-methodologies. In analyzing the potential of deliberative democracy to address problems of democratic governance in Nigeria, this research relies on historical, archival, and textual research methodologies. These research methodologies are sub-methodologies of the qualitative research methodology.

The archival research methodology explains and traces the history of a phenomenon, idea, or problem.¹⁹¹ This research methodology is optimal for examining and analyzing archived documents stored in the archive section of libraries or other places that keep such records. Accordingly, any researcher who employs this research methodology must either personally analyze the archived materials or rely on reliable secondary sources whose author(s) analyzed said archived materials.¹⁹² Research on democratic governance problems in Nigeria would be incomplete without analyzing white papers, committee reports, *et al.*, that document these problems.

Because I am currently unable to access the archive section of the National Library of Nigeria, which houses these documents, this thesis will draw inferences from Professor Toyin Falola's research.¹⁹³ Falola's publications¹⁹⁴ relied on primary archival materials to trace, describe, and explain Nigeria's

¹⁹¹ Albert J Mills & Jean Helms Mills, "Archival Research" in *The SAGE Handbook of Qualitative Business and Management Research Methods: Methods and Challenges* (1 Oliver's Yard, 55 City Road London EC1Y 1SP: SAGE Publications Ltd, 2018) 32.

¹⁹² Marc J Ventresca & John W Mohr, "Archival Research Methods" in Joel A C Baum, ed, *The Blackwell Companion to Organizations* (Oxford, UK: Blackwell Publishing Ltd, 2017) 805.

¹⁹³ Toyin Falola is a Jacob and Frances Sanger Mossiker Chair Professor in the Humanities and a distinguished Teaching Professor at the University of Texas. His works: Toyin Falola, *The History of Nigeria*, The Greenwood histories of the modern nations (Westport, Conn: Greenwood Press, 1999); Falola & Heaton, *supra* note 5. drew on original archival records to trace, explain and describe the history of Nigeria. However, his works did not analyze the legitimacy problem of democratic governance and practices in Nigeria. It merely accounted for the governance of Nigeria from pre-independence to the commencement of extant Nigeria's fourth republic.

¹⁹⁴ Falola, *supra* note 193; Falola & Heaton, *supra* note 5; Toyin Falola, "Nigeria's Twentieth Century: - Nigeria: A New History of a Turbulent Century. By Richard Bourne . London: Zed Books, 2015. Pp. xxiii + 320. £12.99/\$18.95, paperback (ISBN 978-4-78032-906-2)." (2017) 58:3 *The Journal of African History* 550 - 551.

history and democratic governance tussles, from pre-independence to the current republic. Reliance on Falola's published works would enrich this research by robustly articulating democratic practices that currently hinder democratic governance and hamper deliberative democracy's potential in Nigeria.

Further, this research also employs the historical research methodology.¹⁹⁵ Generally, researchers rely on the historical research methodology to investigate and provide an account of events that had taken place. The historical research methodology serves five purposes. First, it attempts to reveal or uncover the unknown. Secondly, it tries to answer previously unanswered questions by adopting historical lenses. Thirdly, it searches and identifies the relationships between past happenings and their link with the present. Fourthly, it records and assesses past activities and achievements of individuals, agencies, and institutions. Finally, it assists in the understanding of human culture.¹⁹⁶ By employing the historical research methodology, I will critique the impact that the Nigerian government's previous governance structures and practices could have on Nigeria's current democratic governance. I will further analyze the effect of said previous governance structures and practices on the potential of deliberative democracy in Nigeria.

Afterward, I will employ the textual research methodology¹⁹⁷ to carefully examine the meaning, content, and structure of relevant literature on Nigeria's democratic governance and deliberative democracy's precepts. By relying on the textual research methodology, I will identify and analyze

¹⁹⁵ Jovita J Tan, *Historical Research: A Historical Research Method* (2015). <https://www.academia.edu/24276932/HISTORICAL_RESEARCH_A_QUALITATIVE_RESEARCH_METHOD> accessed on December 4, 2019.

¹⁹⁶ BL Berg, *Historiography and Oral Traditions: Quantitative Research Methods for the Social Sciences*, 4th ed (MA: Allyn and Bacon, 2001).

¹⁹⁷ Lisa Given, "Textual Analysis" in *The SAGE Encyclopedia of Qualitative Research Methods* (2455 Teller Road, Thousand Oaks, California, 91320, United States: SAGE Publications, Inc., 2008).

democratic governance problems that frustrate marginalized Nigerians from accessing and participating in the Nigerian public sphere. Reliance on the textual research methodology¹⁹⁸ would help conceptualize the framework within which this research will recommend that Nigeria's democratic governance problems are potentially rectifiable by reconceiving norms that the Nigerian government imposes in terms of justice, thereby ensuring that the subsequent application of such norms would enhance coordination and cooperation between marginalized Nigerians and Nigerian elites. Consequently, democratic governance in Nigeria, having encompassed the broad aspirations of all Nigerians, would closely align with the dictates that the originalists conceived for deliberative democracy, and, thus, be accorded more legitimacy by Nigerians.

1.5.2. Doctrinal Research Methodology

Researchers rely on this research methodology to locate and analyze the law's primary document(s) in hopes of ascertaining, explaining, and establishing its substance and parameters.¹⁹⁹ This utility of the doctrinal research methodology extends beyond the process of describing primary sources and locating secondary information²⁰⁰ to the intricate step of reading, analyzing, and linking the new information identified to the known body of law. Doctrinal legal research draws on the legal system "as the main supplier of concepts, categories, and criteria."²⁰¹ Since this research intends to explore the potential of deliberative democracy to address the problems of democratic governance in Nigeria,

¹⁹⁸ Elfriede Fürsich, *Textual Analysis and Communication* (Oxford University Press, 2018).

¹⁹⁹ Terry Hutchinson, *Researching and Writing in Law*, 3d ed (Reuters Thompson, 2010), 37.

²⁰⁰ Terry Hutchinson & Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research" (2012) 17:1 *Deakin Law Review* 83, 113.

²⁰¹ Hutchinson, *supra* note 199, 38.

an optimal way to fulfill said objective is to identify and analyze Nigeria's power source. Within Nigeria's constitutional order, the source of Nigeria's power is the 1999 constitution (As Amended).²⁰²

As Nigeria's grundnorm, it is best researched through the doctrinal research methodology, which incorporates case laws, policy directives, and other documents. These materials detail Nigeria's power source and describe the ideal way to understand the dynamics of Nigeria's governance framework. By relying on the doctrinal research methodology, I will analyze relevant provisions of the 1999 constitution to situate deliberation principles within Nigeria's quasi-liberal constitutional framework. Where necessary, this research will rely on case laws, relevant enacted legislation, drafted policy papers, and issued government directives to clarify and proffer insights on how Nigeria's current democratic practices could impact the potential viability of deliberative democracy in Nigeria.

²⁰² *Constitution of the Federal Republic of Nigeria 1999 (As Amended)*.

2 Deliberation Principles within the Framework of the 1999 Constitution of Nigeria

2.1. Introduction

Deliberative democracy, which generally builds on existing participatory democratic frameworks, is arguably the ideal form of democracy. By subjecting both the process and outcomes of democratic decisions to the hurdles of public justification,²⁰³ deliberative democracy could expose limitations of participatory democracy, and it has.²⁰⁴ Research has revealed that most democratic decisions reached under the participatory democracy fail to scale the public justification hurdle.²⁰⁵ This failure - a recurring feature of Nigeria's democratic governance²⁰⁶ - undermines the legitimacy of decisions reached in participatory democracy and underscores deliberative democracy's utility.²⁰⁷

This chapter examines this utility further by analyzing the extent to which the ideals of deliberative democracy that the originalists conceived²⁰⁸ could operate within Nigeria's quasi-liberal constitutional context. In doing so, this chapter sidesteps the proposals of previous researchers who have primarily recommended the altering and enactment of a new constitution²⁰⁹ as a panacea to Nigeria's democratic governance problems. The avenues for, space within which, and eventual engagement between the Nigerian government and Nigerians on governance issues are what this thesis refers to as the Nigerian

²⁰³ Cohen, *supra* note 68.

²⁰⁴ Christaino, *supra* note 66, 243-244.

²⁰⁵ *Ibid*, 244.

²⁰⁶ Yagboyaju & Akinola, *supra* note 5.

²⁰⁷ Kadlec & Friedman, *supra* note 100, 14.

²⁰⁸ Rawls, *supra* note 101, 42 – 44; Habermas, *supra* note 69, 486; Mills, *supra* note 147, 255; Elster, *supra* note 146, 104; Gutmann & Thompson, *supra* note 136, 14 - 15; and Cohen, *supra* note 68.

²⁰⁹ Ihonvbere, *supra* note 2; Ogowewo, *supra* note 2.

public sphere. Relying on this notion of the Nigerian public sphere, this chapter identifies and analyzes the public reasoning principle, the limitation principle, and the entrenchment deliberative democracy principle within the framework of the 1999 constitution of Nigeria. The continuing nurturing of these principles remains the optimal means to address Nigeria's democratic governance problems without altering its constitutional structure and (re)enacting newer constitutions.

2.2. Deliberation Principles within the 1999 Constitution of Nigeria

In its capacity as Nigeria's grundnorm,²¹⁰ the 1999 constitution articulates Nigeria's source of power and defines limits of said power.²¹¹ The 1999 constitution further identifies the duties of the Nigerian government²¹² and details the rights of Nigerians.²¹³ In addition to prescribing and describing how Nigeria must be governed,²¹⁴ the 1999 constitution imposes a corresponding duty on the Nigerian government to simultaneously cater to the welfare of Nigerians, ensure the safety of Nigerians and guarantee their security.²¹⁵ In exchange, Nigerians are duty-bound to comply with and assist in realizing the policies of the Nigerian government.²¹⁶ In actualizing the respective duties and obligations that the 1999 constitution prescribes and mandates, frequent clashes and frictions generally arise between the Nigerian government and Nigerians on Nigeria's governance issues. These discords - which are expressions of the symbiotic relationship between the Nigerian government and Nigerians - are

²¹⁰ *1999 Constitution (As Amended)*, *supra* note 202, s 1.

²¹¹ *Ibid*, s. 1(1), Chapters I and Part II.

²¹² *Ibid*, s 4, 5, and 6.

²¹³ *Ibid*, Chapter IV.

²¹⁴ *Ibid*, s 1(2).

²¹⁵ *Ibid*, s 14(2)(b).

²¹⁶ *Ibid*, s 24(b), (c).

imperative for the growth of constitutional democracies.²¹⁷ Said symbiotic relationship is equally essential for the vibrancy and integral to the evolution of deliberative democracy in Nigeria. Identifiable gaps in this symbiotic relationship are mostly responsible for the inability of Nigeria's constitutional order and governance structure to produce fair and just outcomes for all Nigerians.

What is deducible from the above paragraph is that the 1999 constitution of Nigeria sought to ensure that Nigerians participate in and are the primary beneficiaries of the governance acts of the Nigerian government. Ensuring that citizens are involved in and the primary beneficiaries of their government's governance act, aligns with Habermas²¹⁸ and Rawls²¹⁹ notion of deliberative democracy as espoused by Mills²²⁰ and Elster.²²¹ However, the skewed structure of Nigeria's quasi-liberal constitutional order, expressed by the unwillingness of the Nigerian government to publicly justify its democratic practices and governance styles to Nigerians (public reasoning principle), undermines the fruition of the aspirations that the originalist conceived for deliberative democracy.²²² This unwillingness of the Nigerian government coincidentally impacts the notion of limited government in Nigeria (limitation principle). Unless rectified, these challenges pose serious problems to the foundation of the Nigerian quasi-liberal constitutional order (entrenchment principle). In the following section, I critically examined the public reasoning, limitation, and entrenchment principles within the 1999 constitution.

²¹⁷ HWO Okoth-Okendo, "Constitutions without Constitutionalism: An African Political Paradox" in Douglas Greenberg et al, eds, *Constitutionalism and Democracy: Transitions in the Contemporary World* (New York: Oxford University Press, 1993) 65.

²¹⁸ Habermas, *supra* note 98.

²¹⁹ Rawls, *supra* note 101, 42 - 44.

²²⁰ Mills, *supra* note 147, 255.

²²¹ Elster, *supra* note 146, 104.

²²² Rawls, *supra* note 101, 42 - 44; Habermas, *supra* note 69, 486; Mills, *supra* note 147, 255; Elster, *supra* note 146, 104; Gutmann & Thompson, *supra* note 136, 14 - 15; and Cohen, *supra* note 68.

2.2.1. Public Reasoning / Public Justification Principle

Within the conceptual lens of deliberative democracy, the process and outcome of democratic decisions ought to be influenced by rational discussions, belief moderation, and difference clarifications,²²³ rather than popular votes and preference rankings.²²⁴ In democratic settings, reliance on rational discussions, belief moderation, and difference clarifications are the optimal means by which citizens of all constitutional orders, particularly those marginalized, could simultaneously be governed and free.²²⁵ Subjecting governance decisions on democratic vital issues to public justification ensures acceptability and enhances the legitimacy of such decisions.²²⁶ In conceiving public justification in quasi-liberal constitutional orders, the substance of the democratic essential issues might be of little significance. What could be paramount is whether the government of such quasi-liberal constitutional order has the authority to govern?

Since Nigerians, by voting during elections in Nigeria, have theoretically authorized the Nigerian government to govern,²²⁷ then all governance acts and decisions of the Nigerian government on issues of democratic importance in Nigeria could be deemed to have been permanently justified to Nigerians. However, this rationale does not align with the fundamental principle of deliberative democracy that avers that attaining compromise via continuous public reasoning remains the optimal way to secure

²²³ Habermas, *supra* note 69, 384.

²²⁴ Miller, *supra* note 119, 61.

²²⁵ Immanuel Kant & Mary J Gregor, *Practical Philosophy*, 1. paperback, 9. print ed, The Cambridge edition of the works of Immanuel Kant general ed.: Paul Guyer and Allen W. Wood[...] (Cambridge: Cambridge University Press, 2006), 457.

²²⁶ John Locke, *Second Treatise of Government*, 1st ed (Indianapolis, Ind: Hackett Pub. Co, 1980), 52.

²²⁷ *1999 Constitution (As Amended)*, *supra* note 202, s 14(2)(a).

the legitimacy of decisions reached in democratic societies.²²⁸ Under the lens of deliberative democracy, the legitimacy of democratic decisions²²⁹ transcends the consent that citizens²³⁰ who inhabit different democratic settings might have donated to their government to govern.²³¹ Instead, the legitimacy of such important democratic decisions is usually determined by the extent to which such decisions are the reflective aftermath and outcome of the logical reasoning between governments and citizens of such democratic settings on critical governance issues.²³²

Further to the ideals of deliberative democracy, attaining legitimacy of democratic decisions in Nigeria would require the Nigerian public sphere to navigate the treacherous slopes of conflicting desires of Nigerians. These treacherous slopes are an expression of democracy's fickleness, which "... often cannot be made, through analytical means, to yield determinate answers."²³³ Yet, it is within these treacherous slopes that the Nigerian government intermittently justifies its actions. However, instead of aligning with the aspirations that the originalists had conceived for deliberative democracy,²³⁴ the justification that the Nigerian government provides for its democratic governance and practices

²²⁸ Martí, *supra* note 126.

²²⁹ Seyla Benhabib, "Towards a Deliberative Model of Democratic Legitimacy" in Seyla Benhabib, ed, *Contesting the Boundaries of the Political* (Princeton N.J: Princeton University Press, 1996) 67, 68.

²³⁰ Authur Ripstein, "Authority and Coercion" (2004) 32:1 *Philosophy and Public Affairs Journal* 2–35.at 8 – 10; Jean Hampton, *Political Philosophy* (Boulder, Colo: Westview Press, 1998), 75 - 78.

²³¹ Cf Allan Buchanan, "Political Legitimacy and Democracy" (2002) 112:4 *Ethics* 689 - 719, 699 - 703. Here the author argued that if consent were to be a necessary determinant for the legitimacy of power, then no government in the world would be legitimate. This argument reinforces Allan's argument that political authority is not necessary for the comprehension and legitimacy of political power.

²³² Worley, *supra* note 111, 432

²³³ Charles F Sabel & William H Simon, "Democratic Experimentalism" in Justin Desautels-Stein & Christopher Tomlins, eds, *Searching for Contemporary Legal Thought*, 1st ed (Cambridge University Press, 2017) 477, 484.

²³⁴ Rawls, *supra* note 101. 42 – 44; Habermas, *supra* note 69, 486; Mills, *supra* note 147, 255; Elster, *supra* note 146, 104; Gutmann & Thompson, *supra* note 136, 14 - 15; and Cohen, *supra* note 68.

merely satisfies procedural requirements that distinguish Nigeria from an autocratic state.²³⁵ Thus, rather than genuinely subjecting its democratic governance and practices to public scrutiny, Nigerians are shut off, civil organizations operating in Nigeria are bullied, and the Nigerian government browbeats media outlets that seek to hold the Nigerian government accountable.²³⁶

By public justification within the context of the Nigerian constitutional order, I neither envisage that Nigerians must be consulted on all governance issues. What I envision is that at all times, the Nigerian government must, through logical reasoning, be capable of proffering reasonable justifications for the prevailing democratic practices and governance style it relies on to govern Nigeria. This recommendation that the Nigerian government continually publicly justify its democratic governance to Nigerians stems from the constitutional provision that "sovereignty belongs to the people of Nigeria from whom [the] government through this constitution derives all its power and authority."²³⁷ Since sovereignty belongs to Nigerians, the Nigerian government ought to continuously and continually account its democratic practices and governance styles to Nigerians as constitutionally prescribed.²³⁸ Besides, the Nigerian government ought to focus on catering to the welfare of and addressing the security concerns of Nigerians.²³⁹ Stated simply, within the conceptual lens of public

²³⁵ Muse & Narsiah, *supra* note 10, 410 - 411.

²³⁶ Rodney Ciboh, "Journalists and Political Sources in Nigeria: Between Information Subsidies and Political Pressures" (2017) 22:2 *The International Journal of Press/Politics* 185–201; Christopher Ochanja Ngara & Edward Ndem Esebonu, "The Mass Media and the Struggle for Democracy in Africa: The Nigerian Experience" (2012) 21:4 *Nordic Journal of African Studies* 183–198; "Concerns About Freedom of Expression in Nigeria: Journalist Arrested, Protests Repressed", (19 November 2019), online: *CIVICUS - Monitor Tracking Civil Space* <<https://monitor.civicus.org/updates/2019/11/19/Concerns-freedom-expression-several-journalists-arrested-protests-repressed/>> accessed June 13 2020.

²³⁷ *1999 Constitution (As Amended)*, *supra* note 202, s 14(2)(a).

²³⁸ *Ibid.*

²³⁹ *Ibid.*, s 14(2)(b).

justification principle of deliberative democracy in Nigeria, the principal objective of the Nigerian government ought to be formulating policies that would produce fair and just outcomes for all Nigerians, irrespective of their socio-economic status or political leanings.

The preceding admonition reminisces the aspiration that Rawls conceived for deliberative democracy,²⁴⁰ as reiterated by Elster.²⁴¹ In their desire to ensure that the Nigerian constitutional order produces fair and just outcomes for all Nigerians, the 15-member committee that drafted the 1999 constitution included the Fundamental Objectives and Directive Principles of State Policy (the policy) in chapter II of the constitution.²⁴² The policy prescribes the broad aspirations of the Nigerian government, expectations of Nigerians and embodies the collective will of Nigerians and the Nigerian government on issues of governance in Nigeria.²⁴³ Therefore, measuring the extent to which the Nigerian government pursues and attains the objectives contained in the policy are prime deliberation topics and opportunities.²⁴⁴

It is crucial to emphasize that deliberative democracy requires a "reasoning[-]giving process which is open and accessible to all citizens, binding in the short term, but dynamic and open to change as a result of future dialogue."²⁴⁵ The legislature, otherwise known as the deliberative body, best provides

²⁴⁰ Rawls, *supra* note 101, 42 - 44.

²⁴¹ Elster, *supra* note 146, 104.

²⁴² Federal Ministry of Information, Nigeria, *Report of the Proceedings of the Constitutional Drafting Committee* (Ministry of Information, Federal Republic of Nigeria, 1976); *1999 Constitution (As Amended)*, *supra* note 202, s 13 and chapter 2

²⁴³ *1999 Constitution (As Amended)*, *supra* note 202; E Alemika, "Fundamental Objectives and Directive Principles of State Policy within the Framework of Liberal Economy" in Ayua, Goubadia & Adekunle, eds, *Nigeria: Issues in the 1999 Constitution* (Lagos: NIALS, 2000) 235.

²⁴⁴ Yagboyaju & Akinola, *supra* note 5, 5 – 10.

²⁴⁵ Gittings, *supra* note 121, 117.

this reasoning-giving process. The ability of members of the legislature in this stead is due to their unconstrained liberty to deliberate on issues and modify their opinions to align with the broad aspirations of their constituents. Based on their smaller composition compared to their constituents, members of the Nigerian legislative arms of government can exhaustively dialogue amongst themselves and interact with their constituents on governance issues at a more involved rate than the other arms of the Nigerian government.

On its part, the executive arm of the Nigerian government must remain pragmatic and amenable to modifying its deliberation tactics and objectives to enhance the legitimacy of the policies that it formulates and seeks to implement.²⁴⁶ The executive must also be willing and capable of ascertaining and aggregating the diverse socio-economic and political aspirations of Nigerians.²⁴⁷ The continued pressure to formulate and implement policies that align with the broad aspirations of Nigerians, particularly those marginalized, usually limits the time that the executive has to deliberate on governance issues. Nevertheless, when the executive is opportune to deliberate with Nigerians, it ought to ensure that such interactions are simultaneously dynamic and static to accommodate to the possible extent, the clamouring of all Nigerians. Doing so would allow the executive to identify and swiftly address the changing necessities crucial to accomplishing its constitutional mandate of imposing norms and prescribing policies that align with and reflect the aspirations of Nigerians.

On its part, the Nigerian judiciary, except when arbitrating, has no luxury of deliberating with Nigerians or other arms of the Nigerian government.²⁴⁸ Even when the Nigerian judiciary adjudicates,

²⁴⁶ *Ibid.*

²⁴⁷ *1999 Constitution (As Amended)*, *supra* note 202, chapter II.

²⁴⁸ *Ikuforji v Federal Republic of Nigeria*, [2018] 43884(SC) Law Pavilion Electronic Law Report . In this case, the Supreme Court reiterated the long-established principle of law in Nigeria that Nigerian courts do not engage in or adjudicate on academic issues. In contrast, the Supreme Court of some countries like Canada has the inherent powers to advise the

it sits above the fray, like a demi-god waiting to pronounce judgment on all. In this way, the Nigerian judiciary presents itself as a virtuous adjudicator whose duty is to ensure the continuing coherence of norms so as to forestall the unravelling of Nigeria's constitutional order.²⁴⁹ Despite the Nigerian judiciary's aloofness, Nigerians, and the other arms of the Nigerian government regularly and circuitously deliberate with it by commenting on case law and judicial findings. Notably, Nigerians and other arms of the Nigerian government analyze, criticize, cite, quote, and, when appropriate, re-submit to the Nigerian judiciary its decisions as legal authorities to be affirmed, upturned, or modified. Through these tactics, some form of engagement, though limited in substance and form, exists between Nigerians and the judicial arm of the Nigerian government on Nigeria's governance issues.

In sum, the constitutional guarantee that power is derived from and exercised in trust for Nigerians broadly aligns with the aspirations that the originalists conceived for deliberative democracy.²⁵⁰ This constitutional guarantee could animate the Nigerian public sphere to ensure that democratic governance in Nigeria produces fair and just outcomes for all Nigerians. To an extent, the Nigerian government had been intensifying its effort to actualize the socio-economic aspirations of Nigerians. Should the government continue to govern in a manner that would produce fair and just outcomes for all Nigerians, Nigeria might scale the hurdles that had and are still negatively impacting its democratic governance.

government on issues that have not amounted to a dispute. See Section 53(1) and (2) of the Supreme Court of Canada Act. R.S.C., 1985, c. S-26.

²⁴⁹ Amalia Amaya, “Virtuous Adjudication; or the Relevance of Judicial Character to Legal Interpretation” (2019) 40:1 Statute Law Review 87 - 95.

²⁵⁰ Rawls, *supra* note 101, 42 – 44; Habermas, *supra* note 69, 486; Mills, *supra* note 147, 255; Elster, *supra* note 146, 104; Gutmann & Thompson, *supra* note 136, 14 – 15; and Cohen, *supra* note 68.

Despite the potential of deliberative democracy to address Nigeria's governance problems as succinctly noted in the preceding paragraphs, governance practices, three of which I will discuss in the next chapter, currently constrain Nigeria's constitutional order's capacity to produce fair and just outcomes for all Nigerians on governance issues. For instance, the Nigerian elites - acting through the Nigerian government - continue to rely on the notion of divide and rule²⁵¹ to sow dissent²⁵² and foment identity politics in Nigeria.²⁵³ Subsequently, Nigerian elites capitalize on the growing mistrust and disaffection between and among marginalized Nigerians and the Nigerian government to hijack, exploit, and bend the policies of the Nigerian government to their will.²⁵⁴ These conducts of Nigerian elites accentuate gaps between the aspirations that the originalists conceived for deliberative democracy²⁵⁵ and the current reality of democratic governance in Nigeria.

2.2.2. Limitation Principle

Generally, deliberative democracy thrives in constitutional orders with liberal undertones but hardly flourishes in constitutional orders where there are limited or no limitations on governmental powers. The absence of or ineffective restriction(s) on governmental powers invariably constrains the ability of citizens of constitutional orders to query and, when circumstance warrants, check the excesses of their government. When such constraints are absent or limited, the capacity of such citizens to

²⁵¹For a comprehensive understanding of this policy, and how it has negatively impacted governance in former British Colonies, including Nigeria, see AJ Christopher, "Divide and Rule: The Impress of British Separation Policies" (1988) 20:3 Area 233-240; F Bethke, "The Consequences of Divide-and-Rule Politics in Africa South of the Sahara" (2012) 18 Peace Economics, Peace Science and Public Policy.

²⁵² Canci & Odukoya, *supra* note 46; Edoh, *supra* note 49.

²⁵³Kiki Edozie, *supra* note 35, 426 - 429

²⁵⁴ Muse & Narsiah, *supra* note 10; Agunyai, *supra* note 57; Yagboyaju & Akinola, *supra* note 5.

²⁵⁵ Rawls, *supra* note 101, 42 - 44; Habermas, *supra* note 69, 486; Mills, *supra* note 147, 255; Elster, *supra* note 146, 104; Gutmann & Thompson, *supra* note 136, 14 - 15; and Cohen, *supra* note 68.

negotiate any identified discrepancies between the actions of their government and constitutionally delineated governmental powers – a factor integral to deliberative democracy – becomes moot.

Theoretically, limitations on queries to governance and government practices are a known feature of illiberal constitutional orders.²⁵⁶ However, some restraints also exist in quasi-liberal constitutional orders, where constitutional ideals exist in principle but are usually not complied with in practice.²⁵⁷

In Nigeria's quasi-liberal constitutional order, the variation between constitutional principles and practices creates a loophole that permits the Nigerian government to deviate from adhering strictly to the rule of law and democratic ideals.²⁵⁸ Governments of quasi-liberal constitutional orders like Nigeria's generally justify their deviation from the rule of law by arguing that "we the people" have consented to be governed by such governments. Since "we the people" have consented, then it is arguable that all acts of such governments should for all intent and purpose, be legitimate.²⁵⁹

Because Nigeria's constitutional make-up, governance structure, and government are inherently non-autochthonous, the question of "we the people" as a gauge to ascertain the legitimacy of the Nigerian government's governance and democratic practices is inherently problematic. By being devoid of the participation of Nigerians in its enactment, the 1999 constitution is not the reflective aftermath of the reasoning of Nigerians, who ought to have a say in determining the parameters within which they would be governed. Relying on this premise, several Nigerian democracy theorists have concluded

²⁵⁶ Mark Tushnet & Alberto Simpser, "Authoritarian Constitutionalism" in Tom Ginsburg, ed, *Constitutions in Authoritarian Regimes* (New York: Cambridge University Press, 2013) 36.

²⁵⁷ Distelhorst, *supra* note 184.

²⁵⁸ Muse & Narsiah, *supra* note 10.

²⁵⁹ Locke, *supra* note 226, 63; Hannah Pitkin, "Obligation and Consent" (1965) 59 *American Political Science Review* 991–999.

that Nigeria's constitutional structure and governance framework is a fraud.²⁶⁰ The fraudulence of Nigeria's constitutional order underscores the abuse of power inherent in Nigeria. Said fraudulence had also negatively impacted the ability of the Nigerian government to fulfill its constitutional mandate of catering to the welfare of and securing the lives and properties of Nigerians.²⁶¹ Resultantly, the inability of the Nigerian government to govern in a manner that aligns with the ideals of deliberative democracy that the originalists conceived²⁶² had weakened the capacity of Nigeria's constitutional order to produce fair and just outcomes for all Nigerians on governance issues.

Despite the preceding, limits exist on the powers that the Nigerian government can exercise. Said limits are detailed in the 1999 constitution.²⁶³ Therefore, any decision(s) of the Nigerian government that contravene dictates of the 1999 constitution will be *ultra vires* to the divergence's extent.²⁶⁴ Nevertheless, instances abound when the necessity of governance imposes a duty on the respective arm and levels of the Nigerian government to reach beyond the delineations of their respective constitutional limits to confront challenges that the Nigerian government did not envisage. In addressing these unforeseen problems, the constitutional duties of the respective arms and levels of the Nigerian government might overlap, thereby violating the notion of separation of powers.²⁶⁵ Although such overlap is integral to the efficiency of all constitutional orders, it ought to be exercised

²⁶⁰ Ogowewo, *supra* note 2; Ihonvbere, *supra* note 2; Femi Falana, "Constitutionalism, Rule of Law, and Human Rights" in Said Adejumobi, ed, *Governance and Politics in Post-Military Nigeria* (New York: Palgrave Macmillan US, 2010) 125.

²⁶¹ Hilary Matfess, "Institutionalizing Instability: The Constitutional Roots of Insecurity in Nigeria's Fourth Republic" (2016) 5:1 *Stability: International Journal of Security and Development* 13.

²⁶² Rawls, *supra* note 101. 42 – 44, Habermas, *supra* note 69. at 486, Mills, *supra* note 147. at 255, Elster, *supra* note 146. at 104, Gutmann & Thompson, *supra* note 136. 14 – 15, and Cohen, *supra* note 68.

²⁶³ *1999 Constitution (As Amended)*, *supra* note 202, s 4, 5 and 6.

²⁶⁴ *Ibid*, s 1(3)

²⁶⁵ Ojo, *supra* note 86, 149.

with constraint.²⁶⁶ Commenting on the utility of the overlap of separation of powers, Professor Ojo noted that:

"a complete separation of powers is neither practicable nor desirable for effective government. What the doctrine can be taken to mean is the prevention of tyranny by the conferment of too much power on any one person or body, and the check of one power by another."²⁶⁷

It is crucial to note that when situations that require the overlap of constitutionally delineated governmental powers arise, said overlap ought to be exercised in moderation. This admonition is noteworthy within the context of Nigeria's quasi-liberal constitutional order because over-harmonization of the Nigerian government's governmental powers could reduce or perhaps wholly eliminate checks on the respective arms and levels of the Nigerian government.²⁶⁸

Since Nigeria operates a federal-presidential government system, the separation of powers in Nigeria is both horizontal (amongst the arms of the Nigerian government) and vertical (between the Nigerian federal government and Nigeria's federating units). The aim of the vertical separation of powers in Nigeria is to *inter alia* ensure that the voices of all Nigerians, particularly those of minority ethnic groups, are heard.²⁶⁹ Thus, the conceptualization of the vertical separation of powers in Nigeria theoretically creates a platform within which marginalized Nigerians inhabiting Nigeria's federating

²⁶⁶ Elster, *supra* note 146, 104.

²⁶⁷ Abiola Ojo, "Separation of Powers in a Presidential System of Government" (1981) *University of Lagos Public Law Journal* 105, 105.

²⁶⁸ *Ibid.*

²⁶⁹ AA Ahmad, "The Position of Minority Identity in Nigeria and Its Effect on Governmental Policies" (2015) *5:4 International Journal of Research in Social Sciences* 89, 99 – 101.

units could effectively engage one another and the Nigerian federal government on vital governance issues in the Nigerian public sphere.²⁷⁰

The 1999 constitution²⁷¹ protects, enhances, and achieves the objectives of the vertical separation of powers in Nigeria by ensuring that certain legislative items are within the exclusive purview of the respective federating units that comprise the Nigerian state.²⁷² Through this tactic, Sager's "moral progress,"²⁷³ which permits federating units of countries that operate federal systems of government to invent ideas, propagate such ideas, and ensure the consolidation of such ideas without unravelling the political, social, and economic fabric of such countries, evolves.

By conferring powers on the respective federating units that comprise the Nigerian state to impose norms on specific issues, the 1999 constitution seeks to actualize Sager's "moral progress." Further to actualizing Sager's "moral progress", the 1999 constitution sought to forestall the emergence of an

²⁷⁰ Phillips Okolo, "Managing Minority Problems in Nigeria: The Case of the Ethnic Minorities of the Niger Delta Region" (2004) 5:6 *Journal of Economics and Sustainable Development* 91 – 99.

²⁷¹ See the Second Schedule to the *1999 Constitution (As Amended)*, *supra* note 202.

²⁷² *Ibid.* The Schedule has two parts. The first part, titled "Exclusive Legislative List," contains items that are within the exclusive legislative competence of the federal government. The other list, titled "Concurrent Legislative List," contains additional items that are with the concurrent legislative competence of both the federal government and that of the federating units. If both the federal government and any of the federating units legislate on an item on the Concurrent Legislative List, any conflict that might arise from the respective legislations must be resolved in favour of the legislation passed by the federal government. This principle is known as Covering the Field. See *Saraki v Federal Republic of Nigeria*, [2016] 40013(SC) Law Pavilion Electronic Law Report, for an analysis of the Nigerian Supreme Court's analysis of the meaning of covering the field.

²⁷³ Lawrence Sager, "Cool Federalism and the Life-Cycle of Moral Progress" (2005) 46:4 *Williams and Mary Law Review* 1385. Sager in this article had argued that the respective legislative competence of the different levels of government is a reflection of the moral compass of the society that allows such society to evolve within the confines of certain legal principles guarded by the federal government. This way, the federating units could function as a testing ground for the pursuit of specific policies, whose policies might affect the social fabric of the society if they were pursued in the first instance by the federal government. By acting as a sandbox, the extent of the success and the rationale for the failings of said policies could be identified, and if possible, swiftly addressed. This identification would serve as a rich source of information that the federal government could draw on if it ever desires to implement similar policies at the federal level.

autocratic government²⁷⁴ that would stifle the voices of marginalized Nigerians from participating in the governance of Nigeria.

Premised on the preceding, it is glaring that Nigeria's vertical separation of powers enhances the principles of equality and liberty that the originalists conceived as integral to deliberative democracy.²⁷⁵

In an attempt to fulfill these commitments to liberty and equality, the 1999 constitution theoretically created an enabling space within which marginalized Nigerians inhabiting Nigeria's federating units could actualize their political and socio-economic aspirations.²⁷⁶ In so doing, the 1999 constitution notionally guarantees Nigerians their liberty and further assures that they remain equal under the law to actualize their pursuit of happiness.

Further to these assurances, the 1999 constitution theoretically certifies that no Nigerian government's level or arm should exercise extensive and intrusive control over Nigerians. In reality, the Nigerian federal government does.²⁷⁷ Not only does the Nigerian federal government control most machinery of governance in Nigeria, but it also exercises overbearing influence, interfering unduly in the democratic governance, norms, and practices of Nigeria's federating units.²⁷⁸ Such interference mostly protects and ensures that Nigerian elites dominate Nigeria's socio-economic and political space. Yet, the Nigerian federal government continues to falsely view said interference as an expression and

²⁷⁴ Ripstein, *supra* note 230, 8 - 10; Hampton, *supra* note 230, 75 - 78.

²⁷⁵ Cohen, *supra* note 68.

²⁷⁶ Okolo, *supra* note 270; Akinbode Fasakin, "State and Democratization in Nigeria" (2015) 11:3 Democracy and Security 298 - 317.

²⁷⁷ Yagboyaju & Akinola, *supra* note 5, at 7- 8.

²⁷⁸ *Ibid.*

expansion of its mandate to ensure uniformity in the socio-economic development of Nigeria's federating units.²⁷⁹

Unsurprisingly, this desire for uniformity, especially on issues that might not be of national importance, mostly fails to acknowledge the inherent differences in the capacity, will, precepts, and norms of Nigeria's federating units. Several administrative functions like regulating policing duties, fingerprint identification, criminal records, insurance, labour-related issues, industrial arbitration, minimum wage, tourism, and business name registration²⁸⁰ that should be decentralized to permit necessary modifications to suit the peculiarities of Nigeria's federating units remain centralized.²⁸¹ The aftermath of the Nigerian federal government's appropriation of these administrative functions is the underperformance of their utilities and their continued failure to aid Nigerians in actualizing their broad socio-economic aspirations and political goals.

Thus, some have viewed the Nigerian federal government's incursions into Nigeria's federating units' legislative competencies as a veiled attempt to starve the latter of their constitutionally delineated

²⁷⁹ See *Attorney General of Abia State v Attorney General of the Federation and Ors*, [2007] 6 (PT. 1029) NWLR 200. In this case, the government of Abia State failed in its attempt to declare the federal anti-corruption bill passed by the federal legislature to be *ultra vires* the power of the federal government and in violation of the provisions of Chapter IV of the 1999 Constitution.

²⁸⁰ See the Exclusive Legislative List contained in the *1999 Constitution (As Amended)*, *supra* note 202.

²⁸¹ The Nigerian federation comprises about 250 ethnic groups, with varying degrees of influence. The smaller ethnic groups - which make up for about 95% of the ethnic groups in Nigeria – generally distrust the dominant Hausa/Fulani, Igbo and Yoruba ethnic groups. Even among these three dominant ethnic groups, disaffection also runs deep. For instance, over 50% of Nigeria's political power is firmly entrenched in the Hausa/Fulani ethnic tribe, who are predominantly Muslims and geographically located in the northern part of the country. In contrast, the Yorubas and Ibos are mostly Christians/traditional worshippers and are principally located geographically in the southern part of Nigeria. That power disparity is not lost on Nigerians, especially the Yorubas and Ibos, who are more academically exposed and economically buoyant as compared to their Hausa/Fulani counterparts. Yet, the Ibos and Yorubas have less control over the machinery of government. Consequently, when the federal government says that it desires uniformity in development, what most southerners interpret such desire to mean is the diversion of resources from the south to the north to contribute to the north's development without a corresponding transfer of power to the south. This misnomer accentuates and consequently leads to the perception that the acts and actions of the government in these steads are illegitimate.

powers.²⁸² Congruently, others have posited that the Nigerian federal government's interference is simply an attempt to subject Nigeria's federating units to the latter's wills and caprices.²⁸³ In my view, said incursions are simply avenues to reward Nigerians within specific federating units that have been and are still subservient to the Nigerian federal government's policy directives while punishing those that are not.²⁸⁴

When the Nigerian federal government interferes in the governance of Nigeria's federating units, it sidesteps the underlying theme of the social contract theory²⁸⁵ in favour of beneficial symbiotic relationships.²⁸⁶ Constitutional orders that rely on such beneficial symbiotic relationships to govern usually constrain the prospective emergence of an egalitarian society that emphasizes collective reasonings on governance issues.²⁸⁷ By relying on beneficial symbiotic relationships, the Nigerian federal government avails Nigeria's federating units that have been amenable to the former's incursion into the latter's governance tactic with financial, logistic, and administrative assistance.²⁸⁸ The Nigerian

²⁸² Muse & Narsiah, *supra* note 10, 51.

²⁸³ Yagboyaju & Akinola, *supra* note 5, 7 – 8.

²⁸⁴ For example, during the administration of Bola Tinubu as the Governor of Lagos State between 1999-2007, the federal government led by Chief Olusegun Obasanjo refused to pay Lagos State its share of the Consolidated Revenue Allocation. The rationale was based on Lagos State's creation of Local Council Development Areas, a creation that was not supported by the Federal Government. Even the Nigerian Supreme Court found the situation to be dicey, and further complicated the issue by holding that the creation was inchoate. See *The Honourable Attorney General of Lagos State v The Honourable Attorney General of the Federation and 35 Others*, [2014] 2014 - LPELR-22701(SC) .

²⁸⁵ M Weber, *The Theory of Social and Economic Organizations*, edited ed, Talcott Parsons, ed (New York: Free Press, 1964), 382.

²⁸⁶ See Buchanan, *supra* note 231, 699 – 703.

²⁸⁷ Maurice Adams, Anne Claartje Margreet Meuwese & E M H Hirsch Ballin, eds, *Constitutionalism and the Rule of Law: Bridging Idealism and Realism* (Cambridge, United Kingdom ; New York, NY: Cambridge University Press, 2017).

²⁸⁸ Michael B Aleyomi, "Nigeria's Image Crisis: Drivers, Efforts and Prospects" (2020) *African Identities* 1 - 16.

federal government usually provides said assistance without any form of deliberation in the Nigerian public sphere.²⁸⁹

Rectifying the negative impacts of beneficial symbiotic relationships on Nigeria's democracy is essential to ascertain the legitimacy of the Nigerian government's governance tactics and the utility of Nigeria's current democratic practices.²⁹⁰ After all, theorizing the optimal means to secure and maintain the delicate balance of power between the federal government and federating units of constitutional orders is one of the objectives of federalism.²⁹¹

While the limitation principle of deliberative democracy is somewhat inoperative in the vertical separation of powers between Nigeria's government levels, the principle operates more visibly, albeit in a limited form, in the horizontal separation of powers in Nigeria. Since their constitutional duties differ, the respective arm of the Nigerian government employs specific tools that determine how deliberative they can be when executing their constitutional duties and checking each other's excesses. For example, the Nigerian legislature relies on normative reasoning to enact legal norms, while the Nigerian executive employs empirical and pragmatic reasoning to cater to the diverse socio-economic and political aspirations of Nigerians. In contrast, the Nigerian judiciary adopts principles like Elster's "consistency constraint"²⁹² and Rawls' fairness as justice approach²⁹³ to ensure the coherence of judicial decisions and forestall the unravelling of Nigeria's constitutional foundation. Through these various

²⁸⁹ Yagboyaju & Akinola, *supra* note 5, 5 - 10

²⁹⁰ *Ibid.*

²⁹¹ Timothy Onimisi et al, "Federal Character Principles: A Conceptual Analysis" (2018) 6:2 International Journal of Social Science and Humanities Research 172 - 177.

²⁹² Elster, *supra* note 146, 104.

²⁹³ Rawls, *supra* note 118, 41.

means, the respective arms of government in Nigeria perform their constitutional duties and check each other's immoderations in hopes of eschewing the emergence of an autocratic government in Nigeria.

Since a primary rationale for the growth of deliberative democracy as a theory of governance is its emphasis that the exercise of governmental power should not be without constraint in democratic settings, then citizens of such democratic settings ought to be involved in exerting that constraint.²⁹⁴ While the 1999 constitution describes and prescribes limits of government powers, it leaves the task of checking the excesses of the government, particularly the executive arm of the Nigerian government, to the Nigerian government.²⁹⁵ The power of recall constitutionally prescribed is restricted to the Nigerian legislature²⁹⁶ and does little to check the overindulgences of the executive arm of the Nigerian government or challenge any depraved judicial conduct that the Nigerian judiciary might exhibit. These power checking gaps are unsettling problems that could further hinder the limitation principle of deliberative democracy that this section examines.

Further, the awareness that aside from instituting actions in courts, Nigerians mostly have limited constitutional and statutory avenues to challenge the Nigerian government's excesses equally compounds the utility of this limitation principle. Yet, when Nigerians approach the court to contest the Nigerian government's perceived excesses, litigants have to scale the hurdle of *locus standi*²⁹⁷ and

²⁹⁴ Ank Michels & Harmen Binnema, "Assessing the Impact of Deliberative Democratic Initiatives at the Local Level: A Framework for Analysis" (2019) 51:5 *Administration & Society* 749–769, 749.

²⁹⁵ *1999 Constitution (As Amended)*, *supra* note 202, s 4, 5 and 6.

²⁹⁶ *Ibid.*, s 69 and 110

²⁹⁷ Z. Adangor, "Locus Standi in Constitutional Cases in Nigeria: Is the Shift from Conservatism to Liberalism Real?" (2018) 12:1 *Journal of Jurisprudence, International Law and Contemporary Issues* 73.

show that they are not meddlesome interlopers.²⁹⁸ These frequent and pronounced hurdles to accessing the Nigerian courts - a prominent feature of quasi-liberal constitutional orders - have negatively impacted and disastrously affected Nigeria's democratic governance.²⁹⁹

Moreover, the ability and capacity of marginalized Nigerians to challenge the excesses of the Nigerian government when the latter violates existing norms of constitutional democracy depend mainly on an independent and vibrant judiciary. Such an independent judiciary must be willing to accommodate social and distributive justice claims, which ought to be integrated to aid marginalized Nigerians in their pursuit of justice accurately.³⁰⁰ Although in Nigeria, justice - which broadly implies equity and fairness³⁰¹ - is presently an elusive concept, its unceasing pursuit remains the most accurate barometer for measuring the utility of Nigeria's democratic governance and its capacity to produce fair and just outcomes for all Nigerians.

While the Nigerian judiciary has inherent powers to adjudicate over all persons, entities, and government entities in Nigeria,³⁰² it lacks the means to enforce its judgment.³⁰³ This inability to enforce

²⁹⁸ The argument that they are taxpayers is not enough. Although the Nigerian courts have become more willing to accommodate cases that challenge the constitutionality and legality of the acts of government, litigants must nonetheless establish either the “injury test” or the “interest test” to have their dispute heard and adjudicated. This requirement exceeds what ordinarily obtains in other civil actions. For a more detailed analysis of this see *ibid*.

²⁹⁹ DO Nnamani & JO Iloh, “Good Governance and National Value: Where does Nigeria stand at 53?” (2014) 2:1 *International Journal of Democratic and Development Studies* 26 - 35.

³⁰⁰ Nlerum S Okogbule, “Access to Justice and Human Rights Protection in Nigeria: Problems and Prospects” (2005) 2:3 *International Journal of Human Rights* 94 - 113, 97.

³⁰¹ RWM Dias, *Jurisprudence*, 4th ed (Butterworth, 1976), 67.

³⁰² *1999 Constitution (As Amended)*, *supra* note 202, s 6(6)(b).

³⁰³ Ibrahim Abdullahi, “Independence of the Judiciary in Nigeria: A Myth or Reality?” (2014) 2:3 *International Journal for Public Administration and Management Research* 55 - 66, 55 - 57

its judgement, which undermines the utility of the Nigerian judiciary,³⁰⁴ has demoralized Nigerians from approaching the Nigerian courts³⁰⁵ to challenge the democratic governance and practices of the Nigerian government.³⁰⁶ Though no law constrains the Nigerian bench from enforcing its judgment, all instruments of state power³⁰⁷ necessary to secure compliance with judicial decisions are under the Nigerian executive arm of government's control.³⁰⁸ While this scenario is not peculiar to Nigeria,³⁰⁹ the overbearing influence that the Nigerian executive bears on the notion of the rule of law in Nigeria is *sui generis*.³¹⁰ This overbearing influence extends to viewing existing governing norms, including the 1999 constitution (as amended), as literature that the executive arm of the Nigerian government could cherry-pick from or completely disregard with little consequence.³¹¹

Research has also revealed that though the Nigerian legislature intermittently checks the governance style and practices of the Nigerian executive, such checks, rather than fulfilling the mandates of the

³⁰⁴ “Judicial Independence under Threat in Nigeria, warns UN Rights Expert”, *UN News* (11 February 2019), online: <<https://news.un.org/en/story/2019/02/1032391>> accessed July 24 2020.

³⁰⁵ Osahon Guobadia, “The Relevance of the Judiciary in a Democratic Nigeria” (2012) 20:2 *African Journal of International and Comparative Law* 301.

³⁰⁶ Remi Chukwudi Okeke & Adeline Nnenna Idike, “The Judiciary and Democracy Consolidation in Nigeria under the Buhari Administration” (2017) 2:4 *Specialty Journal of Politics and Law* 24 - 32.

³⁰⁷ AA Aderinto, “Policing and the Politics of Law Enforcement in Nigeria” in DE Agwanwo, ed, *A Political Economy of Policing in Nigeria* (Makurdi: Aboki Publishers, 2014) 59, 80.

³⁰⁸ Okeke & Idike, *supra* note 306, 27 - 28.

³⁰⁹ This act of the executive arm of government in Nigeria is akin to enthronement of the rule of man. For detailed critique of this see, Wojciech Sadurski, “Rule of Law v. the Rule of Men and Women: What’s in the Distinction?: A Short Essay for Martin Krygier” (2019) 11:2 - 3 *Hague J Rule Law* 377 - 382. For analysis of attempts by the legislature to lawfully subvert the rule of law, see Peter van Lochem, “Legislation against the Rule of Law – An Introduction” (2017) 5:2 *The Theory and Practice of Legislation* 95 - 100, 95.

³¹⁰ Phillips Aka, “Judicial Independence under Nigeria’s Fourth Republic: Problems and Prospect” (2015) 45:1(2) *California Western International Law Journal* 1 - 73, 49 - 52.

³¹¹ Patrick Ukata, “The Judiciary in Nigeria Since 1999” in Carl Levan & Patrick Ukata, eds, *The Oxford Handbook of Nigerian Politics* (Oxford University Press, 2018) 301.

1999 constitution, are simply power tussles between the Nigerian executive and legislature.³¹² Accordingly, the excesses of the Nigerian executive and the insincerity of the Nigerian legislature, which undermine their ability to perform their respective constitutionally delineated duties with moderation, underscore the importance of an independent Nigerian judiciary.³¹³

I agree with the analysis of several researchers that have critically analyzed the utility of an independent Nigerian judiciary to Nigeria's nascent democracy.³¹⁴ However, to actualize this thesis's overall objectives, I contend that the Nigerian judiciary must become empowered to enforce its judgment. To achieve this proposal, I recommend that the Nigerian legislature enact a statute mandating the respective law enforcement agencies in Nigeria to create a department within their organizational structures, whose sole duty would be to enforce the Nigerian court's decisions. While members serving within the proposed created departments will remain part of their respective agencies, their promotion, remuneration, and service conditions should be outside their principal agencies' hierarchical framework and the Nigerian government's executive arm's influence.

The proposal mentioned in the preceding paragraph would shield these law enforcement agents from punitive actions, especially when the judicial decision(s) they enforce or have enforced is against their principal agencies or the Nigerian government's executive arm. If this recommendation is actualized, enforcement of judicial pronouncement in Nigeria would no longer rely exclusively on the willingness

³¹² Joseph Yinka Fashagba, Matthew Ajayi Ola-Rotimi & Chiedo Nwankwor, *The Nigerian National Assembly*, 1st ed (Cham: Springer International Publishing, 2019), 15.

³¹³ Aka, *supra* note 310.

³¹⁴ Some of the leading works on the independence of the judiciary in Nigeria are A Olowofoyeku, "The Beleaguered Fortress: Reflections of the Independence of Nigeria's Judiciary" (1989) 33:1 *Journal of African Law* 55–71; M A Ikhariale, "The Independence of the Judiciary under the Third Republican Constitution of Nigeria" (1990) 34:2 *Journal of African Law* 145–158; Abdullahi, *supra* note 305; Ibrahim Sule, "Judicial Independence in Nigeria: Between Global Trends, Domestic Realities and Islamic Law" (2018), online: <<http://rgdoi.net/10.13140/RG.2.2.26017.45920>> accessed June 29 2020.

of the executive arm of the Nigerian government. Accordingly, the successful implementation of this recommendation could re-animate the trust of Nigerians in the judicial process, and in doing so, re-energize this limitation principle.

Despite the quasi-liberal nature of Nigeria's constitutional order, some limitations on governmental power exist. By delineating the scope of democratic governance, it becomes easier to identify excesses and abuses as they arise. This delineation could help Nigerians articulate the identified excesses to the body constitutionally mandated to check the erring arm. Deliberative democracy does not mean unilateral decision-making;³¹⁵ it means engaging existing participatory democratic governance to identify inherent problems, so the identified challenges could be rectified in a mutually beneficial manner.³¹⁶ This deliberating framework remains an unfolding art that must be carefully nurtured and cautiously guided. The unceasing nurturing of the limitation principle would help enhance the potential vibrancy of deliberative democracy to produce fair and just outcomes for all Nigerians as the originalist conceived.

2.2.3. Entrenchment Principle

Deliberative democracy is arguably the most effective way to reflect on and balance the current realities of democratic governance with the often fleeting desires of those inhabiting democratic settings of liberal and quasi-liberal constitutional orders.³¹⁷ These often fleeting desires, which are usually the aftermath of demands that governments publicly justify their governance style and democratic

³¹⁵ Michelman, *supra* note 97, 145.

³¹⁶ Gittings, *supra* note 121, 117

³¹⁷ Hammond, *supra* note 109.

practices,³¹⁸ seek to ensure that the actions of such government remain limited by law. Securing this goal is the objective of the entrenchment principle of deliberative democracy. While the public justification principle ensures that democratic governance and practices are geared toward the citizens' communal benefits, the limitation principle provides the framework to ascertain government acts and limit governmental powers to forestall unwanted intrusion into the citizens' lives. Both principles are undeniably vital to the potential vibrancy of deliberative democracy in Nigeria.

However, the public reasoning and limitation principles cannot guarantee the objectives they respectively seek to accomplish in Nigeria. That guarantee is theoretically provided by the entrenchment principle, which makes indelible, subject to constitutional amendments,³¹⁹ limited government in Nigeria's quasi-liberal constitutional order. The entrenchment principle further guarantees the means by which Nigerians could demand justification publicly and continually from the Nigerian government on the latter's democratic governance and practices. Therefore, the entrenchment principle of deliberative democracy discussed in this section is the foundation that guarantees the utility and vibrancy of the public justification and limitation principles discussed previously. Besides, the entrenchment principle also relies on and simultaneously reinforces the public justification and limitation principles hitherto discussed. Therefore, subsequent analysis and reference to the limitation and public justification principles of deliberative democracy, either collectively or respectively, encompass the entrenchment principle and *vice versa*.

³¹⁸ Mills, *supra* note 147, 255.

³¹⁹Although uncertainties of governance and verisimilitudes of life could intermittently mandate earlier amendments to constitutions, researchers have established that seventeen years is the average lifespan of constitutions. For detailed analysis of this see Zachary Elkins, Tom Ginsburg & James Melton, *The Endurance of National Constitutions* (Cambridge ; New York: Cambridge University Press, 2009); Tom Ginsburg, *The Lifespan of Written Constitutions* (2007).

Difficulties inherent in nurturing the relationship between the government and the governed in democratic settings, as previously critiqued, underscore the impossibilities of reflecting all of the often-conflicting desires of inhabitants of democratic settings when the respective government of such democratic settings governs. In seeking to address this delicate balance within the Nigerian context, the entrenchment principle acknowledges that the continual update of the 1999 constitution to reflect the veracities under which Nigerians should be governed is essential for the growth of Nigeria's nascent democracy and vital to the vibrancy of deliberative principles earlier discussed.

However, not all conceived socio-economic aspirations and political goals of Nigerians should warrant changes to the provisions of the Nigerian constitution.³²⁰ In instances where the need for such alteration(s) arises, the process ought to accommodate, to the possible extent, the preferences and objections³²¹ of all Nigerian, irrespective of their socio-economic status and political affiliation. The recognition of the intrinsic role that the 1999 constitution plays in securing and enlivening Nigeria's democracy underscores the higher threshold constitutionally prescribed to amend the provision of the 1999 constitution. In ensuring that proposed amendments to the 1999 constitution genuinely reflect the desires of Nigerians, the entrenchment principle potentially guarantees that the process and outcome of said amendment(s) to the 1999 constitution would not have selfish undertones.

To be deemed proper, an amendment to the 1999 constitution must, to the possible extent, consider and accommodate the socio-economic and political aspirations of all Nigerians. The involvement of

³²⁰ To comprehend how deliberative democracy influences unnameability and unconstitutionality of certain constitutional provisions, see Joel Colón-Ríos, "Deliberative Democracy and the Doctrine of Unconstitutional Constitutional Amendments" in Ron Levy et al, eds, *The Cambridge Handbook of Deliberative Constitutionalism*, 1st ed (Cambridge University Press, 2018) 271.

³²¹ For general analysis of the role of deliberative democracy in constitutional drafting, see John Erik Fossum & Agustin Jose Menendez, "The Constitution's Gift? A Deliberative Democratic Analysis of Constitution Making in the European Union" (2005) 11:4 *European Law Journal* 380 - 440.

Nigerians in the amendment process must transcend mere referendums,³²² where the Nigerian government invites Nigerians to indicate acceptance or rejection of the proposed amendment(s). Instead, the constitutional amendment process ought to encompass detailed, structured, informative, and expressive conversations with Nigerians on the rationale for the amendments, by *inter alia*, highlighting the collective benefit of such amendment to Nigerians. Section 9 of the 1999 constitution provides that:

“(2) An Act of the National Assembly for the alteration of this Constitution, not being an Act to which section 8 of this Constitution applies, shall not be passed in either House of the National Assembly unless the proposal is supported by the votes of not less than two-thirds majority of all the members of that House and approved by resolution of the Houses of Assembly of not less than two-thirds of all the States.

(3) An Act of the National Assembly for the purpose of altering the provisions of this section, section 8, or Chapter IV of this Constitution shall not be passed by either House of the National Assembly unless the proposal is approved by the votes of not less than four-fifths majority of all the members of each House, and also approved by

³²² Conducting referendums could also be inherently deliberative. For a detailed account of how referendums might be deliberative in furtherance to the precepts of deliberative democracy, see Hoi L Kong, “The Deliberative Mandate Referendum.” (2020) 53:1 UBC Law Review 179 - 204.

resolution of the House of Assembly of not less than two-third(s) of all States.”³²³

The threshold stipulated above is not easily attainable. Nigeria’s national legislative body (the National Assembly) comprises a 109-member Senate and 360-member House of Representatives.³²⁴ Of these numbers, a minimum of 73 Senators and 240 Representatives must approve any proposed constitutional amendment(s).³²⁵ Since these legislators are representative of the diverse ethnic groups in Nigeria, many of whom have an innate distrust of each other, their distrust complicates the ease of attaining that threshold.³²⁶ This innate distrust that the National Assembly members have for one another also reflects the deep divide among the various cultures, communities, and federating units in Nigeria. Therefore, these Senators and Representatives usually jostle to ensure that any proposed constitutional amendment(s) does not diminish, interfere, or render useless the cultural, religious, social, and ethnic peculiarities of their respective constituents. In this way, members of the National Assembly seek to ensure that the amendment process reflects and is geared towards actualizing their constituents' socio-economic and political aspirations.

This desire to ensure that the proposed amendment(s) reflects the peculiarities of the communities that make up the Nigerian state becomes pronounced when the Nigerian National Assembly forwards

³²³ 1999 Constitution (As Amended), *supra* note 202, s 9(2) and (3)

³²⁴ *Ibid* s 48 and 49.

³²⁵ However, if a proposed amendment to the Constitution seeks to affect the structure of the Nigerian State or modify the provisions on the fundamental rights of the citizens, then the threshold differs. In this instance, four-fifth members of each of the Houses of the Nigerian National Assembly as well as the Houses of Assembly of the federating units, must consent to said proposed amendment(s). This means a minimum of 88 members of the Senate; 288 members of the House of Representatives and at least 29 Houses of Assembly must subscribe to such amendment(s).

³²⁶ Canci & Odukoya, *supra* note 46.

said proposed amendment(s) to the respective Houses of Assembly of Nigeria's 36 federating units for approval.³²⁷ Members of those respective Houses of Assembly in Nigeria (local legislatures) are elected to represent their respective local communities' interests. Thus, it is reasonable to anticipate that the local legislatures will likely view any proposed constitutional amendment(s) through the lens of the amendments' benefit to their respective local communities first, before conceiving the importance of such amendment to Nigeria as a whole.

Without the opportunity to engage in robust and exhaustive deliberations, as Habermas³²⁸ and Mills³²⁹ urged, it is equally logical to presume that the local legislatures might be unwilling to support any proposed amendment(s) that could be disadvantageous to the respective constituencies they represent. The complexities associated with balancing the often-conflicting needs and desires of the respective communities of constitutional orders with heterogeneous compositions have led some researchers to inconclusively wonder whether heterogeneity hinders the growth and utility of democratic ideals in such constitutional orders.³³⁰

Admittedly, norms imposed via constitutional amendments in a society with heterogeneous makeup like Nigeria are unlikely to favour all the federating units evenly. The unevenness of the utility of such imposed norms underscores the importance of detailed and engaging interactions³³¹ between local

³²⁷ 1999 Constitution (*As Amended*), *supra* note 202 s 9(2) and 9(3)

³²⁸ Habermas, *supra* note 98.

³²⁹ Mills, *supra* note 147, 255.

³³⁰ Wolfgang Merkel & Brigitte Weiffen, "Does Heterogeneity Hinder Democracy?" (2012) 11:3 Comparative Sociology 387 - 421.

³³¹ Selen A Ercan, Carolyn M Hendriks & John S Dryzek, "Public Deliberation in an Era of Communicative Plenty" (2019) 47:1 policy polit 19–36.

legislatures and residents of the “disadvantageous communities” before such constitutional amendments would either be supported or opposed.³³² Although not expressly provided in the 1999 constitution, members of the respective local legislatures in Nigeria’s federating units usually confer with their constituents before taking a constitutional amendment stance.

The feedbacks from such engagement theoretically secured through the actualization of Habermas’ “force of the better argument,”³³³ inform the recommendations that the members of local legislatures to their respective legislative chambers. In making these recommendations, the respective local legislatures in Nigeria ought to rely on the Samaritan concept of justice, which states that “what ultimately legitimizes a [S]tate’s imposition upon *your* liberties is not merely the services it provides *you*, but the benefit it provides *others*.”³³⁴ This Samaritan concept of justice aligns more broadly with Rawls’s theorization of justice as fairness³³⁵ and Mill’s evolving perception of justice within representative systems. According to Mills:

“The representative system ought not to allow any of the various sectional interests to be so powerful as to be capable of prevailing against truth and justice and the other sectional interest combined. There ought always to be such a balance preserved among personal interests as may render any one of them dependent for its successes,

³³² Pretorius, “Deliberative Democracy and Constitutionalism”, *supra* note 125.

³³³ Habermas, *supra* note 69, 89 - 103. For explanatory notes on Habermas’s Force of a Better Argument, see Allen, *supra* note 69; Victor, *supra* note 69; Ferrell & Old, *supra* note 69.

³³⁴ Wellman, *supra* note 117, 213 (emphasis supplied by Wellman).

³³⁵ Rawls, *supra* note 118.

on carrying with it at least a large proportion of those who act on higher motives, and more comprehensive and distant views.”³³⁶

Relying on the preceding, the Nigerian National Assembly ought to carefully consider the proposals and recommendations that the respective legislative chambers of Nigeria’s federating units must have proffered.³³⁷ The consideration(s) of the recommendation(s) of the local legislatures are optimal means of ensuring that the proposed constitutional amendment produces fair and just outcomes for all Nigerians in alignment with the ideals that Rawls³³⁸ and Mills³³⁹ conceived for deliberative democracy. Moreover, because the Nigerian National Assembly requires the support of at least 24 of the 36 legislative chambers of Nigeria’s federating units for a successful amendment,³⁴⁰ it usually considers the inputs of the legislative chambers of Nigeria’s federating unit. Aware of this leverage, the local legislatures could band together to force the Nigerian federal government to, in furtherance to the Samaritan principle, ensure that the proposed amendment reflects and caters to the socio-economic and political aspirations of disadvantaged communities in Nigeria.

³³⁶ As quoted from Mills, *Collected Works XIX*: 447 by CL Ten, “Democracy, Socialism and the Working Class” in *The Cambridge Companion to Mill* (Cambridge: Cambridge University Press, 1998) 372, 379, culled from Peter Fabienne, “Political Legitimacy” in Edward N Zalta, ed, *The Stanford Encyclopedia of Philosophy*, summer 2017 ed (Stanford, CA: Metaphysics Research Lab, Stanford University, 2017).

³³⁷ Samuel Oni, Faith Olanrewaju & Oluwatimilehin Deinde-Adedeji, “The Legislature and Law Making in Nigeria: Interrogating the National Assembly (1999–2018)” in Joseph Yinka Fashagba, Ola-Rotimi Matthew Ajayi & Chiedo Nwankwor, eds, *The Nigerian National Assembly* (Cham: Springer International Publishing, 2019) 15.

³³⁸ Rawls, *supra* note 101, 42 – 44.

³³⁹ Mills, *supra* note 147, 255.

³⁴⁰ *1999 Constitution (As Amended)*, *supra* note 202.

Admittedly, amending the Nigerian constitution is exclusively a legislative process. Thus, the Nigerian government hardly invites Nigerians to participate in the amendment process.³⁴¹ Instead of involving Nigerians, the Nigerian government usually summons civil society groups,³⁴² labour unions, and professional associations.³⁴³ The Nigerian government erroneously perceives these groups and associations to be the informal representatives of all Nigerians. Unfortunately, and as I explain further in the next chapter, Nigerian elites have infiltrated and currently control labour unions, trade unions, professional associations, and other civil rights groups in Nigeria.³⁴⁴ Therefore, the Nigerian government's continued reliance on these groups as representatives of Nigerians, particularly marginalized Nigerians, is misleading.

Although the strenuous process of amending the 1999 constitution would likely enhance the legitimacy of its proposed amendments, its procedure nonetheless falls short of the deliberative method and comprehensiveness that most deliberative democrats conceive when constitutions are undergoing the process of amendments.³⁴⁵ Despite this shortcoming, the multilayered process involved in amending the 1999 constitution is noteworthy. This is more so since the enactment of the 1999 constitution was mostly devoid of the participation of Nigerians.

³⁴¹ *Ibid*, s 8 and 9.

³⁴² Darren Kew & Chris Kwaja, "Civil Society in Nigeria" in Carl Levan & Patrick Ukata, eds, *The Oxford Handbook of Nigerian Politics* (Oxford University Press, 2018) 368.

³⁴³ For instance, the 1st Alteration of the Nigerian Constitution in 2010 came about because of the pressure imposed on the government by members of the groups, as mentioned above. They not only pressured the Nigerian Government but also provided suggestions, inputs and recommendations that were useful to the legislature when the provisions of the 1999 Constitution were subsequently amended.

³⁴⁴ Onapajo & Babalola, *supra* note 95, 42 - 43.

³⁴⁵ Mariela Vargova, "Democratic Deficits of a Dualist Deliberative Constitutionalism: Bruce Ackerman and Jurgen Habermas" (2005) 18:3 *Ratio Juris* 365 - 86.

2.3. Reflections on the Deliberation Principles within Nigeria's Constitutional Framework

Notwithstanding the quasi-liberal nature of Nigeria's constitutional order, decisions made within it are mostly by-products of various deliberations between the Nigerian government and Nigerians. While most democratic decisions in Nigeria are neither reached by compromise nor continuously justified publicly to Nigerians, the 1999 constitution theoretically encourages the contributions of Nigerians to Nigeria's democratic governance and practices. Since securing and enhancing citizens' participation in governance issues is one of the objectives of deliberative democracy,³⁴⁶ the opportunities that Nigerians have to participate in Nigeria's governance that transcends mere voting during elections are worthy of commendations

Although deliberative democracy generally advocates the willingness to transform erstwhile held opinions, arguments, and beliefs based on reasoning,³⁴⁷ it does not envisage the complete eradication of one's biases. Instead, it admonishes participants in the democratic space to be willing to modify their thinking based on logic and compromise in pursuit of democratic ideals.³⁴⁸ A "central point of deliberation is to shape both preferences and beliefs and frequently alter them."³⁴⁹ It is against this background that I inquire in this section whether the three deliberative principles identified in the 1999 constitution (as amended) are truly deliberative? That is, do they, on the one hand, provide the platform within which the arms and levels of the Nigerian government could engage each other and, on the other, encourage Nigerians to engage the Nigerian government on the latter's governance style

³⁴⁶ Smith & Wale, *supra* note 67, 56.

³⁴⁷ Cass R Sunstein, *The Partial Constitution* (Cambridge: Harvard University Press, 1994), 22 - 23.

³⁴⁸ *Ibid.*

³⁴⁹ Cass R Sunstein, *Designing Democracy: What Constitutions Do* (Oxford: Oxford Univ. Press, 2002), 8.

and democratic practices? If they do? How and to what extent? If they do not, what could be the rationale?

Between 1960 to date, military dictators and former military dictators have ruled Nigeria for approximately 40 years. In other words, for an immoderate period of its existence, Nigerian had been governed by military decrees that are generally devoid of citizens' participation, lacking in accountability and unwelcome to deliberations.³⁵⁰ Even the extant federal-presidential system of government that Nigeria operates and the 1999 constitution are military constructions. Although the 1999 constitution borrowed ideas and phraseology from the 1979 constitution - which many Nigerians acclaim to be citizen-driven – the extant Nigeria's 1999 constitution was drafted by the Nigerian military's alter egos.³⁵¹

Yet, the 1999 constitution, despite not being a product of genuine deliberations amongst Nigerians, commenced by stating that: - "We The People,"³⁵² - thereby giving the false connotation that Nigerians participated in drafting and agreed to be bound by the constitution's contents. This false connotation led some researchers to argue that Nigeria is nothing more than a geographical location with a fraudulent government.³⁵³ As an aberration, the provisions, implementation, and interpretation of the 1999 constitution have been lopsided. Although the 1999 constitution paid lip service to inclusion, the constitution's real drafters - the Nigerian military - deliberately incorporated huddles to constrain

³⁵⁰ Muse & Narsiah, *supra* note 10; Kiki Edozie, *supra* note 35.

³⁵¹ Instead, a 15-member drafting body appointed by the Nigerian Military Government under the leadership of General Abubakar Abdulsalam drafted the 1999 Constitution. During that period, Nigeria had a population of about 116 million people. See <https://countryeconomy.com/demography/population/nigeria?year=1998>, accessed October 19 2019.

³⁵² See preamble of the *1999 Constitution (As Amended)*, *supra* note 202.

³⁵³ Ogowewo, *supra* note 2; Ihonvbere, *supra* note 2; Falana, *supra* note 260.

Nigerians from engaging the Nigerian government on the latter's policies.³⁵⁴ In actualizing this objective, the 1999 constitution rendered unjusticiable the entirety of chapter II that contains the "fundamental objectives and directive principles of state policy" that the Nigerian government ought to aspire to actualize.³⁵⁵ Also, by concentrating excess power in the Nigerian government's executive arm, the 1999 constitution's drafters ensured that Nigeria's judicial independence remains a mirage.³⁵⁶

Since the 1999 constitution, with its several challenges,³⁵⁷ is the basis from which Nigeria's democratic governance derives its validity,³⁵⁸ democracy in Nigeria has been subpar.³⁵⁹ In the Intelligence Unit of the Economist's (IUE) latest report, Nigeria, with an average score of 4.12 out of 10, ranked 109 of the 160 countries indexed.³⁶⁰ Nigeria scored 5.17 on electoral process and pluralism, 3.93 on the functional government, 3.33 on political participation, 3.75 on political culture, and 4.41 on civil liberties.³⁶¹ In comparison, Canada - with its democratic imperfections - ranked 7 of the countries indexed with an average score of 9.22. Canada scored 9.58 on electoral process and pluralism, 9.64 on functional government, 7.78 on political participation, 9.38 on political culture, and 9.17 on civil

³⁵⁴ For an analysis of the failing of the 1999 Constitution and its effect on the Nigerian society, see Elaigwu, *supra* note 3; John Campbell & Matthew T Page, *Nigeria: What Everyone Needs to Know*® (New York, NY: Oxford University Press, 2018).

³⁵⁵ s 6(6)(c) of the *1999 Constitution (As Amended)*, *supra* note 202; Alemika, *supra* note 243.

³⁵⁶ Abdullahi, *supra* note 303.

³⁵⁷ Ogowewo, *supra* note 2.

³⁵⁸ *1999 Constitution (As Amended)*, *supra* note 202, s 1

³⁵⁹ Ihonvbere, *supra* note 2; Idada & Uahunmwangho, *supra* note 6; Muse & Narsiah, *supra* note 10.

³⁶⁰ *Democratic Index: 2019 - A Year of Democratic Setbacks and Popular Protest*, by Intelligence Unit (London ; New York, NY: The Economist, 2020), 12.

³⁶¹ *Ibid.*

liberties.³⁶² While the IUE views Canada as a full democracy, it describes Nigeria as a hybrid regime where the rule of law is anemic, electoral fraud is rampant, and avenues to check the government's excesses are almost non-existent.³⁶³ What is equally worrisome is that political opposition - arguably the most effective tool to demand justification of official government actions³⁶⁴ - is more symbolic than effective in Nigeria.³⁶⁵

Despite these hurdles, the extant 1999 constitution contains three distinct deliberation principles: public reasoning, entrenchment, and limitation principles. Although skewed, these deliberation principles collectively indicate some forms of engagement that transcend mere voting during elections, exist between Nigerians and the Nigerian government on Nigeria's democratic governance and practices.³⁶⁶ Relying on the principles of reciprocity, accountability, and publicity, as urged by the originalists,³⁶⁷ further engagements between Nigerians and the Nigerian government could be broadened to ensure that the Nigerian constitutional order and governance structures begin to produce fair and just outcomes for all Nigerians in alignment with the views that the originalists conceived for deliberative democracy.³⁶⁸

³⁶² *Ibid*, 10.

³⁶³ *Ibid*, 5.

³⁶⁴ Nicolas Van De Walle & Kimberly Smiddy Butler, "Political Parties and Party Systems in Africa's Illiberal Democracies" (1999) 13:1 *Cambridge Review of International Affairs* 14–28. For an analysis of the functions and consequences of deliberations within political parties see Gherghina, Soare & Jacquet, *supra* note 127.

³⁶⁵ Intelligence Unit, *supra* note 360.

³⁶⁶ Cohen, *supra* note 107.

³⁶⁷ Gutmann & Thompson, *supra* note 136, 14 - 15.

³⁶⁸ Rawls, *supra* note 101, 42 – 44; Habermas, *supra* note 69, 486; Mills, *supra* note 147, 255; Elster, *supra* note 146, 104; Gutmann & Thompson, *supra* note 136, 14 – 15; and Cohen, *supra* note 68.

2.4. Conclusion

The objective of this chapter was to establish that, though skewed, the ideals of deliberative democracy exist within the framework of Nigeria's quasi-liberal constitutional order. The existence of these deliberation principles and their potential to ensure that democratic government in Nigeria produces fair and just outcomes undercut the proposal that addressing Nigeria's governance problems requires altering or enacting a new constitution. In place of these recommendations, this chapter identified and analyzed three deliberation principles within the framework of Nigerian's extant 1999 constitution. Although the current skewed structure of Nigeria's constitutional order undermines the utility of the public reasoning, limitation and entrenchment principles identified and discussed in this chapter - thereby rendering them incapable of actualizing the aspirations that the originalists conceived for deliberative democracy³⁶⁹ - their continued nurturing is the optimal means of addressing the endemic problem of democratic governance in Nigeria.

³⁶⁹ See fn 368.

3. Governance Practices that currently undermine Democratic Governance and could hinder the potential of Deliberative Democracy in Nigeria

3.1. Introduction

Further to the objectives that the originalists conceived for deliberative democracy, the previous chapter examined the 1999 constitution to identify and analyze the public reasoning, limitation, and entrenchment deliberation principles. The critique of these deliberation principles reveals gaps that constrain Nigeria's quasi-liberal constitutional order from actualizing the aspirations that the originalists conceptualized for deliberative democracy.³⁷⁰ Said gaps do not arise exclusively from the ineffectual constitutional precepts necessary for the evolution of deliberative democracy in Nigeria. Instead, said gaps are equally the aftermath of governance practices that have undermined and continue to weaken democratic governance and, by extension, the fruition of deliberative democracy in Nigeria. By identifying and critiquing these governance practices that hinder marginalized³⁷¹ Nigerians from gaining access to the Nigerian public sphere, this chapter shifts the focus of deliberative democracy from attempts to produce fair and just outcomes as Rawls conceived,³⁷² to an emphasis on the process, as Dryzek urged.³⁷³

³⁷⁰ Rawls, *supra* note 101, 42 – 44; Habermas, *supra* note 69, 486; Mills, *supra* note 147, 255; Elster, *supra* note 146, 104; Gutmann & Thompson, *supra* note 136, 14 – 15; and Cohen, *supra* note 68.

³⁷¹ Marginality is a fluid concept that depends on the subject matter discussed. For example, a financially successful white gay man living in North Carolina or Alabama in the United States, would only have his marginality heightened during discussions on sexual orientation. The peculiarity of his marginality is different from that of women, people of color and poor people who might either be homosexual or heterosexual. For additional information on the fluidity of powerless (marginalized) groups, see Iris Marion Young, “Five Faces of Oppression” in Lisa Heldke & Peg O’Connor, eds, *Oppression, Privilege and Resistance* (Boston: McGraw Hill, 2004) 37, 40 - 45. See also Kimberle Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics” (1989) 8:1 University of Chicago Legal Forum 139 - 167. This article explained intersectionality that analyzes marginality across multifaceted layers.

³⁷² Rawls, *supra* note 101, 42 - 44.

³⁷³ Dryzek, *supra* note 134, 2 – 6.

The governance practices that this chapter identifies are equally responsible for the several layered difficulties that marginalized Nigerians experience in identifying and situating the discrepancies between their socio-economic aspirations³⁷⁴ and the Nigerian government's policies.³⁷⁵ While the question of marginalization in Nigeria is an aftermath of colonialism³⁷⁶ and identity politics³⁷⁷ - both of which have continued to undermine the attainment of genuine nationhood in Nigeria³⁷⁸ - the effect of marginalization is mostly felt and more aptly expressed in socio-economic terms.³⁷⁹ Accordingly, politically marginalized Nigerians are often socio-economically poor. In Nigeria, those marginalized comprise about 90% of the population,³⁸⁰ many of whom earn less than 5.5USD daily.³⁸¹

The marginalization of marginalized Nigerians skews their perception of democratic governance, especially since Nigerian elites - represented by the Nigerian government - deliberately place hurdles that compound the ability of and frustrates marginalized Nigerians from participating in the governance of Nigeria.³⁸² Consequently, and as Mutz had admonished in her analysis of the American democratic process,³⁸³ marginalized Nigerians have developed and continue to develop apathy towards

³⁷⁴ Agunyai, *supra* note 57, 211-213.

³⁷⁵ Nnamani & Iloh, *supra* note 299, 26 - 27

³⁷⁶ Falola & Heaton, *supra* note 5, 115 - 118.

³⁷⁷ Kiki Edozie, *supra* note 35, 426 - 429

³⁷⁸ Aleyomi 2015, 109, cited in Ajayi, *supra* note 8, 100.

³⁷⁹ Ogbeidi, *supra* note 4, 1 - 2.

³⁸⁰ See <<https://www.macrotrends.net/countries/NGA/nigeria/poverty-rate>> accessed on May 22, 2020.

³⁸¹ Currently, according to the World Poverty Clock, about 102,000,000 Nigerians, which comprises about 50% of Nigeria's population live on less than 2 USD a day. <<https://worldpoverty.io/>> accessed on May 22, 2020. See also the report by CNN Adebayo, *supra* note 63.

³⁸² Agunyai, *supra* note 57, 211 - 213.

³⁸³ Mutz, *supra* note 166, 265-266.

governance issues,³⁸⁴ believing that their voices would never be central to the prescription of norms and integral to the tactics that the Nigerian government would adopt to governing. Such perceptions result in an image crisis for Nigeria³⁸⁵ and undermine the ability of Nigeria's governance framework and by extension, public sphere, to produce fair and just outcomes for all Nigerians in furtherance of the ideals that the originalist conceived for deliberative democracy.

Although the government practices that hinder the access of marginalized Nigerians to the Nigerian public sphere are numerous,³⁸⁶ this chapter restricts its analysis to elite domination,³⁸⁷ corruption prevalence,³⁸⁸ and the unwillingness of the Nigerian government to accommodate the civil disobedience of Nigerians. Unless addressed, these government practices - which as previously noted are aftermaths of the prevalence of identity politics³⁸⁹ and Nigeria's skewed federal structure³⁹⁰ - would continue to compound problems of democratic governance in Nigeria. Consequently, the potential of deliberative democracy to thrive in Nigeria's quasi-liberal constitutional order would be a mirage.

3.2. Analysis of Governance Practices that could negatively impact the potential of Deliberative Democracy in Nigeria

3.2.1. The Problem of Elite Domination

³⁸⁴ Muse & Narsiah, *supra* note 10; Olaiya, *supra* note 59; Agunyai, *supra* note 57.

³⁸⁵ Aleyomi, *supra* note 288.

³⁸⁶ Idada & Uhummwuangho, *supra* note 6, 50-51.

³⁸⁷ *Who Rules Nigeria?*, by Inge Amundsen, External Series (Oslo: Norwegian Peacebuilding Resource Center, 2012). <<https://www.cmi.no/publications/4623-who-rules-nigeria>> accessed July 18, 2020.

³⁸⁸ Paul D Ocheje, "Norms, Law and Social Change: Nigeria's Anti-Corruption Struggle, 1999–2017" (2018) 70:3 Crime Law Soc Change 363 - 381.

³⁸⁹ Kiki Edozie, *supra* note 35, 426 – 429.

³⁹⁰ Elaigwu, *supra* note 11.

To forestall the emergence of an autocratic government, an essential characteristic of quasi-liberal constitutional orders is power dispersal, however skewed, within the democratic structures and governance institutions of such constitutional orders.³⁹¹ While the government of Nigeria is notionally limited constitutionally and statutorily,³⁹² divergence usually exists between those who really govern Nigeria and the Nigerian government.³⁹³ That divergence reveals that a minuscule group of elites³⁹⁴ - many of whom are neither constitutionally empowered nor statutorily recognized³⁹⁵ - conceive norms and invisibly dictate Nigeria's democratic practices, governance styles,³⁹⁶ and political economy.³⁹⁷

Since Nigerian elites generally exert influence on electoral candidacy and victory in Nigerian elections,³⁹⁸ political officeholders, hoping to secure the support and allegiance of Nigerian elites,

³⁹¹ Robert A Dahl, *Democracy and Its Critics*, 12. print ed (New Haven: Yale Univ. Press, 1991), 1 - 2.

³⁹² Chukwunonso Okafor, "The Rule of Law in a Developing Nation: Limitations, Alternative Models, and the Challenges of Application in Nigeria" (2014) 17:1 Contemporary Justice Review 23.

³⁹³ Amundsen, *supra* note 387.

³⁹⁴ In his contributions to the distributive theories of power, writing from the lens of the liberal constitutional order of the United States, and as a response to C. Wright Mills' elitist theory of power, Dahl asked two significant questions? How does popular sovereignty function in America? See Robert A Dahl, *Who Governs? Democracy and Power in an American City* (New Haven, Conn: Yale University Press, 1961b). at 1, and "[I]n a political system where nearly every adult may vote but where knowledge, wealth, social position, access to officials, and other resources are unequally distributed, who actually governs"? Robert A Dahl, *A Preface to Democratic Theory*, original ed (Chicago: University of Chicago Press, 1956). at 1, Dahl's questions set the stage to challenge the notion that power in democratic societies was concentrated mainly in the hands of a small group of elites. Relying on his personal experience and empirical research, Dahl established that power in the distributive sense is more dispersed than Mills had stated. While the tripartite of the government, military and big corporations undoubtedly benefit the most from exercised power, such benefit accrues to them with citizens' consent. However, Dahl's conceptual lens's centrality was the municipal government that had no control over foreign policy and the use to which the military could be put. Furthermore, his notion of the distributive pattern of power is situated in liberal constitutional orders where inquiries into government acts are permitted, and the Judiciary is, at least to no small extent, perceived to be independent. The converse is the reality in quasi-liberal constitutional orders.

³⁹⁵ Agunyai, *supra* note 57, 211-213.

³⁹⁶ Amuwo, *supra* note 9.

³⁹⁷ Owen, *supra* note 7.

³⁹⁸ Eziho Promise Ogele, "Elitism, Election, and Governance in Nigeria's Fourth Republic. A Study of Rivers State from 2003-2019" (2020) 5:1 Journal of Law and Global Policy 1 - 13.

usually prescribe norms and uphold policies that align with the expectations and aspirations of Nigerian elites.³⁹⁹ In doing so, political officeholders hope to, and indeed do, secure the loyalty of Nigerian elites on all issues.⁴⁰⁰ This symbiotic relationship is a holdover of the previously discussed⁴⁰¹ military federalism that Nigeria practiced from 1966 to 1999.⁴⁰²

In occasional instances when the interest(s) of Nigerian elites conflict with the broad aspirations of marginalized Nigerians, the Nigerian government - unwilling to strain its symbiotic relationship with the Nigerians elites, and in hopes of continuously safeguarding its longevity in the governance of Nigeria - usually kowtows to the wishes of Nigerian elites at the expense of marginalized Nigerians.⁴⁰³

In exchange, Nigerian political officeholders intermittently dispatch Nigerian elites to use their wealth and influence to check the resistance of marginalized Nigerians to the democratic practices and governance styles of the Nigerian government.⁴⁰⁴ If this tactic fails to yield the desired result, the Nigerian government reverts to threats and sanctions to silence dissident Nigerians.⁴⁰⁵

The undue influence that Nigerian elites bring to bear on democratic governance contributes to social stratification, socioeconomic inequalities, and social injustices that collectively frustrate attempts of marginalized Nigerians to access the Nigerian public sphere. In exerting their influence over Nigeria's socio-economic and political space, Nigerian elites - who arguably neither understand nor are

³⁹⁹ Onapajo & Babalola, *supra* note 95, 43.

⁴⁰⁰ Ogele, *supra* note 398.

⁴⁰¹ See page 10 – 11 of this thesis.

⁴⁰² Elaigwu, *supra* note 11, 11 – 18.

⁴⁰³ Onapajo & Babalola, *supra* note 95, 43.

⁴⁰⁴ *Ibid.*

⁴⁰⁵ Idada & Uhunmwangho, *supra* note 6.

genuinely interested in participating and addressing issues that do not directly impact them⁴⁰⁶ - hardly consider the impact of their actions on marginalized Nigerians.⁴⁰⁷ The inconsiderateness of Nigerian elites is attributable to the reality that while individuals comprise the Nigerian society, the latter hardly reflects the collective desires and aspirations of marginalized Nigerians.⁴⁰⁸ Instead, Nigeria is conceivable as a social construct shaped by norms that the Nigerian elites dictate to ensure their continued selfish domination of Nigeria's socio-economic and political space.⁴⁰⁹ Consequently, if Nigerian elites violate the norms that they prescribed or influenced, the mechanisms (law enforcement agencies and courts) that enforce such prescribed norms are usually lenient when imposing sanctions.⁴¹⁰ In contrast, breaches by marginalized Nigerians are met with the full force of the law.⁴¹¹ Through these tactics, Nigerian elites continually manipulate the norms that govern Nigeria to the continued detriment of marginalized Nigerians.

In Nigeria, the elites comprise those who control the economy (corporate leaders and majority shareholders of fortune 500 companies), military (including the military-industrial complex), and the government (particularly the executive). This description of Nigerian elites aligns with Mills'

⁴⁰⁶ Yagboyaju & Akinola, *supra* note 5, 5 – 8.

⁴⁰⁷ Amundsen, *supra* note 387.

⁴⁰⁸ William Over, "Redefining Political Drama: Onwueme and Nigerian society" (2010) 13:2 Contemporary Justice Review 173–189.

⁴⁰⁹ Amuwo, *supra* note 9.

⁴¹⁰ Data obtained from existing literature show that elites are accorded more expansive protections under the law. These heightened protections accorded elites are not peculiar to quasi-liberal constitutional orders alone. See Jensenius Francesca & Wood Abby, "Caught in the Act but not Punished: On Elite Rule of Law and Deterrence" (2016) 4:2 Penn State Journal for Law and International Affairs 686 - 717, 700. Similarly, the assistance that elites receive in side-stepping existing norms is not the exclusive fault of the executive and legislature alone. Research has revealed that even in liberal constitutional orders like the United States, the judiciary that should be an impartial and faithful arbitral of disputes is equally complacent. See Lawrence Baum & Devins Neal, "Why the Supreme Court cares about Elites, not the American People" (2010) 95 The Georgetown Law Journal 1516 - 1580.

⁴¹¹ Onapajo & Babalola, *supra* note 95, 43.

conceptualization of elitism.⁴¹² Under the lens of elite domination, the Nigerian government that should firmly control Nigeria's democratic governance becomes a part of Nigeria's governing structure. Of this structure, Nigerian elites that control the Nigerian economy are presumably the most sophisticated as they should in a capitalist-developing economy that relies heavily on demand and supply forces to shape the Nigerian government's governance and economic policies.

In further stifling access to the Nigerian public sphere, Nigerian elites have apportioned themselves critical leadership roles in the hope of optimizing the privileges of their status to continuously and selfishly dominate Nigeria's socio-economic and political space.⁴¹³ Recently, Nigerian elites have extended their influence to the judiciary, political parties, trade unions, and labour associations in Nigeria.⁴¹⁴ By invisibly controlling these critical institutions, Nigerian elites have systematically broadened their influence over the Nigerian government and the entirety of Nigeria's administrative and justice structures. These Nigerian elites' conduct reminisces Mills' elitist theory. According to Mills:

“The power elite is composed of men whose position enable them to transcend the ordinary environments of ordinary men and women; they are in positions to make decisions having major consequences. Whether they do or do not make such decisions is less important than the fact that they do occupy such pivotal position[s]; their failure to act, their failure to make decisions, is itself an act that is often of greater

⁴¹² C Wright Mills, *The Power Elite* (New York: Oxford University Press, 1956), 6.

⁴¹³ Onapajo & Babalola, *supra* note 95, 43.

⁴¹⁴ Amuwo, *supra* note 9, 425-430.

consequence than the decisions they do make. For they are in command of the major hierarchies and organizations of modern society. They rule the big corporations. They run the machinery of the state and claim its prerogatives. They direct the military establishment. They occupy the strategic command post of the social structure, in which are now centered [on] the effective means of the power and the wealth and the celebrity which they enjoy.”⁴¹⁵ (Emphasis supplied).

When the Nigerian government confronts challenges to its governance tactics that could upset the Nigerian elites’ continued domination of Nigeria’s socio-economic and political space, it calls on technocrats for advice on the prevailing democratic practices that it should employ. These technocrats usually apply the doctrine of optimizing the benefit of governance for the maximum number of Nigerians.⁴¹⁶ Taken at face value, these technocrats’ tactics to imposing norms ought to be efficient. If democratic decisions on governance issues rely on facts and figures that are by-products of extensive research, such decisions ought to be beneficial to all Nigerians and not just Nigerian elites. However, governance and democratic practices are not pure sciences. As subsets of social science, democratic governance and practices must navigate the treacherous slopes of democratic disillusion to arrive at outcomes that ought to be generally applicable and acceptable to all. As earlier noted, these treacherous slopes are an expression of democracy’s fickleness, which “... often cannot be made, through analytical means, to yield determinate answers.”⁴¹⁷

⁴¹⁵ Mills, *supra* note 412, 3 - 4.

⁴¹⁶ Alexander Thurston, “The Politics of Technocracy in Fourth Republic Nigeria” (2018) 61:1 African Studies Review 215 - 238.

⁴¹⁷ Sabel & Simon, *supra* note 233, 484.

Thus, rather than reconceiving Nigeria's democratic governance to produce just and fair outcomes for all Nigerians, the Nigerian government merely mandates these technocrats to theorize policies that would ensure that Nigerian elites continuously dominate Nigeria's socio-economic and political space.⁴¹⁸ In doing so, the Nigerian government, as previously noted, hardly considers the disastrous negative impact(s) that such theorized policies might have on marginalized Nigerians who are merely seeking means of actualizing their socio-economic and political aspirations in Nigeria. Resultantly, elites' domination of Nigeria's democratic governance, which perfectly aligns with Mill's elitist theory,⁴¹⁹ undermines the aspirations that the originalists conceived for deliberative democracy.⁴²⁰

The prevalence of elite domination of Nigeria's socio-economic and political space is indisputably inimical to the socio-economic and political aspirational pursuits of marginalized Nigerians. While those elites are often skilled in the art of rational discussions necessary to deliberating in the Nigerian public sphere, their unwillingness to accommodate the yearning and comprehend the challenges of marginalized Nigerians would undermine the outcomes of decisions that might be reached in the Nigerian public sphere. This analysis of the demerit of elite domination exposes challenges inherent in deliberative democracy's process and also underscores the need to conceptualize means of ensuring that marginalized Nigerians participate and have their voices heard in the Nigerian public sphere. After all, the primary function of government, and by extension, the principal rationale for adopting democratic practices, including my proposal to incorporate the ideals of deliberative democracy into

⁴¹⁸ Onapajo & Babalola, *supra* note 95, 43.

⁴¹⁹ Mills, *supra* note 412, 292.

⁴²⁰ Rawls, *supra* note 101, 42 – 44; Habermas, *supra* note 69, 486; Mills, *supra* note 147, 255; Elster, *supra* note 146, 104; Gutmann & Thompson, *supra* note 136, 14 – 15; and Cohen, *supra* note 68.

Nigeria's quasi-liberal constitutional orders, is to safeguard those marginalized from being unduly oppressed by the affluent and elitist members of such constitutional orders.⁴²¹

3.2.2. Prevalence of corruption in Nigeria

Deliberative democracy relies on existing societal structures in democratic settings to accomplish its aspirations of liberalizing access to power on an egalitarian basis.⁴²² Since societal structures remain a dominant influence in societal discourse, deliberative democracy must actualize its aspirations without subjecting the foundation of constitutional orders to unnecessary tension or structural alterations. To secure the reasoned collections of the competing and sometimes conflicting reasonings of Nigerians, including those marginalized, who might intermittently be opportune to participate in the Nigerian public sphere, the democratic structures of Nigeria's skewed quasi-liberal constitutional order could expose the deliberation process to corrupt practices, thereby undermining its integrity.⁴²³

A corrupt society - which is an aftermath of the failure of such society's democratic governance and practices to scale the hurdle of public justification⁴²⁴ - is not poised to permit deliberative democracy principles to flourish.⁴²⁵ The leaders of such corrupt society, in this case, Nigerian elites,⁴²⁶ have a

⁴²¹ William H Simon, "Justice and Accountability: Activist Judging in the Light of Democratic Constitutionalism and Democratic Experimentalism" (2019) 15:3 *Law, Culture & the Humanities* 602 - 621.

⁴²² John Medearis, "Social Movements and Deliberative Democratic Theory" (2005) 35:1 *British Journal of Political Science* 53 - 75, 54 - 57.

⁴²³ Okon, *supra* note 92, 211 - 212.

⁴²⁴ Katherine A DeCelles et al, "Does Power Corrupt or Enable? When and Why Power Facilitates Self-interested Behavior." (2012) 97:3 *Journal of Applied Psychology* 681-689, 687 - 689

⁴²⁵For an analysis on the inadvertent effect of corruption on the deliberation process, see Robert Goodin, "Democratic Deliberation Within" (2000) 29 *Philosophy and Public Affairs Journal* 81-109, 82.

⁴²⁶See Ogbeidi, *supra* note 4. This author analyzed the effect and negative impact of corruption on the political climate of Nigeria.

stranglehold on power,⁴²⁷ and as such, are unlikely to genuinely allow a system of governance that relies on collective reasoning, citizen approach to policy formulation, and transparency in governance to thrive.⁴²⁸

Under Nigeria's corrupt clime,⁴²⁹ and for reasons previously articulated in Section 3.2.1 of this chapter, the Nigerian government's attempts to justify its governance tactics would be insincere. Said insincerity is attributable to the Nigerian government's need to ensure that Nigerian elites continuously dominate Nigeria's political and socio-economic space.⁴³⁰ Moreover, since alliances and allegiances in Nigeria are guaranteed by the promise of and the actual benefits derived from political power, coalitions on governance issues frequently shift.⁴³¹ This frequent shifting of coalitions subsequently results in non-coherent policies and its hap-hazard implementation in Nigeria.⁴³²

Rather than being convinced by the utility of another's argument, Nigeria's democratic governance and practices mostly rely on opportunity cost calculated in terms of personal benefits that would accrue to the person or group of persons participating in the Nigerian public sphere.⁴³³ The tactic to governance had emboldened Nigerian political office seekers to employ all mechanisms, including violence, the threat of violence, bribery, and other corrupt means, to secure victories at elections to

⁴²⁷ George Schwarzenberger, *Power Politics: A Study of International Society*, revised ed (New York: Frederick A. Praeger Inc, 1951), 14.

⁴²⁸ Goodin, *supra* note 425.

⁴²⁹ Okon, *supra* note 92, 211 - 212.

⁴³⁰ Muse & Narsiah, *supra* note 10, 412 - 414.

⁴³¹ Ogbeidi, *supra* note 4, 3 - 5.

⁴³² *Ibid.*

⁴³³ Ocheje, "Norms, law and social change", *supra* note 388, 381

the detriment of Nigeria and marginalized Nigerians.⁴³⁴ Without rectifying Nigeria's endemic corrupt practices, Nigeria's constitutional order would continuously fall short of the fair and just outcomes aspirations that the originalist conceived for deliberative democracy.⁴³⁵

Furthermore, the prevalence of corrupt practices in Nigeria has negatively impacted Nigeria's corruption ranking⁴³⁶ and disastrously affected Nigeria's democratic governance.⁴³⁷ According to the latest Transparency International report, Nigeria, with an anti-corruption score of 26%, is the world's 148th least corrupt country.⁴³⁸ The permeation of corruption in Nigeria, which is traceable to the colonial era, reinforces the distrust that Nigerians, particularly those marginalized, have for the Nigerian government⁴³⁹ and in the constitutional mandate that directs the latter to formulate policies geared toward eradicating all forms and acts of official corruption in Nigeria.⁴⁴⁰

Moreover, the selective use of the Nigerian government's anti-corruption policies as a tool to victimize dissidents and political opposition(s)⁴⁴¹ had led many marginalized Nigerians to cease confronting the

⁴³⁴ Ogbeidi, *supra* note 4. This author analyzed the effect and negative impact of corruption on the political climate of Nigeria.

⁴³⁵ Rawls, *supra* note 101, 42 – 44; Habermas, *supra* note 69, 486; Mills, *supra* note 147, 255; Elster, *supra* note 146, 104; Gutmann & Thompson, *supra* note 136, 14 – 15; and Cohen, *supra* note 68.

⁴³⁶ *2018 Anti-Corruption Index*, Annual Corruption Perception Index, by Transparency International, Annual Corruption Perception Index (Transparency International, 2018).

⁴³⁷ SC Agunyai & KW Olawoyin, "Legislative-Executive Corruption and Good Governance in Nigeria: Insights from Buhari's Administration in the Fourth Republic." in Omololu Fagbadebo & Fayth Ruffin, eds, *Perspectives on the legislature and the prospects of accountability in Nigeria and South Africa Advance in African Economic, Social and Political Development* (Cham: Springer, 2019) 105.

⁴³⁸ <<https://www.transparency.org/en/countries/nigeria#>> accessed May 27, 2020.

⁴³⁹ <<https://www.stearsng.com/article/nigerians-do-not-trust-government>> accessed October 21, 2019

⁴⁴⁰ *1999 Constitution (As Amended)*, *supra* note 202, s 15(5).

⁴⁴¹ Ocheje, "Norms, law and social change", *supra* note 388.

Nigerian government on the prevalence of corruption in Nigeria.⁴⁴² Another reason for the unwillingness of marginalized Nigerians to challenge the Nigerian government on the pervasiveness of corruption in Nigeria is the resilient social norms and institutions that continually constitute an enabling environment for corrupt practices.⁴⁴³

Having lost faith in Nigeria's democratic governance, most marginalized Nigerians eschew the intermittent opportunities they might have to interact with the Nigerian government on governance issues, viewing such opportunities as avenues for the Nigerian government to insincerely justify the norms it imposes while presenting itself as a government that genuinely cares for all Nigerians, especially those marginalized.⁴⁴⁴ Without a doubt, the increasing unwillingness of marginalized Nigerians to engage the Nigerian government on the latter's governance tactics, especially on prevalent corruption issues, is inimical to the vibrancy of democratic governance, and by extension, the potential of deliberative democracy to thrive in Nigeria.

Since the prevalence of corrupt practices in the governance of Nigeria is *inter alia* traceable to the non-accountability of powers that the Nigerian government exercises, it is potentially rectifiable. The Nigerian legislature could enact legislation(s) mandating all Nigerian government arms and levels to annually document and publicly justify their respective governance style and democratic practices. This proposal for the accountability⁴⁴⁵ of powers that the Nigerian government exercises aligns with

⁴⁴² Agunyai, *supra* note 57.

⁴⁴³ Ocheje, "Norms, law and social change", *supra* note 388, 370

⁴⁴⁴ Okon, *supra* note 92, 211 to 212.

⁴⁴⁵ Accountability within this context not only connotes that the acts, actions, and activities of government must be transparent, accessible, and justifiable to Nigerians but also requires that the Nigerian government's policies and implementation be in tandem with the socio-economic and political aspirations of Nigerians. for a detailed analysis of accountability in governance, see Yousueng Han & Mehmet Akif Demircioglu, "Accountability, Politics, and Power" in

the reasoning that Nigerians, as the source of democratic governance in Nigeria,⁴⁴⁶ should be the primary beneficiary of Nigeria's governance.⁴⁴⁷ Since Nigerians are the constitutional donors of Nigerian state power, they ought to be entitled to a mandatory account of the Nigerian government's governmental actions and activities⁴⁴⁸ in furtherance of the previously discussed public justification principle of deliberative democracy.

Implementing this proposal for mandatory account power that the Nigerian government exercises would likely curb the prevalence of corruption in Nigeria and check the propensity of Nigerian political office holders to abuse their respective positions for selfish gain. Said mandatory account of the Nigerian government's democratic governance could also help the Nigerian government and Nigerians to better understand and identify challenges to policies that the Nigerian government had imposed or might impose. However, because no statute in Nigeria currently mandates the Nigerian government to account for its democratic governance and practices, the Nigerian government hardly

Ali Farazmand, ed, *Global Encyclopedia of Public Administration, Public Policy, and Governance* (Cham: Springer International Publishing, 2016) 1.

⁴⁴⁶ *1999 Constitution (As Amended)*, *supra* note 202, s 14(2)(a).

⁴⁴⁷ *Ibid*, s 14(2)(b).

⁴⁴⁸ In 2011, the administration of Goodluck Jonathan signed into law the *Freedom of Information Act*, 2011, 32. The aim of this Act as stated in its preamble was to “make public records and information more freely available, provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences of disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes and; for related matter.” However, this Act is inchoate. While it mandates the Nigerian government to publish an account of its acts, actions, and activities, it does not prescribe the frequency of such publication, nor does it prescribe/impose sanction(s) for the Nigerian government's failure to document and publish those records. As a result, public officials in Nigeria have exploited these lacunas to deny the request of many Nigerians for information on the activities of the government See “Nigeria's Access to Information Law is not Working”, *International Center for Investigative Reporting* (12 April 2012), online: <<https://www.icirnigeria.org/nigerias-access-to-information-law-is-not-working/>>; Tomiwa Ilori, “How Nigeria and Uganda are Faring in the Right to Information”, (23 November 2018), online: *CIPESA - Promoting Effectiveness and Inclusiveness* <<https://cipesa.org/2018/11/how-nigeria-and-uganda-are-faring-on-the-right-to-information/>> accessed June 30, 2020. My recommendation not only imposes a duty on the Nigerian government to publish and publicize an account of its acts, actions and activities, but also mandates that said publications must be done annually.

justifies its governance to Nigerians. Chapter II of the 1999 constitution, where such mandatory account of the Nigerian government's governance tactics might be inferred, is, sadly, non-justiciable!⁴⁴⁹

3.2.3. Unwillingness to Accommodate Civil Disobedience and Protest

Civil disobedience and protests are essential in democratic societies where the relationship between the government and its citizens on democratic practices must be in a constant state of tension to eschew the emergence of autocracy.⁴⁵⁰ Any democratic society that is unwilling to encourage and permit civil disobedience would continuously fail to make democratic decisions that would be the reflective assent of all persons who ought to and should have been encouraged to participate in making such decisions.⁴⁵¹ Within the confines of constitutionality and legality,⁴⁵² discourteous discussions and civil confrontations are necessary tools to perfect the ideals of democratic governance and precepts of deliberative democracy.⁴⁵³ Thus, decisions reached in democratic settings that fail to accommodate the contributions of those who would be impacted - even if the process of making such contributions subsequently becomes discourteous and confrontational - betray the aspirations that the originalists conceived for deliberative democracy.⁴⁵⁴ This reasoning aligns with and informs Dryzek's distrust in

⁴⁴⁹ 1999 *Constitution (As Amended)*, *supra* note 202, s 6(6)(c).

⁴⁵⁰ Tusalem Rollin, "Democracies, Autocracies, and Political Stability" (2015) 90:1 *International Social Science Review* 1 - 42.

⁴⁵¹ Ilufoye Sarafa Ogundiya, "The Cycle of Legitimacy Crisis in Nigeria: A Theoretical Exploration" (2009) 20:2 *Journal of Social Sciences* 129 - 142.

⁴⁵² Ludvig Beckman, "Deciding the Demos: Three Conceptions of Democratic Legitimacy" (2019) 22:4 *Critical Review of International Social and Political Philosophy* 412 - 431.

⁴⁵³ Jürgen Habermas, "Religious Tolerance: The Pacemaker for Cultural Rights" (2004) 79 *Journal of Philosophy* 5 - 18, 9 - 10.

⁴⁵⁴ Rawls, *supra* note 101, 42 - 44; Habermas, *supra* note 69, 486; Mills, *supra* note 147, 255; Elster, *supra* note 146, 104; Gutmann & Thompson, *supra* note 136, 14 - 15; and Cohen, *supra* note 68.

and for government institutions for their unwillingness to accommodate and promote deliberative ideals.⁴⁵⁵

Due to the prevalence of elite domination and corrupt practices in Nigeria, the Nigerian constitutional order is unwelcoming of the civil disobedience of Nigerians.⁴⁵⁶ By failing to accommodate the civil disobedience⁴⁵⁷ of Nigerians, the Nigerian government is encouraged to intensify the self-regarding preferences and unreasonable empirical beliefs that it is unlikely to advance in public for apprehension that such preferences and beliefs would not scale public justification hurdles.⁴⁵⁸ The resulting lack of procedural fairness, transparency and accountability of the Nigerian government's tactic to and substance of norms it imposes underscore the need for civil disobedience of Nigerians.

Sadly, and as previously noted, the Nigerian government frowns at civil disobedience and any forms of protest embarked upon by Nigerians that could expose governance failings in Nigeria. And as the Nigerian government intensifies its unwillingness to accommodate the civil disobedience of Nigerians, the potential of deliberative democracy to thrive within Nigeria's quasi-liberal constitutional order will continue to denigrate.

Yet, in Nigeria, civil disobedience and discourteous discussions are imperative as they are the optimal means through which marginalized Nigerians could express their dissatisfaction on governance issues, even if they cannot immediately realize their socio-economic and political aspirations. Permitting and

⁴⁵⁵ Dryzek, *supra* note 134, 2 – 6.

⁴⁵⁶ Agunyai, *supra* note 57, 211 – 213.

⁴⁵⁷ For the negative effect of the unwillingness to accommodate civil disobedience in democratic settings, see Tushnet & Simpson, *supra* note 256. CF with Adam Przeworski & Alberto Simpson, "Ruling against Rules" in Tom Ginsburg, ed, *Constitutions in Authoritarian Regimes* (New York: Cambridge University Press, 2013) 21.

⁴⁵⁸ Young, *supra* note 99, 126 - 128.

encouraging civil confrontations of Nigerians in Nigeria would also help the Nigerian government to evaluate the efficacy of norms it imposes. Consequently, discourteous confrontations and civil disobedience could also help marginalized Nigerians and the Nigerian government recognize the intersubjective validity of the different claims on which Nigeria's social cooperation depends. The integral role that civil disobedience plays in enhancing the utility of democratic practices of constitutional orders was succinctly stated by Habermas when he noted that:

“. . . the justification of civil disobedience relies on a *dynamic understanding* of the constitution as an unfinished project. From this long-term perspective, the constitutional state does not represent a finished structure but a delicate and sensitive – above all fallible and revisable – enterprise, whose purpose is to realize the system of rights anew in changing circumstances, that is, to *interpret* the system of rights better, to institutionalize it more appropriately, and to draw out its contents more radically. This is the perspective of citizens who are actively engaged in realizing the system of rights. Aware of, and referring to, changed contexts, such citizens want to overcome in practice the tension between social facticity and validity.”⁴⁵⁹

After the Nigerian public sphere has become uncivil and confrontational, the Nigerian government must protect the deliberation process from devolving into lawlessness, violating the constitutionally guaranteed rights of other participants in the Nigerian public sphere, or precipitating the commission of a crime. The Nigerian government's ability to simultaneously accommodate civil disobedience and

⁴⁵⁹ Habermas, *supra* note 69, 384.

forestall the breakdown of law and order is integral to the growth of Nigeria's nascent democracy. It is only after Nigeria's nascent democracy has attained some form of maturity would Nigeria's quasi-liberal constitutional order be fully capable of producing fair and just outcomes for all Nigerians, thereby fulfilling the aspirations that the originalists conceived for deliberative democracy.⁴⁶⁰ Commenting on the relationship between mature democracies and the incivility of public spheres, Habermas averred that:

“[a] democratic culture of contestation like this [i.e., allowing civil disobedience] demands ... in return a high degree of tolerance towards the irritating actions of those who move in the twilight between anomie and innovation... It cannot be *organized*.”⁴⁶¹

Habermas's averment aligns with Hammond's critical theory. In his critical theory, Hammond contended that civil confrontations between governments and citizens of constitutional orders are the optimal means through which those marginalized can secure their government's cooperation and coordination on important governance issues.⁴⁶² For instance, the willingness of Paul Kagame's administration in Rwanda to accommodate civil disobedience of Rwandans has increased Rwandans'

Rawls, *supra* note 101, 42 – 44; Habermas, *supra* note 69, 486; Mills, *supra* note 147, 255; Elster, *supra* note 146, 104; Gutmann & Thompson, *supra* note 136, 14 – 15; and Cohen, *supra* note 68.

⁴⁶¹ Emphasis supplied by Habermas (1990) *Die Nachholende Revolution: Kleine Politische Schriften VII*, pp. 95 – 175, 174. Frankfurt am Main: Suhrkamp. Culled from Lasse Thomassen, “Within the Limits of Deliberative Reason Alone: Habermas, Civil Disobedience and Constitutional Democracy” (2007) 6:2 *European Journal of Political Theory* 200 - 218, 203.

⁴⁶² Hampton, *supra* note 230, 77 - 79.

trust in the Rwandan government, reduced the perception of social injustices in Rwanda, and entrenched good governance that is responsive and responsible to Rwandans.⁴⁶³

Moreover, since marginalized Nigerians often confront diverse challenges in demanding accountability from the Nigerian government, encouraging civil disobedience in Nigeria could expose questions, identify fears, and highlight the often conflicting and competing desires of Nigerians that would otherwise have remained unnoticed and undetected. Until the needs of Nigerians bubbling under the surface of Nigeria's constitutional order are identified and addressed, the Nigerian constitutional order would continuously fail to aid Nigerians, particularly those marginalized, to actualize their socio-economic and political aspirations in alignment with the aspirations that the originalists conceived for deliberative democracy.

3.4. Conclusion

This chapter augments the previous chapter by identifying and analyzing governance practices that currently hamper democratic governance, and by extension, hinder the potential of deliberative democracy in Nigeria. Although these governance practices are numerous, I restricted my analysis to the prevalence of elite domination of Nigeria's socio-economic and political space, endemic corrupt practices that have undermined the prospect of good governance in Nigeria and the unwillingness of the Nigerian government to accommodate civil disobedience to its democratic decisions. These identified and critiqued governance practices articulate challenges that deliberative democracy must address before it would become capable of producing fair and just outcomes for Nigerians in alignment with the broad aspirations that the originalists conceived.

⁴⁶³ Ibrahim Ndagijmana, "Leadership and Good Governance: The Rwandan Experience" (2019) 3:2 International Journal of Research and Innovation in Social Sciences 68 - 78, 72 – 76.

4. Institutional Means that could ensure the Potential Vibrancy of Deliberative Democracy in Nigeria

4.1. Introduction

In Nigeria, governance practices identified in the previous chapter frustrate attempts of marginalized Nigerians to access the Nigerian public sphere.⁴⁶⁴ Even if marginalized Nigerians gain access to the Nigerian public sphere, these governance practices, for reasons discussed in the previous chapter, could also hinder their voices from being heard when they engage Nigerian elites on Nigeria's governance issues. Without addressing the problems that these governance practices create, deliberations in the Nigerian public sphere would continue to produce "undemocratic power relations that beleaguer our larger society, [thus resulting in practices that] are neither sufficiently inclusive to be democratic nor meaningful enough to be genuinely deliberative."⁴⁶⁵ Resultantly, the outcome of such deliberations would continuously fall short of the fair and just outcomes aspirations that the originalists conceived for deliberative democracy.⁴⁶⁶

Desirous of addressing this identified lacuna, this chapter conceptualizes institutional means that could guarantee that the voices of marginalized Nigerians would not be lost when the Nigerian public sphere discusses and theorizes solutions to the challenges of democratic governance in Nigeria. However, the utility of the institutional means that this chapter conceives would have minimal impact if seeking consensus remains the means through which deliberative democracy seeks to actualize fair and just outcomes for Nigerians. Though consensus, which aggregates and ranks opinions shared in public

⁴⁶⁴ Agunyai, *supra* note 57, 211 - 213

⁴⁶⁵ Kadlec & Friedman, *supra* note 100, 3.

⁴⁶⁶ Rawls, *supra* note 101, 42 – 44; Habermas, *supra* note 69, 486; Mills, *supra* note 147, 255; Elster, *supra* note 146, 104; Gutmann & Thompson, *supra* note 136, 14 – 15; and Cohen, *supra* note 68.

spheres,⁴⁶⁷ is somewhat realizable in liberal constitutional orders,⁴⁶⁸ attempts to actualize it in Nigeria's quasi-liberal constitutional order would mostly perpetuate and re-entrench the existing injustices that are the aftermaths of the governance practices that I identified in the previous chapter.

Since Nigerian elites, in furtherance to the prevalence of elite domination in Nigeria, would probably be responsible for prescribing the parameters within which deliberation would occur in the Nigerian public sphere, aspiring for consensus with its penchant for preference ranking during deliberations⁴⁶⁹ would likely be disproportionately advantageous to Nigerian elites. Consequently, the process and outcome of deliberations in the Nigerian public sphere that have consensus as its goal would hardly accommodate the yearnings of marginalized Nigerians. Accordingly, such deliberations' process and outcomes would simultaneously be unfair and unjust to marginalized Nigerians, thus falling short of the aspiration that the originalists conceived for deliberative democracy.⁴⁷⁰

Furthermore, while seeking consensus is integral to conceiving the ideals that Habermas and Rawls's theorized for deliberative democracy, its continued pursuit in quasi-liberal constitutional orders like Nigeria's, where the liberal precepts necessary for its success are either lacking or ineffective, would be futile. It is the absence of these liberal principles that contribute to the prevalence of governance practices discussed in the previous chapter. As previously noted, said governance practices limit avenues through which marginalized Nigerians could participate in the Nigerian public sphere and challenge the Nigerian government on perceived and identified shortcomings in the latter's tactic to

⁴⁶⁷ Kadlec & Friedman, *supra* note 100, 13 - 14.

⁴⁶⁸ John S Dryzek, "Legitimacy and Economy in Deliberative Democracy" (2001) 29:5 Political Theory 651–669, 657.

⁴⁶⁹ Parkinson, *supra* note 131, 184

⁴⁷⁰ Rawls, *supra* note 101, 42 – 44; Habermas, *supra* note 69, 486; Mills, *supra* note 147, 255; Elster, *supra* note 146, 104; Gutmann & Thompson, *supra* note 136, 14 – 15; and Cohen, *supra* note 68.

and substance of governance. Hence, before theorizing the institutional means that could guarantee that the voices of marginalized Nigerians would not be lost in the Nigerian public sphere, it is crucial that the ultimate goal of deliberative democracy within Nigeria's constitutional framework shifts from consensus to confluence.⁴⁷¹

In conceiving this shift, I will rely on Mutz's⁴⁷² and Benhabib's⁴⁷³ admonition that deliberative democracy ought to evolve and be willing to alter some of its principles to accommodate the uniqueness of different constitutional orders. Independently, and yet in fulfillment of this admonition, I will further rely on Young⁴⁷⁴ and Sanders⁴⁷⁵ respective contributions to argue that deliberative democracy would remain unjust until its principles are modified to accommodate marginalized members that are often excluded from participating in public spheres. Sander specifically noted that:

"Taking deliberation as a signal of democratic practice paradoxically works undemocratically, discrediting on seemingly democratic grounds the views of those who are less likely to present their arguments in ways that we recognize as characteristically deliberative. In our political culture, these citizens are likely to be those who are already underrepresented in formal political institutions and who are

⁴⁷¹ Kadlec & Friedman, *supra* note 100.

⁴⁷² Mutz, *supra* note 114, 535.

⁴⁷³ Benhabib, *supra* note 170, 21.

⁴⁷⁴ Young, *supra* note 153, 25.

⁴⁷⁵ Lynn M Sanders, "Against Deliberation" (1997) 25:3 Political Theory 347 - 376, 349.

systematically materially disadvantaged, namely women; racial minorities, especially Blacks; and poorer people."⁴⁷⁶

Based on Young and Sanders' contributions, another progressive, also writing from the lens of the United States' liberal constitutional order, subsequently urged jettisoning consensus for confluence as the ultimate objective of deliberative democracy.⁴⁷⁷ This shift from consensus to confluence is vital because the pursuit of consensus is a faulty egalitarian notion that inadvertently circumvents existing power disparities that hinder a liberalized access to public spheres.⁴⁷⁸ As this chapter will subsequently explain, jettisoning consensus for confluence could further enhance the utility of the deliberation principles identified in chapter two of this thesis and potentially rectify the challenges associated with the governance practices that I critiqued in the previous chapter.

However, confluence, which is a notion that "encourages participants in the public sphere to reach across boundaries and explore multiple perspectives by focusing together on the examination of an issue from as many vantage points as possible,"⁴⁷⁹ cannot independently certify that the voices of marginalized Nigerians would continuously be heard when they participate in the Nigerian public sphere. That assurance comes from structuring a framework that would guarantee that the voices of marginalized Nigerians would not be lost when they engage Nigerian elites in the Nigerian public

⁴⁷⁶ *Ibid.*

⁴⁷⁷ Kadlec & Friedman, *supra* note 100, 13 - 15. For a related argument see Christopher F Karpowitz & Jane Mansbridge, "Disagreement and Consensus: The Need for Dynamic Updating in Public Deliberation" (2005) 1:1(2) *Journal of Public Deliberation* 348 - 364.

⁴⁷⁸For broader understanding of the identified bottlenecks associated with seeking consensus as the ultimate objective of deliberative democracy, see John S Dryzek & Simon J Niemeyer, "Reconciling Pluralism and Consensus as Political Ideals" (2006) 50:3 *American Journal of Political Science* 634 - 649.

⁴⁷⁹ Kadlec & Friedman, *supra* note 100.

sphere. Analyzing these issues, including the optimal way to frame deliberation subjects, are the objectives of this chapter.

4.2. Criticism of Consensus as Deliberative Democracy’s Ultimate Objective

Desirous of addressing undemocratic power relationships in public spheres that are usually the consequences of pursuing consensus, one deliberative democrat, who wrote from the lens of the United States’ liberal constitutional order and in furtherance to the consensus aspiration of deliberative democracy, reasoned that outcomes of civic engagement could only be democratically legitimate “if and only if they could be the object of a free and reasoned agreement among equals.”⁴⁸⁰ Aside from voting during elections, there are hardly any avenues for marginalized Nigerians to participate in the governance of Nigeria.⁴⁸¹ Yet during elections in Nigeria, the prevalence of vote-rigging and buying, electoral malpractices, and voter intimidation that Nigerian elites sponsor undermine this claim.⁴⁸² Thus it is reasonable to conclude that “equals,” in anticipation of deliberations on governance issues in the Nigerian public spheres, refers almost exclusively to Nigerian elites and not marginalized Nigerians.

Even if the Nigerian government liberalizes the Nigerian public sphere to accommodate marginalized Nigerians, Nigerian elites, desirous of continuously dominating Nigeria’s socio-economic and political

⁴⁸⁰ Joshua Cohen, “Deliberation and Democratic Legitimacy” in James Bohman & William Rehg, eds, *Deliberative Democracy: Essays on Reason and Politics* (Cambridge, Mass: MIT Press, 1997a) 67, 73.

⁴⁸¹ Idada & Uhunmwangho, *supra* note 6, 50 – 51.

⁴⁸² Gram Matenga, “Cash for Votes: Political Legitimacy in Nigeria”, (11 October 2016), online: *Open Democracy* <<https://www.opendemocracy.net/en/cash-for-votes-political-legitimacy-in-nigeria/>>; Folmi Yohanna, “Nigeria: A Democracy Where Votes are for Sale”, (2 November 2018), online: *The Commonwealth Youth Programme* <<http://www.yourcommonwealth.org/social-development/democracy-participation/nigeria-a-democracy-where-votes-are-for-sale/>> accessed December 19, 2020.

space,⁴⁸³ would likely urge and probably ensure that the Nigerian public sphere relies on speechmaking to articulate opinions shared therein. Since consensus, as the goal of deliberative democracy, generally ranks preferences,⁴⁸⁴ speechmaking, which substitutes rhetoric for reasoned arguments,⁴⁸⁵ is a useful tool to swiftly achieve such ranking in public spheres.⁴⁸⁶

Through speechmaking,⁴⁸⁷ Nigerian elites would easily promote and build collaborations to support their views on Nigeria's governance issues compared to marginalized Nigerians - who are ordinarily less skilled in the art of speech-making and rhetoric. Resultantly, deliberations in the Nigerian public sphere within this context would neither genuinely allow marginalized Nigerians to participate in, confront and or propose solutions that could rectify the existing challenges that hinder them from actualizing their socio-economic and political aspirations in Nigeria.

Moreover, deliberations undertaken under such conditions would probably be devoid of the rational discussion component that could eliminate irrational preferences that participants (elites and those marginalized alike) in public spheres might present.⁴⁸⁸ As argued in this chapter 3.2.3 of this thesis, when appropriate, the optimal means of drawing attention to the injustices suffered by marginalized members of democratic societies, especially those who reside in quasi-liberal constitutional orders like Nigeria, is through civil disobedience and protests. Such civil disobedience and protests could become

⁴⁸³ Onapajo & Babalola, *supra* note 95, 43.

⁴⁸⁴ Parkinson, *supra* note 131, 184.

⁴⁸⁵ Goodin, *supra* note 425, 83.

⁴⁸⁶ Lynn Sanders, "Against Deliberation" (1997) 24 *Political Theory* 347 - 376, 370 - 372.

⁴⁸⁷ Goodin, *supra* note 425, 83.

⁴⁸⁸ Kadlec & Friedman, *supra* note 100, 10.

confrontational in hopes of attracting the attention of constituted authority and the international community to acknowledge and commence the process of rectifying the existing injustices that such constituted authorities, i.e., the Nigerian government, have failed to address.⁴⁸⁹

The civil disobedience and protests that marginalized people might embark on must be structured to encourage,⁴⁹⁰ and when appropriate, necessitate authentic responses⁴⁹¹ from those who govern and dictate democratic practices in all constitutional orders.⁴⁹² As previously noted, several factors, including the governance practices identified and discussed in the previous chapter, undermine the avenues through which those marginalized could participate in public spheres. To cater to the challenges of ensuring that marginalized voices are heard in public spheres, Sanders proposed that those marginalized could rely on testimonies and storytelling to tilt the proverbial scales.⁴⁹³ Other deliberative democrats have argued that such tilt is best achieved by replacing consensus with confluence as the ultimate objective of deliberative democracy. This thesis agrees with the latter.

4.3. Benefits of Confluence as Deliberative Democracy’s Ultimate Aspirations

In ordinary parlance, confluence refers to a body of simultaneously static and fluid water, sufficiently broad to accommodate further inflowing without constantly or continuously shifting its banks ephemerally.⁴⁹⁴ In deliberative democracy, it is a notion that “encourages participants in the public sphere to reach across boundaries and explore multiple perspectives by focusing together on the

⁴⁸⁹ *Ibid*, 13-14.

⁴⁹⁰ Sanders, *supra* note 486, 349.

⁴⁹¹ Habermas, *supra* note 453, 9 - 10.

⁴⁹² Kadlec & Friedman, *supra* note 100, 20.

⁴⁹³ Sanders, *supra* note 486, 349.

⁴⁹⁴ Kadlec & Friedman, *supra* note 100.

examination of an issue from as many vantage points as possible.”⁴⁹⁵ Stated simply, confluence is the filtering lens through which alternative views may be voiced and heard, rather than ranked (as consensus does) when suggestions capable of rectifying identified bottlenecks of democratic governance and practices are being proposed in the public sphere.

One factor that distinguishes confluence from consensus is that confluence accommodates all opinions shared in the public sphere, rather than those best articulated alone.⁴⁹⁶ Since confluence does not rank opinions as consensus does, it is more attuned to actualizing the fair and just outcomes aspirations that the originalists conceived for deliberative democracy. Adopting confluence as deliberative democracy’s ultimate objective also aligns with the “fairness as justice” theory that Rawls conceived.⁴⁹⁷ By subjecting the process and outcomes of deliberations to the litmus test of justice that confluence assures and aspires to, existing structural injustices that reinforce and entrench ranked preferences⁴⁹⁸ in the Nigerian public sphere would be easily identified and swiftly rectified. In this way, confluence would reduce the propensity of apportioning blame should decisions reached in the public sphere fail to achieve their intended purpose(s).

Instead of apportioning blame, confluence shifts the focus of deliberations towards clarifying differences by suggesting paths to improvement,⁴⁹⁹ which, though provisional, must remain practical

⁴⁹⁵ *Ibid*, 13 – 14.

⁴⁹⁶ *Ibid*.

⁴⁹⁷ Rawls, *supra* note 118, 41.

⁴⁹⁸ Young, *supra* note 153, 25.

⁴⁹⁹ Mutz, *supra* note 165, 125 – 152.

and dynamic to accommodate all ideas presented and not just those best articulated.⁵⁰⁰ Through these means, deliberations in the Nigerian public sphere would scale the hurdles of public justification⁵⁰¹ that all reasonable and rational Nigerians can endorse in the light of their common reasoning. Such common reasoning would require that the process and outcomes of deliberations⁵⁰² be conceptualized in terms of justice,⁵⁰³ not as personally held, but as a tool to actualize the socio-economic aspirations of all, especially those marginalized. In doing so, the pursuit of confluence would continuously focus on reconceiving the optimal means to address the endemic injustices in Nigeria to the benefit of all Nigerians.

Since confluence “sharpens the communicative skills, political efficacy, and self-worth of participants who engage in the public sphere,”⁵⁰⁴ Nigerians, particularly those marginalized, and the Nigerian government would likely gain an invaluable appreciation of each other's civic engagement capacities. Such appreciation could enhance democratic expectations,⁵⁰⁵ result in acquisitions of democratic habits,⁵⁰⁶ and increase Nigeria's social capital and cohesion, all of which could be geared toward the emergence of an egalitarian Nigerian constitutional order.⁵⁰⁷ Moreover, since notionally, no social

⁵⁰⁰ Kadlec & Friedman, *supra* note 100, 13 – 14.

⁵⁰¹ Amy Gutmann & Seyla Benhabib, “Democracy, Philosophy, and Justification” in *Democracy and Difference: Contesting the Boundaries of the Political* (Princeton N.J: Princeton University Press, 1996) 340, 344.

⁵⁰² Mills, *supra* note 147, 255.

⁵⁰³ Young, *supra* note 99, 27 - 36.

⁵⁰⁴ Kadlec & Friedman, *supra* note 100, 17.

⁵⁰⁵ Miller, *supra* note 119, 61.

⁵⁰⁶ Hammond, *supra* note 113, 801 – 803.

⁵⁰⁷ Onapajo & Babalola, *supra* note 95, 43.

order can produce fair outcomes if its governance processes are unjust,⁵⁰⁸ confluence as the goal that deliberative democracy should aspire for in Nigeria could invigorate marginalized Nigerians and Nigerian elites to appreciate their respective shared similarities and understand their differences simultaneously.

However, comprehension of confluence as deliberative democracy's goal within Nigeria's constitutional framework is insufficient to assure that the voices of marginalized Nigerians would neither be drowned nor lost during participation in the Nigerian public sphere. Such assurance comes from conceptualizing a framework that could guarantee that the voices of marginalized Nigerians would continuously be heard in the Nigerian public sphere. Analysis of such assurance, which is the objective of the following sub-sections, extends to framing the subject of deliberation.

4.4. Conceptualizing Institutional Means to Guarantee the voices of Marginalized Nigerians in the Nigerian Public Sphere

Since deliberative democracy aims to increase citizens' engagement and involvement in democratic governance, it is pertinent that such citizens play a central role in determining the subject of democratic importance worthy of deliberation in public spheres.⁵⁰⁹ In Nigeria, marginalized Nigerians ought to be involved in identifying factors that hinder them from actualizing their socio-economic and political aspirations.⁵¹⁰ Once marginalized Nigerians have identified these factors, they ought to present their findings to the Nigerian public sphere.

⁵⁰⁸ Sanders, *supra* note 486, 349.

⁵⁰⁹ Kadlec & Friedman, *supra* note 100, 20.

⁵¹⁰ Agunyai, *supra* note 57, 211 - 213.

Involving marginalized people in conceptualizing policies⁵¹¹ that will liberalize them from the extant democratic governance and practices under which they are currently subjugated would make public spheres more vibrant.⁵¹² Furthermore, including marginalized Nigerians in conceiving solutions to issues of democratic governance in Nigeria is integral to enhancing the potential of deliberative democracy in Nigeria. I attribute the preceding to the fact that a genuinely liberalized Nigerian public sphere would reduce the overbearing influence of elites' domination, thereby availing marginalized Nigerians with the means and opportunities to present their grievances under an atmosphere that accommodates diverging viewpoints. The willingness to accommodate such diverging viewpoints could modify the perceptions of Nigerians participating in the Nigerian public sphere to become amenable to other ideas presented during deliberations in said public sphere.

The appropriate way to energize marginalized people to participate in public spheres has generated and continues to generate intellectual disagreement amongst deliberative democracy researchers, with some researchers advocating for an elected representative approach.⁵¹³ However, the elected representative approach could be hyper-politicized, with the process's vibrancy replaced with an emphasis on outcomes.⁵¹⁴ In its place, other deliberative democracy researchers have begun to increasingly rely on mini-publics⁵¹⁵ - which rely on randomly selected citizens to reason together about

⁵¹¹ Habermas, *supra* note 453, 9 - 10.

⁵¹² Hammond, *supra* note 113. at 801-803

⁵¹³ Cass R Sunstein, "Deliberation, Democracy, Disagreement" in Ron Bontekoe & Marieta Stepaniants, eds, *Justice and Democracy: Cross-Perspectives* (Honolulu: University of Hawai'i Press, 1997) 93, 94.

⁵¹⁴ Dryzek, *supra* note 468, 653.

⁵¹⁵ Graham Smith & Maija Setälä, "Mini-Publics and Deliberative Democracy" in Andre Bächtiger et al, eds, *The Oxford Handbook of Deliberative Democracy* (Oxford University Press, 2018) 299.

an issue or issues of public concern⁵¹⁶ - to address the problem of determining who participants in the public sphere should be. This concept, envisioned over four decades ago by Robert Dahl,⁵¹⁷ could be defined as an artificial institution that fosters “deliberation concerning general political issues among small groups of randomly selected citizens.”⁵¹⁸ At present, the impact of mini-publics on political systems is relatively unknown.⁵¹⁹ While some research pieces reveal that mini-publics teach and encourage participants to deliberate on issues, others indicate that participatory and deliberative democracy are often complex and evolving, thus not easily comprehended by citizens who participate in mini-publics.⁵²⁰

Mini-publics have two core defining features – deliberation (which connotes careful and open discussion to weigh the evidence about an issue) and representativeness, achieved through sortition (random selection).⁵²¹ Although these mini-public features theoretically lend legitimacy to the process and outcome of deliberations, some researchers have argued that they could also “increase the perceived legitimacy of the democratic system and its outcomes”⁵²² rather than genuinely “meet the

⁵¹⁶ Vincent Jacquet, “The Role and the Future of Deliberative Mini-publics: A Citizen Perspective” (2019) 67:3 Political Studies 639–657, 639.

⁵¹⁷ Robert A Dahl, *Democracy and Its Critics* (New Haven, Conn: Yale University Press, 1989), 340.

⁵¹⁸ Cristina Lafont, “Deliberation, Participation, and Democratic Legitimacy: Should Deliberative Mini-publics Shape Public Policy?: Deliberation, Participation & Democratic Legitimacy” (2015) 23:1 Journal of Political Philosophy 40 – 63, 40.

⁵¹⁹ Vincent Jacquet & Ramon van der Does, “The Consequences of Deliberative Minipublics: Systematic Overview, Conceptual Gaps, and New Directions” (2020) Representation - Journal of Representative Democracy 1 - 11.

⁵²⁰ Jacquet, *supra* note 516, 640.

⁵²¹ Chwalisz, *supra* note 129. Accessed from <<https://carnegieurope.eu/2019/11/26/new-wave-of-deliberative-democracy-pub-80422>> accessed October 23, 2020.

⁵²² Shelley Boulianne, “Mini-publics and Public Opinion: Two Survey-Based Experiments” (2018) 66:1 Political Studies 119–136. at 119

normative standard of effective citizen participation.”⁵²³ Thus, in certain instances, outcomes of mini-publics deliberations do not often reflect the collective agreement of all persons who might be affected by decisions reached in such public spheres. For instance, the mini-publics that the British Columbia government held to deliberate on electoral reforms in the province⁵²⁴ failed to translate into meaningful policy changes when the subsequently held referendum to approve the Citizen Assembly’s recommendations failed to scale the 60% threshold of eligible voters who participated in the referendum.⁵²⁵ This was despite the support that the recommendations received in 77 of the 79 electoral districts in British Columbia.⁵²⁶

Mini-publics have several examples, some of which are planning cells,⁵²⁷ deliberative systems⁵²⁸ consensus conferences,⁵²⁹ institutionalized group representations,⁵³⁰ citizen jury,⁵³¹ citizens assembly⁵³²

⁵²³ Daan Jacobs & Wesley Kaufmann, “The Right Kind of Participation? The Effect of a Deliberative Mini-Public on the Perceived Legitimacy of Public Decision-Making” (2019) *Public Management Review* 1 – 21, 2.

⁵²⁴ *38 Provincial Elections/2005 Referendum on Electoral Reforms*, by Elections BC (British Columbia: Office of the Chief Election Officer, 2005).

⁵²⁵ Amy Lang, “But Is It for Real? The British Columbia Citizens’ Assembly as a Model of State-Sponsored Citizen Empowerment” (2007) 35:1 *Politics & Society* 35–70. For an analysis of the impact of the failure to reflect the population composition in the membership of the citizens’ assembly, see Michael Pal, “The Promise and Limits of Citizens’ Assemblies: Deliberation, Institution and the Law of Democracy” (2012) 38 *Queen’s Law Journal* 259 - 294.

⁵²⁶ Lang, “But Is It for Real?”, *supra* note 525.

⁵²⁷ Michels & Binnema, “Assessing the Impact of Deliberative Democratic Initiatives at the Local Level”, *supra* note 294.

⁵²⁸ John Parkinson & Jane Mansbridge, eds, *Deliberative Systems: Deliberative Democracy at the Large Scale*, Theories of institutional design (Cambridge: Cambridge Univ. Press, 2012).

⁵²⁹ Edna F Einsiedel & Deborah L Eastlick, “Consensus Conferences as Deliberative Democracy: A Communications Perspective” (2000) 21:4 *Science Communication* 323 - 343.

⁵³⁰ Anne Phillips, *The Politics of Presence* (Oxford University Press, 1998); Young & Allen, *supra* note 99.

⁵³¹ Smith & Wale, *supra* note 67.

⁵³² ME Warren & H Pearse, *Designing Deliberative Democracy: The British Columbia Citizens’ Assembly* (Cambridge Mass.: Cambridge University Press, 2008).

and deliberative polls.⁵³³ Of these prominent examples, the deliberative polls that Fishkin developed and applied with varying degrees of success in liberal and quasi-liberal constitutional orders⁵³⁴ have the broadest acceptance among deliberative democrats and other democracy theorists.⁵³⁵ Recently, Jacob and Kaufman noted that,

“The Deliberative Poll® is perhaps the most well-known example of a deliberative mini-public, but more recent initiatives like AmericaSpeaks and the G1000 are based on similar principles. In AmericaSpeaks, citizens are invited to participate in a ‘21st Century Town Meeting’. As an updated version of the New England town hall meeting, this type of mini-public engages a large group of citizens in a deliberative process that aims to facilitate informed public decision-making. Defining features include the relatively large number of participants, which ranges from 500 to 5000, and the fact that policymakers and other stakeholders are always directly involved. The G1000 has a slightly different design. While it is also intended to

⁵³³ V Andersen & K Hansen, “How Deliberation Makes Better Citizen: The Danish Deliberative Poll on the Euro” (2007) 46 *European Journal of Political Research* 531–556.

⁵³⁴ Js Fishkin, Rc Luskin & R Jowell, “Deliberative Polling and Public Consultation” (2000) 53:4 *Parliamentary Affairs* 657–666; James S Fishkin, “Consulting The Public Through Deliberative Polling” (2003) 22 *Journal of Policy Analysis and Management* 128 - 133; James S Fishkin et al, “Deliberative Democracy in an Unlikely Place: Deliberative Polling in China” (2010) 40:2 *British Journal of Political Science* 435 - 448; James S Fishkin et al, “Applying Deliberative Democracy in Africa: Uganda’s First Deliberative Polls” (2017) 146:3 *Daedalus* 140 - 154.

⁵³⁵ Recently, two forms of citizen panel mini-publics - the Toronto Planning Review Panel (TPRP) and the Metrolinx Standing Reference Panel (MSRP) that adopts similar logic to deliberative polls were created in Toronto. In this newly created citizen panel, a group of randomly selected Canadians residing in Toronto is mandated to meet every two months for two years to deliberate and provide informed inputs on planning and transportation issues in Toronto. See <<https://carnegieeurope.eu/2019/11/26/new-wave-of-deliberative-democracy-pub-80422>> accessed October 23, 2020 and <<https://www.masslp.com/work-panels>> accessed October 23, 2020.

engage a relatively large group of citizens, it does so in a more structured way. In G1000-like initiatives, 100 to 1000 citizens are randomly selected to participate in a deliberative forum. Its defining features include the fact that non-participating citizens are also invited to weigh in, and that decision-making takes place in several phases.⁵³⁶

None of the mini-publics mentioned above could independently guarantee that the voices of marginalized Nigerians would not be lost during deliberations in the Nigerian public sphere. Further to the objectives of this thesis, I propose combining the institutionalized group representations (IGR)⁵³⁷ citizens' jury⁵³⁸ and the citizens' assembly.⁵³⁹ Combining these mini-publics could provide a broad platform that could ensure that the voices of marginalized Nigerians would not be lost during deliberations in the Nigerian public sphere. These mini-publics could also guarantee that marginalized Nigerians have access to the necessary information to participate effectively and intelligently in the Nigerian public sphere.

4.4.1. Institutional Group Representations

The IGR is a mini public that identifies and ensures, to the possible extent, the representations of all diverse groups during deliberations in public spheres. In accomplishing this objective, the IGR relies on the agency relationship between the marginalized people and their sub-sects of marginalization to

⁵³⁶ Jacobs & Kaufmann, *supra* note 523, 3.

⁵³⁷ Phillips, *supra* note 530; Young & Allen, *supra* note 99.

⁵³⁸ Smith & Wale, *supra* note 67.

⁵³⁹ Warren & Pearse, *supra* note 532.

identify marginalized stances that ought to be represented in public spheres.⁵⁴⁰ In doing so, the IGR evokes differing logics of actions that inform the marginalization of marginalized people and offers multiple bases for determining the legitimacy and eventual utility of deliberating in public spheres.⁵⁴¹ Through these means, the IGR collects, collates, and aggregates views of participants in hopes of deciphering their aspirations and current inhibitions. It is crucial to note that the marginalized identities of marginalized Nigerians generally cut across tribes, religious beliefs, sexual orientation, education level, exposure, *et al.*

Ascertaining the aspirations and current inhibitions of marginalized Nigerians would require the IGR to rectify democratic practices discussed in the previous chapter that hinder marginalized Nigerians from accessing the Nigerian public sphere. Hence, for the IGR to actualize its objective, participants in the IGR ought to be as broad as possible to permit the inclusion or, in the least, the representation of all marginalized Nigerians. Besides, marginalized Nigerians who are participating in the IGR should be allowed to align themselves broadly along their marginalized positions. Should the marginalized Nigerians participating in the IGR become intersectionality objects,⁵⁴² they ought to also be permitted to code-switch as often as allowable to ensure the extensive deliberation of factors that contribute to their marginalization and exclude them from the Nigerian public sphere.⁵⁴³

⁵⁴⁰ Samer Abdelnour, Hans Hasselbladh & Jannis Kallinikos, “Agency and Institutions in Organization Studies” (2017) 38:12 *Organization Studies* 1775 – 1792.

⁵⁴¹ WR Scott, “Lords of the Dance: Professionals as Institutional Agents.” (2008a) 29 *Organization Studies* 219–238. at 222 cited in Abdelnour, Hasselbladh & Kallinikos, *supra* note 540, 1778.

⁵⁴² Crenshaw, *supra* note 371; Gregory Parks, Shayne E Jones & W Jonathan Cardi, eds, *Critical Race Realism: Intersections of Psychology, Race, and Law* (New York: New Press, 2008).

⁵⁴³ This argument does not violate the “consistency constraint” argument of Elster. See Elster, *supra* note 146, 104.

Moreover, to the extent comprehensible to marginalized Nigerians participating in the IGR, data essential to deliberating on Nigeria's democratic governance problems ought to be provided to them in its pristine form to forestall the manipulation of such data by experts, who might have been invited to explain the data's technical parts. Access to such data would avail marginalized Nigerians of information they ordinarily have limited or no access to.

Owing to the increasing complexity of democratic governance, the need for expert involvement during deliberations is increasingly becoming an integral part of mini-publics.⁵⁴⁴ In attempting to balance the utility of deliberation processes, Christiano contended that citizens participating in public spheres should deliberate to ascertain the policy goals, while experts should determine the means and consequences of achieving the policy aims.⁵⁴⁵ By excessively limiting the citizens' role to policy outcomes, Christiano's proposal undermines deliberative democracy's emancipatory objectives by granting extensive discretionary decision-making powers to the experts at the citizens' expense.⁵⁴⁶

Christiano's recommendation, which does little to invigorate the process of democratic decisions, as Dryzek urged,⁵⁴⁷ reminisces elite domination, and is thus, ill-suited to actualize the aspirations that the originalists conceived for deliberative democracy.⁵⁴⁸ In place of Christiano's recommendations, I urge that the involvement of experts in deliberations ought to be embedded in the institutional culture of

⁵⁴⁴ Jennifer J Roberts et al, "Experts and Evidence in Deliberation: Scrutinizing the Role of Witnesses and Evidence in Mini Publics, A Case Study" (2020) 53 Policy Science 3 - 32, 5.

⁵⁴⁵ Thomas Christiano, "Rational Deliberation among Experts and Citizens" in John Parkinson & Jane Mansbridge, eds, *Deliberative Systems* (Cambridge: Cambridge University Press, 2012) 27. cited in Roberts et al, *supra* note 544, 5.

⁵⁴⁶ Roberts et al, *supra* note 544.

⁵⁴⁷ Dryzek, *supra* note 134, 2 – 6.

⁵⁴⁸ Rawls, *supra* note 101, 42 – 44; Habermas, *supra* note 69, 486; Mills, *supra* note 147, 255; Elster, *supra* note 146, 104; Gutmann & Thompson, *supra* note 136, 14 – 15; and Cohen, *supra* note 68.

public scrutiny. Such public scrutiny would, *inter alia*, ensure experts invited to clarify issues raised in the proposed IGR do not express their personal and often biased opinions, irrespective of the perceived ingenuity or utility of such opinions. In doing so, marginalized Nigerians participating in the IGR can bring “public judgment to bear on expertise”⁵⁴⁹ that inadvertently frustrate deliberations⁵⁵⁰ and hinder the liberalization of the Nigerian public sphere. Subsequently, marginalized Nigerians, having become more knowledgeable about Nigeria’s democratic governance problems, would be better positioned to intelligently engage Nigerian elites on Nigeria’s governance issues.

4.4.2. **Citizens’ Jury**

After acquiring sufficient information about the problems of Nigeria’s democratic governance and practices, marginalized Nigerians who have participated in the IGR could be randomly (either through secret ballot or lottery) selected to become members of the Nigerian citizens’ jury. Citizen juries share semblance with juries that adjudicate facts in court systems that operate such, and their functions are also similar.

Marginalized Nigerians who would participate in the proposed Nigerian citizens’ jury would weigh factual questions on democratic importance issues that could help Nigerians, particularly those marginalized, actualize their socio-economic and political aspirations in Nigeria. The number of participants in the proposed Nigerian citizens’ jury should be as broad as necessary to represent the various marginalized identities of marginalized Nigerians. As previously noted, the marginalized identities of marginalized Nigerians, thought political, cut across tribes, religious beliefs, sexual

⁵⁴⁹ Alfred Moore, “Deliberative Elitism? Distributed Deliberation and the Organization of Epistemic Inequality” (2016) 10:2 Critical Policy Studies 191–208, 191.

⁵⁵⁰ Roberts et al, *supra* note 544, 6.

orientation, education level, exposure, *et al.*, but mostly reflect itself in socio-economic stance. Against this backdrop, marginalized Nigerians, according to the World Poverty Clock, comprise about 90% of the Nigerian population,⁵⁵¹ many of whom live on less than 5 USD daily.⁵⁵²

As noted under the IGR, the increasing complexity of democratic governance generally necessitates the involvement of experts during deliberations.⁵⁵³ Thus, an umpire who should be an expert on the subject deliberated on should be the moderator of the ensuing deliberation⁵⁵⁴ undertaken by the proposed Nigerian citizens' jury. The duty of said umpire must be constrained to clarifying technical terms related to the subject discussed or that might arise during deliberations.⁵⁵⁵

Subsequently, participants in the proposed Nigerian citizens' jury ought to be availed with sufficient time to deliberate amongst themselves in hopes of generating confluence of ideas. After participants in the proposed Nigerian citizens' jury have attained confluence of ideas that clarify their respective marginalized differences,⁵⁵⁶ Nigerian elites (alternative group) could then be invited to participate in the deliberation process.

⁵⁵¹ <<https://www.macrotrends.net/countries/NGA/nigeria/poverty-rate>> accessed May 22, 2020.

⁵⁵² Currently, according to the World Poverty Clock, about 102,000,000 Nigerians, which comprises about 50% of Nigeria's population live on less than 2 USD a day. <<https://worldpoverty.io/>> accessed on May 22, 2020. See also the report by CNN Adebayo, *supra* note 63.

⁵⁵³ Roberts et al, *supra* note 544, 5.

⁵⁵⁴ *Ibid.*

⁵⁵⁵ *Ibid.*

⁵⁵⁶ Kadlec & Friedman, *supra* note 100, 20.

4.4.3. Nigerian Citizens' Assembly

Here, I propose a Nigerian citizens' assembly backed by legislation to articulate far-reaching recommendations to the Nigerian government on policy decisions.⁵⁵⁷ This proposed Nigerian citizens' assembly resembles the legislature of liberal and quasi-liberal constitutional orders, constitutionally created, and empowered to propose legislation after deliberating on the structure, substance, merit, and demerit of such proposed legislation. Participants in the proposed Nigerian citizens' assembly should be evenly structured so that the alternate groups and the marginalized groups are evenly represented. The function of the proposed Nigerian citizens' assembly would be to suggest recommendations capable of rectifying the problems of democratic governance in Nigeria. Through those recommendations - which would likely be the reflective aftermath of the coordination and cooperation of Nigerians elites and marginalized Nigerians - all Nigerians would be better positioned to pursue and actualize their socio-economic and political aspirations.

Research suggests that mini-publics - which includes the IGR, the Citizens' jury and Citizen Assemblies that I discussed above - could foster unity and shape opinions expressed in public spheres.⁵⁵⁸ Stated simply, mini-publics could enhance the cooperation and coordination of participants in public spheres, even if such participants are inhabitants of deeply divided societies where challenges and distrust exist on almost all issues.⁵⁵⁹ Thus, if the Nigerian constitutional order dutifully incorporates the mini-publics discussed above into its democratic governance structures, the mounting dissonance between marginalized Nigerians and Nigerian on governance issues that

⁵⁵⁷ Warren & Pearse, *supra* note 532.

⁵⁵⁸ Marina Lindell, *Same but Different - Similarities and Differences in the Implementation of Deliberative Mini-publics* (University of Reykjavik, Iceland, 2011), 19.

⁵⁵⁹ Robert C Luskin et al, "Deliberating across Deep Divides" (2014) 62:1 Political Studies 116 - 135.

currently undermine the utility of Nigeria's extant democratic governance could be permanently addressed. Consequently, the increased coordination and cooperation between marginalized Nigerians and Nigerian elites on Nigeria's governance issues would likely produce fair and just outcomes for all Nigerians, thereby fulfilling the aspirations that the originalists conceived for deliberative democracy.

4.5. Framing the Subject of Deliberation

In addition to conceptualizing institutional means that could guarantee that the voices of marginalized Nigerians would not be lost in the Nigerian public sphere when issues of democratic importance are being discussed, it is equally crucial to frame the subject of deliberations appropriately. Some deliberative democrats have argued that deliberations in public spheres should either be reserved for significant constitutional moments⁵⁶⁰ or instances where the foundation of a particular constitutional order is in jeopardy.⁵⁶¹ Reserving deliberations in public spheres to such moments or instances would have little impact in amplifying and rectifying existing structural injustices and inequalities that exist in all societies. Instead of waiting for the moments or instances noted above, the precepts of deliberative democracy ought to be integrated into democratic institutions and the governance framework of all constitutional orders to help the marginalized members of such constitutional orders actualize their socio-economic and political aspirations.

Integrating the precepts of deliberative democracy into Nigeria's extant democratic governance has the potential to rectify the governance practices discussed in chapter three of this thesis. As previously noted, these government practices compound the ability and access of marginalized Nigerians to participate and contribute to deliberations in the Nigerian public sphere. To guarantee the continued

⁵⁶⁰ B Ackerman, *We the People 1: Foundations* (Cambridge, MA: Harvard University Press, 1991).

⁵⁶¹ Dryzek, *supra* note 468, 653.

participation of marginalized Nigerians in the Nigerian public sphere and make the former more amenable to the latter's clamouring, the subject matter to be deliberated on must be appropriately framed by “clarifying the *range* of positions surrounding an issue so that [Nigerians themselves, particularly those marginalized], can better decide what they want to do.”⁵⁶²

Ensuring that marginalized Nigerians participate in framing the subject to be deliberated could inspire the Nigerian public sphere to generate frames of queries and analyses, which could encourage Nigerians participating in the Nigerian public sphere to deliberate from a non-self-enhancing lens. Through this tactic, manipulations that are inherent in the participatory democracy that Nigeria currently operates would be avoided, while inherent power disparities prevalent in Nigeria that undermine the vibrancy of the deliberation principles discussed in chapter two would be dispersed. Consequently, the Nigerian public sphere would be protected from the undue influence of Nigerian elites whose views and ambitions almost always have selfish undertones.

This tactic to framing the subject matter to be deliberated on would likely scale the hurdles of Elster's “consistency constraint,”⁵⁶³ thereby producing fair and just outcomes for all, as Rawls admonished.⁵⁶⁴ It would also sharpen “the communicative skills, political efficacy, and self-worth of participants,”⁵⁶⁵ thereby availing them with the liberty to engage a wide range of viewpoints contesting their attention without being overwhelmed by its numbers. The preceding reasonings align with the arguments that

⁵⁶² Kadlec & Friedman, *supra* note 100.

⁵⁶³ Elster, *supra* note 146, 104.

⁵⁶⁴ Rawls, *supra* note 101, 42 – 44.

⁵⁶⁵ Kadlec & Friedman, *supra* note 100, 17.

I proposed in section 4.3 of this chapter to support my proposal to jettison consensus for confluence as the ultimate objective that deliberative democracy should aspire for in the Nigerian public sphere.

4.6. Conclusion

This chapter builds on the previous chapters to succinctly analyze the impropriety of seeking consensus as deliberative democracy's ultimate objective. It does so by rationalizing consensus's propensity to inadvertently perpetuate existing structural injustices that currently exclude marginalized Nigerians from effectively participating in the Nigerian public sphere. In consensus's place, this chapter proposes that confluence - which closely aligns with the notion of enhancing the coordination and cooperation of all on issues of governance - should be the ultimate objective of deliberative democracy. In accomplishing this thesis' overall objective, this chapter subsequently conceptualized institutional means that could guarantee that subsequent engagement in the Nigerian public sphere would accommodate, to the possible extent, the voices of marginalized Nigerians.

5. General Conclusion

The primary objective of this thesis was to inquire into the potential of deliberative democracy to address Nigeria's endemic democratic governance problems. By deliberative democracy, this thesis refers to the form of democratic governance that emphasizes inclusivity and civic dialogue in the decision-making process.⁵⁶⁶ This form of democratic governance intermittently achieves said inclusivity by strategically manipulating and maneuvering civil discourse⁵⁶⁷ to ensure that participants in public spheres reach an agreement that expresses their collective desires and reflects their socio-economic aspirations.⁵⁶⁸ Despite the utility and potential of deliberative democracy to address Nigeria's endemic democratic governance problems, several challenges undermine its fruition in Nigeria.⁵⁶⁹ These challenges, which are the consequences of colonialism,⁵⁷⁰ identity politics,⁵⁷¹ and the skewed structure of Nigeria's extant constitutional framework,⁵⁷² encompass governance practices of elite domination,⁵⁷³ corruption prevalence,⁵⁷⁴ and the unwillingness of the Nigerian government to accommodate and encourage civil disobedience of Nigerians to the latter's governance style.⁵⁷⁵

⁵⁶⁶ Smith & Wale, *supra* note 67, 56.

⁵⁶⁷ *Ibid.*

⁵⁶⁸ *Ibid.*, 57.

⁵⁶⁹ Agunyai, *supra* note 57, 211 - 213

⁵⁷⁰ Owen, *supra* note 7, 474 - 475.

⁵⁷¹ Kiki Edozie, *supra* note 35, 426 - 429

⁵⁷² Elaigwu, *supra* note 11, 11 - 18.

⁵⁷³ Obiajulu, Obi & Iwuoha, *supra* note 27.

⁵⁷⁴ Ogbeidi, *supra* note 4.

⁵⁷⁵ Agunyai, *supra* note 57, 211 - 213

Notwithstanding these challenges, I critically analyzed Nigeria's constitutional framework to reveal the public reasoning, limitation, and entrenchment principles of deliberative democracy. Although these deliberative principles fall short of the aspirations that the originalists conceived for deliberative democracy, their skewed presence within the framework of Nigeria's quasi-liberal constitutional order is worthy of commendation. Should the gaps that undermine these deliberations principles' ability to produce fair and just outcomes for all Nigerians be rectified, its subsequent utility could permanently address Nigeria's democratic governance problems. Originalists, in this thesis, refer to Habermas,⁵⁷⁶ Rawls,⁵⁷⁷ Mills,⁵⁷⁸ Elster,⁵⁷⁹ Cohen,⁵⁸⁰ as well as Gutmann and Thompson.⁵⁸¹ And as previously noted, these originalists conceptualized the framework within which deliberative democracy evolved.

While deliberative democracy can theoretically address Nigeria's democracy's problems, its consensus aspiration, which ranks preferences rather than genuinely accommodating the contributions of all who ought to participate in the Nigerian public sphere, undermines its utility.⁵⁸² In consensus's place, I contended that confluence - which is a filtering lens through which alternative views are voiced and simultaneously heard⁵⁸³ - should be the goal that deliberative democracy should aspire for when marginalized Nigerians and Nigerians elites deliberate in the Nigerian public sphere.

⁵⁷⁶ Habermas, *supra* note 69, 486.

⁵⁷⁷ Rawls, *supra* note 101, 42 – 44.

⁵⁷⁸ Mills, *supra* note 147, 255.

⁵⁷⁹ Elster, *supra* note 146, 104.

⁵⁸⁰ Cohen, *supra* note 68.

⁵⁸¹ Gutmann & Thompson, *supra* note 136, 14 - 15.

⁵⁸² Kadlec & Friedman, *supra* note 100, 3 - 5.

⁵⁸³ *Ibid*, 20.

Due to confluence's capacity to genuinely liberalize the public sphere to accommodate the views and opinions of all participants, rather than those best expressed,⁵⁸⁴ it has, within the lens of democratic theory, attained higher legitimacy.⁵⁸⁵ Accordingly, it is more attuned, within the framework of Nigeria's quasi-liberal constitutional order, to entrench the rule of law,⁵⁸⁶ and promote democratic ideals essential to ensuring that the often silenced voices of marginalized Nigerians become central to the norms that the Nigerian government would prescribe and integral to the tactics that the Nigerian government would rely on in the governance of Nigeria.

Notably also, is the fact that confluence challenges the notion that the feasibility and legitimacy of democratic practices do not depend on accommodating the varied and multifaceted interests of all inhabiting constitutional orders that operate such practices.⁵⁸⁷ From the preceding, it is glaring that replacing consensus with confluence as the ultimate goal that deliberative democracy should aspire for furthers the aspirations that the originalists conceived for deliberative democracy.⁵⁸⁸

It is crucial to note that actualizing the aspirations that the originalists conceived for deliberative democracy ought to be the collective responsibilities that Nigerians (elites and those marginalized alike) owe one another as responsible citizens desirous of addressing existing structural injustices that are prevalent in Nigeria. Therefore, all Nigerians who participate in the Nigerian public sphere must act to elevate each other by willingly clarifying their differences in hopes of reaching confluence of

⁵⁸⁴ *Ibid*, 20.

⁵⁸⁵ Miller, *supra* note 119, 61.

⁵⁸⁶ Okon, *supra* note 92, 211 - 212.

⁵⁸⁷ Cf with Cohen, *supra* note 107.

⁵⁸⁸ Rawls, *supra* note 101, 42 – 44; Habermas, *supra* note 69, 486; Mills, *supra* note 147, 255; Elster, *supra* note 146, 104; Gutmann & Thompson, *supra* note 136, 14 – 15; and Cohen, *supra* note 68.

ideas.⁵⁸⁹ Through these means, Nigerians might attain enlightenment that Mills envisaged as the ideals of justice,⁵⁹⁰ and Habermas referred to as the aftermath of the force of the better argument.⁵⁹¹

Despite the potential utility of confluence, it lacks the means to guarantee that the voices of marginalized Nigerians would not be lost when the Nigerian public sphere discusses issues of democratic governance in Nigeria. The quest to guaranteeing such a guarantee necessitated this thesis to conceptualize institutional means for securing said assurance and conceiving the appropriate way to frame the subject of deliberation. By actualizing these institutional means, the Nigerian public sphere would be forced to hear, accommodate, and genuinely comprehend the challenges and voices of those marginalized in the administration of Nigeria and its political economy. Accordingly, decisions that would subsequently be reached in the Nigerian public sphere would be fairer and more just, thus closer to fulfilling the aspirations that the originalists conceived for deliberative democracy.⁵⁹²

Avenues for actualizing the justice aspiration for deliberative democracy exist in limited form in Nigeria's quasi-liberal constitutional order. Prescribing means of enhancing said avenues was this thesis' overall objective. Should the several recommendations of this thesis be implemented, Nigeria's quasi-liberal constitutional order would become more attuned to enhancing the reasoned collection of competing and conflicting arguments *of all* Nigerians nudged towards their collective benefits. This reasoned collection of competing and conflicting arguments of all to produce fair and just outcomes

⁵⁸⁹ For a detailed analysis on how to attain utilitarian compromise, see David Brink, "Mill's Deliberative Utilitarianism" (1992) 21:1 *Philosophy and Public Affairs Journal* 67- 103.

⁵⁹⁰ As quoted from Mills, *Collected Works XIX: 447* by Ten, *supra* note 336. at 379, culled from Fabienne, *supra* note 336.

⁵⁹¹ Habermas, *supra* note 69, 89 - 103. For explanatory notes on Habermas's Force of a Better Argument, see Allen, *supra* note 69; Victor, *supra* note 69; Ferrell & Old, *supra* note 69.

⁵⁹² Rawls, *supra* note 101, 42 – 44; Habermas, *supra* note 69, 486; Mills, *supra* note 147, 255; Elster, *supra* note 146, 104; Gutmann & Thompson, *supra* note 136, 14 – 15; and Cohen, *supra* note 68.

is, after all, what originalists and progressives collectively agree that deliberative democracy should aspire to attain.⁵⁹³

In conclusion, this thesis is broadly descriptive and prescriptive; hence, its several recommendations have mostly been normative. Since questions on democratic governance problems and the potential of deliberative democracy are vast,⁵⁹⁴ constraining them as this thesis did undoubtedly leaves several unconsidered questions unanswered. For instance, deliberative democracy principles are continually evolving in response to challenges to its underlying tenets. While deliberative democracy's aspirations seem settled amongst researchers, the path to attaining said aspirations is unclear and thus remains the subject of dispute amongst deliberative democrats. By restricting this research's analysis mostly to the respective contributions of Habermas, Rawls, Mills, Elster, Dryzek, Young, Mutz, Benhabib and Hammond, this research excludes others, too numerable to mention, of equal utility.

Further, reliance on ethnography and socio-legal research methodologies would have enriched this research by confirming this thesis's hypothesis that deliberative democracy has the potential to address Nigeria's democratic governance problems. Specifically, the ethnography and socio-legal research methodologies would have been useful to validate the efficacy of the mini-publics that I conceptualized in chapter four of this thesis. However, time and financial constraints have constrained this thesis from employing and relying on these methodologies.

Finally, this research did not analyze how the precepts of deliberative democracy would become applicable within the conceptual lens of Nigeria's skewed federal structure, with its diverse ethnicity

⁵⁹³ Boulianne, "Building Faith in Democracy", *supra* note 116.

⁵⁹⁴ Enaifoghe, *supra* note 187, 13.

and plurality of languages. This thesis did not also inquire into the prospect of applying the principles of deliberative democracy to address challenges of resource control in, and bottlenecks of, Nigeria's political economy. These lacunas are not inadvertent. They stem from the thoughtful restricted focus of this research's objective. As previously noted, the objective of this thesis was to address problems of democratic governance in Nigeria, not from the prism of identity politics or Nigeria's skewed federal structure, but from the deliberate exclusion of marginalized Nigerians from participating in the governance and administration of Nigeria and its political economy. As I argued in this thesis, said exclusion of marginalized Nigerians has frustrated their attempts to pursue and actualize their socio-economic aspirations and political objectives under a constitutional clime that ought to encourage inquiries into the tactic and substance that the Nigerian government relies on to govern.

This narrow-focused approach to rethinking and addressing the mounting challenges and disillusionments of representative democratic governance is gradually becoming the norm among political scientists and researchers, led by Ian Shapiro⁵⁹⁵ and James Fishkin.⁵⁹⁶ In a recent publication, one such political scientist *inter alia* argued that the optimal means of addressing the imploding challenges to democracy and liberal democratic precepts is to conceive means through which political power would become more accessible to those marginalized rather than concentrated in the hands of the elites, as presently obtainable.⁵⁹⁷ Despite these limitations, which I hope to subsequently research and inquire into soon,

⁵⁹⁵ Ian Shapiro & Stephen Macedo, eds, "Instituting Deliberative Democracy" in *Designing Democratic Institutions* Nomos 42 (New York: New York University Press, 2000) 75; Ian Shapiro, *The State of Democratic Theory* (Princeton, N.J.: Princeton University Press, 2003); Ian Shapiro & Inc ebrary, *The Real World of Democratic Theory* (Princeton: Princeton University Press, 2011); Ian Shapiro, *Politics Against Domination*, 1st ed (Harvard: Harvard University Press, 2016); Frances Rosenbluth & Ian Shapiro, *Responsible Parties: Saving Democracy from Itself* (2018).

⁵⁹⁶ James S Fishkin, *When the People Speak: Deliberative Democracy and Public Consultation* (Oxford: Oxford University Press, 2009); James S Fishkin, *Democracy When The People Are Thinking: Revitalizing Our Politics Through Public Deliberation*, first ed (Oxford, United Kingdom: Oxford University Press, 2018).

⁵⁹⁷ Hélène Landemore, *Open Democracy: Reinventing Popular Rule for the Twenty-first Century* (Princeton: Princeton University Press, 2020).

this research's objective of analyzing deliberative democracy's potential to address Nigeria's governance problems from the lens of expanding the public sphere to accommodate the often silenced voices of marginalized Nigerians in the governance of Nigeria and its political economy, is noteworthy. Other researchers are welcome to address the limitations noted above as a criticism of this research by expanding on it.

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