

## THE CONSTITUTIONALISM OF INTRA-GOVERNMENTAL RELATIONS IN NIGERIA'S FOURTH REPUBLIC

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### ABSTRACT

Most seemingly intractable occasions of state failure are a product of unavailability of crises-free relations amongst governmental arms. The Nigerian case presents a plethora of clashes amongst governmental arms. Recent examples depicted in executive-legislative face-offs have given room to poor implementation of budgets and inability to steer the course of national development hence giving opportunity to constitutional crises and political instability. This paper argues that smooth and confrontation-free intra-governmental relations are the only necessary ingredients needed to drive durable economic and political development in Nigeria. The paper, relying on secondary sources, examines instances of conflicts amongst the key organs of government in Nigeria. The paper recommends that the three arms of government viz: the legislature, judiciary and executive should effectively ensure and act in accordance with the provisions of the rule of law, principles of checks and balances and the ethics of separation of power as these will aid them in eschewing whatever form of faceoff between or amongst them.

### INTRODUCTION

Since the Hobbesian State of Nature, government has been recognized as an indispensable institution in the quest to safeguard citizens' lives and properties. Following the evolution of this institution with attendant complexities of societal growth, questions began to rise as to which nature the government should be organized so as to also guarantee the freedom of citizens from oppressive propensities of the institution. It was the Greeks (albeit arguable) in the 5<sup>th</sup> and the 4<sup>th</sup> century BC that began to question the capacity of the government to make far reaching laws that reflects the will of the citizens, the answer to this question is what is known and practiced today as democracy.

By the ethos of democracy, the organization of governments around the world has been modified to bestow the legitimacy of the State and its laws on the citizens. Also observing the ostensible abuse of political power by state actors, French political philosopher, Baron de Montesquieu in the 18<sup>th</sup> century advocate that there should exist power distinction in the operational apparatus of the State in order to avoid tyranny. The contention of Montesquieu gave rise to separation of power between the organs of government. Separating the organ that makes the law from the organ that implements it and even so to the organ that reviews the law making and implantation will necessitates checks and balances by the various organs. These ideas have been adopted in the constitution of several countries of the world and Nigeria inclusive.

Nigeria practices a constitutional democracy with notably three organs of government: Legislature, Executive, and Judiciary, which has the responsibilities of making, implementing and interpreting laws respectively. These organs play complementing role on each other through checks and balances. As Oshio (2004) noted that "although the 1999 Constitution

vests the governmental powers on the three separate arms of government, the division of powers is not created to institutionalize isolation of any arm of government.” Under the arrangement by the Nigerian constitution, the President has veto power on any bill passed by the National Assembly (NA) but the National Assembly can impeach the President.

Also, nominations for appointment of Justices to the Supreme Court and the Chief Justice of Nigeria, by the President are subject to confirmation by the Senate. The NA exercises oversight functions, including the power over public finance and the power of investigation. On the other hand, the Judiciary exercises the power of judicial review over executive and legislative actions. Hence, the separation of powers involves sharing of the powers of government, a system of checks and balances which allows each arm of government to defend its position in the constitutional framework of the government.

The essence of these checks and balances is to prevent any organ from assuming excessive powers to the detriments of the citizens. Given the avalanche remorseless abuse of privileged constitutional powers in Nigeria due to institutional weakness, the doctrine of separation of power and checks and balance in her constitutional democracy is questioned. Thus this paper looks at the various strategies that could be adopted to reposition democratic institutions in Nigeria focusing on the three main arms of government: Legislative, executive and Judiciary.

## CONCEPTUAL CLARIFICATIONS

### *Separation of Power*

Separation of power is a doctrine based on the recognition that there exist three main categories of government function: Legislative, Executive, and Judicial. These main functions are distributed according to corresponding organs of organs of the government in a state – the Legislature, the Executive and the Judiciary. This doctrine believes that the three functions of government in a democracy must be maintained separately and exercised by separate organs of the state. The significance of this doctrine was based on natural law philosophy traceable back to Plato and Aristotle and later articulated by the 16th and 17th centuries, French Philosopher Jean Bodin and British politician John Locke (Nwabueze, 1973).

However it is the French Montesquieu who formulated the doctrine systematically and scientifically in his book *Esprit des Lois* (The Spirit of the Laws 1748). Montesquieu was not the pioneer as Aristotle in his treatise known as *Politics* had made the same distinctions but Montesquieu gave it clarity and developed a model which has with variations influenced the format of modern constitutions (Reeve, 1998).

More to it Montesquieu was impressed by the liberal thoughts of John Locke and based his analysis of the British constitution in the 18th century, as he understood it concluding that the secret behind the liberty enjoyed by the English society was based on the separation and functional independence of the three arms of government. He argued that:

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty, because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. Again, there is no liberty if the judicial power be not separated from the legislative and executive. Where it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control: for

the judge would then be the legislator. Where it joined with the executive power, the judge might behave with violence and oppression. Miserable indeed would be the case, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions and that of judging the crimes or differences of individuals. (Montesquieu, 1748:55)

What Montesquieu detested was absolutism and the concentration of powers in one organ of state. It is the same principle that this realisation came at a great cost to democracy and human rights in Europe. As was correctly pointed out by Lord Atkin: "Every power tends to corrupt and absolute power tends to corrupt absolutely", Mbah (2007:187) amplifying this argued that:

The reason for proposing the doctrine of separation of powers is to fragment government power in such a way to defend liberty and keep tyranny at bay. This is because of human and the assumption that if unrestrained by external checks, any given individual or groups of individuals in power will go beyond the limit of their authority, in order to establish a political system where no individual or group could dominate others...

Separation of power is therefore essential for guaranteeing the freedom of citizens from oppression through state apparatus of power. The goal is to protect citizens from the arbitrary use of state powers.

### ***Checks and Balances***

A fundamental misgiving that greeted the Montesquieu presentation of the doctrine of separation of powers is that his model was based on a faulty premise where it assumed that the three functions of Government are compactly distinguishable from another which is practically not the case. Most notably, of the cases against Montesquieu's argument is the principle of delegated legislation- where organs of the executive and judicial arm of government make laws, original a function of the legislature, that are incidental to achieving the goals of the constitution. Also there are evidences where the executive and legislative arms of government are performing quasi-judiciary functions which are primarily the function of the Judiciary.

There is a multiplicity of tribunals that have been established by Acts of Parliament to cater for specific areas of dispute settlement (Jain and Jain, 1974). Ostensibly, the Montesquieu's model provides two dimensions to its doctrine; first, the dimension of institution; and secondly, the dimension of function. The dimension of function focused headlong on the division of powers between the institutional organs of state while the functional dimension focuses on the usage of their powers. Since the usage of the power determines the strength or otherwise of each institution, the essential focus of this paper is on the functional dimension of the institutions including their powers to check on each other.

Consequently, the functional aspect of the doctrine of separation of power is operationalized to mean checks and balances based on constitutional schematics. What is important today is not separation of powers in strict sense but checks and balances. It is one of the various functions of the Parliament to check the executive. This is done through various means including authorisation of budget, scrutiny of Government expenditure and questioning the

Government in Parliament to account for its actions. It is the duty of the Judiciary to protect the constitution and the laws of the country which are not contrary to the constitution (James and Kassam, 1973).

On its own, the judiciary stands between the citizens and the state as a balance against executive excesses or abuse of power, transgression of constitutional or legal limitations by the Executive as well as the Legislature (Bhagwati 1989).

Thus checks and balances are desirable and feasible rather than an absolute separation of powers, which is impracticable. The powers may be distinct but not really separate. This is palpable under the Nigerian constitutional arrangement. The President has veto power on any bill passed by the legislature but the legislature can impeach the President. Also, the President's nomination for appointment as Supreme Court Justices is subject to confirmation by the Senate. The legislature has powers including the power over public finance and the power of investigation. On the other hand, the judiciary exercises the power of judicial review over executive and legislative actions.

## **THEORETICAL FRAMEWORK**

Various theories abound that could be adopted as framework upon which the literature could be built, these theories range from; Structural Functionalism, Systems theory and theory of checks and balances. All these theories have certain intellectual relevance to the subject-matter but for the sake of application to the case study, the Structural-Functional approach is considered most appropriate. Although structural functionalism predated systems theory it still presupposes a "systems" view of the political world. Similarities link functionalism to systems analysis.

### ***Basic Theoretical Assumptions of the Theory***

According to Merton (1968), the social system is the prior causal reality and the system parts are functionally interrelated, all social phenomena have functions for the larger social system. Concerning these functions, the theory has the following assumptions:

1. they may be functional for the whole system or only part of it
2. there may be functional alternatives
3. there may be multiple consequences from particular phenomena, The and finally
4. dysfunctions account for tension and change in the system
5. approaches assume that systems can be identified and specified, that the boundaries are measurable
6. they cannot explain the existence of societies in the first place
7. it cannot easily explain rapid Social change and social conflict
8. explanations can be tautological

Susser (1992) writes that both focuses on input—output analysis, both see political systems as striving for homeostasis or equilibrium, and both consider feedback in their analysis. Yet functionalism is significantly different. Applying Functional Analysis to the Study of Politics according to Michael G. Smith (1966), four approaches are useful in the comparative study of political systems: process, content, function, and form. Studies based on process and content face huge obstacles.

In developed countries, the processes of government are "elaborately differentiated, discrete and easy to identify," but in simpler societies, the same processes are rarely differentiated and discrete". They occur within the context of institutional activities that are difficult to analyze

for political processes. The more "differentiated and complex" the government processes, the "greater the range and complexity" of content. Since content and process are "interdependent and derivative," they require independent criteria for studying government. The functional approach does not have the same limitations as process and content, It defines government as all those activities that influence "the way in which authoritative decisions are formulated and executed for a society" (Easton, 1957).

From this definition, various schemata were developed to study the functions of government. Easton listed five modes of action as elements of all political systems: *legislation, administration, adjudication, the development of demands, and the development of support and solidarity*. These were grouped as input and output requirements of political systems. An Example of the Structural Functional Approach and systems Theory Structural functionalism analysis consists of nothing more than stating empirical questions in one of the following forms or some combination of them: (a) What observable uniformities (or patterns) exist in the phenomenon under study? (b) What conditions result because of the phenomenon? (c) What processes occur as a result of the conditions? The first question asks: What structures are involved? The second: What functions have resulted because of the structures? Asked in the opposite direction, different results could occur: What functions exist? What structures result from the functions?

### ***The Relevance of the Theory to the Paper***

Essentially, the legislature as a symbol of true democracy makes laws which the executive is under obligation to implement. The judiciary is legally called upon in the determination of civil rights and obligations to interpret the laws. This system of government understands from the onset that powers may be abused and therefore introduced a system that guarantees checks and balances amongst the three arms of government. Therefore, through the power of interpretation, the courts can declare laws made by the legislature unconstitutional, null and void and of no effect whatsoever.

On the other hand, the legislature has the power of oversight over the execution and administration of laws by the executive. The executive holds the powers of investigation, coercion and implementation of laws and can as well use these powers to call the legislature and judiciary to order. In other words, it implies that the three organs of government according to Onyekpere, (2012) should be kept apart from each other in the interest of individual liberty and it is a perfect system created for the overall benefit of the citizens.

The functions of the government should be differentiated and performed by different organs consisting of different bodies of persons so that each department be limited to its respective sphere of activity and not be able to encroach upon the independence and jurisdiction of another (Johari, 1989:280). The principal function of the executive is to execute laws, orders, rules, regulations, decrees, prevention of the breaches of law, rendering a host of social welfare services and meting punishment to the delinquents so as to maintain peace and good government. On the other hand, in spite of its primary function of legislating laws, amending or repealing existing laws, the legislature serves a number of overlapping objectives and purposes to improve the efficiency, economy, and effectiveness of governmental operations; evaluate programmes and performance; detect and prevent poor administration, waste, abuse, arbitrary and capricious behaviour, or illegal and unconstitutional conduct; protect civil liberties and constitutional rights; inform the general public and ensure that executive policies reflect the public interest; gather information to develop new legislative proposals or to amend existing statutes; ensure administrative compliance with legislative intent; and prevent

executive encroachment on legislative authority and prerogatives encapsulates in oversight functions  
([http://en.wikipedia.org/wiki/Congressional\\_oversight](http://en.wikipedia.org/wiki/Congressional_oversight)).

Congressional oversight takes place when the National Assembly (the Senate and the House of Representatives) continually review the effectiveness of the executive arm in carrying out the congressional mandates through supervision, watchfulness, or review of executive actions and activities (Ogbu and Ereke, 2017). This helps the National Assembly to establish issues and address problem areas in order to make the necessary improvements or changes to create an effective process. This legislative process brings to the knowledge of the public what the executive branch is doing, and it affords the electorates the opportunity to see what public office holders are actually doing, whether they are really serving their collective interest or not. This ultimately is the theoretical basis of the Structural-Functional theory.

Arising from the above therefore, efficient interaction amongst the key organs of government can derive good governance in any setting. The question thus is: to what extent has these organs of government availed good governance to the Nigerian State and how can they be strengthened?

## **SEPARATION OF POWER AND NIGERIA'S FOURTH DEMOCRATIC EXPERIENCE**

It is noteworthy that, the 1999 constitution of the Federal Republic of Nigeria, separation of powers constitutes a fundamental constitutional principle which spells the roles and duties of the three arms of the government. These principles are enunciated in the constitution as follows:

Part I Section 231(1), states that, "the appointment of a person to the office of Chief Justice of Nigeria shall be made by the president on the recommendation of the National Judicial Council subject to the confirmation of such appointment by the Senate".

Part I Section 231(2), states that, "the appointment of a person to the office of a Justice of the Supreme Court shall be made by the president on the recommendation of the National Judicial Council subject to confirmation of the appointment by the Senate".

Section 232 (2) states that, in addition to the Jurisdiction conferred upon it by sub-section(1) of this section, the Supreme Court shall have such original jurisdiction as may be conferred upon it by any Act of the National Assembly.

Part II Section 4(8) states that, save as otherwise provided by this constitution, exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of Judicial tribunals established by law and accordingly, the National Assembly or a House of Assembly shall not enact any law, that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law.

Chapter V (The Legislature) Section 5 8(1) States that, "The Power of the National Assembly to make laws shall be exercised except as otherwise provided by this section and sub-section (5) of this section, assented to by the President.

Section 58(3) says, "Where a bill has been passed by the House in which it originated, it shall be sent to the other House, and it shall be presented to the President for assent when it has been passed by that other House and agreement has been reached between the two Houses on any amendment made on it.

Section 5 8(4) states that, "Where a bill is presented to the President for assent, he shall within thirty days thereof signify that he assents or that he withholds assent.

Chapter V Part II (House of Assembly of A State) Section 100(1) states that, "The Power of a House of Assembly to make laws shall be exercised by bills passed by the House of

Assembly and, except as otherwise provided by this section, assented to in accordance with the provisions of this section.

Section 100(2) states that, “a bill shall not become Law unless it has been duly passed and, subject to sub-section (1) of this section, assented to in accordance with the provision of this section.

Section 100(3) states that, “Where a bill has been passed by the House of Assembly, it shall be presented to the Governor for assent.

The above postulations demonstrate the evidence of separation of powers as guaranteed by the Constitution of the Federal Republic of Nigeria, 1999 as amended. This was necessary to prevent arbitrariness in the use of power and to protect the citizens from the oppressive powers of the state. The various evidences produced by the constitution show that in principle Nigeria has adopted the ethos of separation of power and checks and balances becomes a natural consequence of this admission.

### **STRENGTHENING THE KEY ORGANS OF GOVERNMENT IN NIGERIA**

This aspect of the research endears suggestive measures geared towards the consolidation of the key organs of government from the angle of the theory and practice of *power separation as follows*:

- i. The legislative arm should maintain its independence from the executive arm by not having undue affinity and co-operation with the executives and the judicial arm too should not be induced by the executive arm to have such close and subordinate relationship to it as such would vitiate independent status of either arm. Doing this effectively, however, depends on the extent to which political office holders are willing to avoid bias tendencies. In this case, therefore, there is the need for an alteration in the mindset of the legislators and the executives from prebendalism to the ideal practice of using public office to serve the people (Ugwuanyi et al, 2015).
- ii. There is the need for government to ensure that there is both intra-party and inter-party democracy to ensure free and fair election of the members of the executive and the legislature. Such free and fair election will, to a reasonable extent, guarantee the election of credible and committed people into the legislative and the executives arms of the local government.
- iii. There is the need to strengthen the legislative capacity for undertaking the rigorous legislative duties particularly as it relates to its functions of checking the exercise of executive powers. This could be achieved through organizing trainings, workshops and conferences for the legislators. Very importantly, such training should aim at building in the legislators a spirit of community service and effective representation of the electorates. In respect of the regularity of such training, at least one training programme or workshop is recommended for the councilors yearly. Such will enrich their knowledge of the legislative procedures and proceedings (Ugwuanyi, et al, 2015).
- iv. The National Assembly should make legislations that would direct savings of returns made from excess crude sales; this will of course avoid the unnecessary sharing of excess crude by Governors and government agencies. Additionally, for the sake of patriotism, the National Assembly should conduct its lawmaking, representation and oversight duties without recourse to party affiliation, ethnic and religious sentiments as these are always harbingers of economic and political ruin (Ogbu and Ereke, 2017).
- v. There is the need for the existence of varied political party membership among the political office holders in the local government as such creates room for

opposition and criticism that is necessary for effective checks on the powers of the executive by the legislature. Such varied political party membership can only evolve and exist naturally in the atmosphere of free and fair electoral conducts in multi-party election (Ugwuanyi, et al, 2015).

- vi. The three arms of government viz: the legislature, judiciary and executive should effectively ensure and act in accordance with the provisions of the rule of law, principles of checks and balances and the ethics of separation of power as these will aid them in eschewing whatever form of faceoff between or among them. Again, since the National Assembly is directly responsible when there is no meaningful economic progress, they should strive, through their power over the purse to effectively drive national economic development by equitably allocating resources to areas of urgent needs
- vii. Very importantly, the tendency to hijack and control the legislative leadership by the executive need to be resisted by the former and equally seriously eschewed by the latter. Indeed, in the interest of the overall good governance of the local government areas, the political leadership, particularly the executive leadership, must be committed towards ensuring that it keeps to its constitutionally assigned functions while still subjecting the exercise of its powers to the required constitutional checks and scrutiny by the legislature. (Ugwuanyi, et al, 2015)
- viii. Bribery, budget padding and evidence of party sentiment should be criminalized when they form threat to national development. This will go a long way in instilling sanity, transparency and unity of purpose amongst members of the National Assembly (Ogbu and Ereke, 2017).

## CONCLUSION

The historical development of the relationships between organs of government in Nigeria has been examined in this paper. It is obvious that the roles of these institutions of governance have always been established to complement each other under the presidential constitution of Nigeria. The presidential practice in the country since 1979 when the country adopted the system of government, have nonetheless, witnessed institutional frictions. The legislative institution of Nigeria is adjudged to have been unable to adequately perform its constitutional roles in the face of executive dominance in the Nigeria's presidential model. Recent performance of the legislature of the Fourth Republic in Nigeria however, gives a glimmer of hope for sustainable democracy in the country as a gradual decline in executive dominance in Nigeria is discernable. Moreover, the recent series of general elections in Nigeria indicated that Nigeria is beginning to accept and use elections as the only legitimate process for assuming power and the foundations of accountability.

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