

The Doctrine of Separation of Powers and Checks and Balances in the Nigerian Executive-Legislative Relationship

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Abstract

Separation of powers and checks and balances is a theoretical framework for promoting and enhancing the autonomy of the arms of government in exercising their constitutional responsibilities. This framework is intimately bound with the practice of the culture of liberal democracy as it is being expressed in the near independent relationship between the different arms of government. For democracy and good governance to stand the taste of time, the principle of separation of powers and checks and balances among the arms of the government must be respected and entrenched particularly between the executive and legislature. Nigeria as a country has adopted the presidential system of government with the executive, legislative and judiciary collaborating to facilitate the harmonious interaction between them in the discharge of their constitutional responsibilities. The 1999 Constitution of the Federal Republic of Nigeria clearly outlined the duties of the three arms of government and how they are to checkmate each other. In practice however, one notices an aberration in the constitutional provisions and the Nigerian experience as regards separation of power and checks and balances. This paper therefore is an attempt to look into this constitutional relationship and examine how the executive and legislature have fared so far in the Nigerian context.

Keywords: Separation of Powers, Checks and Balances, Executive, Legislative

Introduction

The debate on the principle of separation of powers is an age long concern. Over the years, scholars and laymen have come to accept that what guarantees liberty of citizens and responsibility in governance is the practice of separation of powers. This theory of separation of powers implies that the three functions of the government should be performed by different bodies of persons; each department (the legislature, the executive and judiciary) limited to its own sphere of action, and within that sphere should be independent and supreme (Chaturvedi; 2006:282).

The 1999 constitution of the Federal Republic of Nigeria clearly outlined the duties of the different arms of government and leaves no one in doubt that it is in tandem with

the doctrine of separation of powers and checks and balances. Having been through military regimes overtime, the average Nigerian citizen has come to appreciate that the three arms of government should work independently. However, the frictions and disruptions in governance occasioned by the frequent standoff between the executive and the legislature have brought to the fore the need to investigate how Nigeria has fared as regards separation of powers and checks and balances. This paper is therefore an attempt to match the theory and practice of separation of powers and checks and balances in the Nigerian context.

The Principle of Separation of Powers and Checks and Balances

Separation of powers is a mechanism for promoting and enhancing the independence of the organs of government in building a virile and stable political environment. Mbachu (1998:96) argued that there can be no liberty where the executive, legislative, judicial powers are united in one person or body of persons, because such concentration is bound to result in arbitrary despotism. A constitutional democracy that is anchored on the modern principles of liberal culture of representative democracy expresses its powers in three forms; legislation, execution (implementation) and judicial precedence. It is of significance to the theory of the harmonization of government to determine the level of powers, privileges and entitlement to be exercised by a particular arm of government. Onyeneho (2014: 61) noted that separation of powers presupposes that no one should have powers over the others neither can anyone usurp the functions of the other arms. This he argued is to ensure political and civil liberty and the advancement of freedom of citizens.

Even though the theory of separation of power was clearly formulated and popularized for the first time by Baron de Montesquieu; a French enlightenment writer in his book *Spirit of Laws* in 1748. the actual practice of separation of powers amongst different branches of government can be traced to ancient Greece (Ogoloma, 2015). This doctrine of separation of powers; according to Montesquieu means that when an individual occupies the position of both the executive and the legislature, there is the danger of the legislature enacting oppressive laws which the executive will administer to attain its own ends". In the same manner, if the power of the judiciary is not separated from the legislative and executive, liberty is not guaranteed. He believed that this system of government would provide a safeguard against the concentration of too much power in a single authority (Kusamotu, 2001: 35-39). To affirm this, Appadorai (2004:516) observed that:

When the legislative and executive powers are united in one person, or in the same person, the same body of magistrates there can be no liberty;

because an apprehension may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

According to Omeregbe (2010:72), Montesquieu felt that “absolute monarch” would deprive individual citizens of their freedom. In fact his aim was to perfect the freedom of the individual citizens and reduce the power of the king by advocating separation of powers”. The logic of the arrangement of the separation of powers is to ensure that the legislature perform the function of 'law making', the executive perform the function of 'rule implementation' and the judiciary oversees the 'interpretation of rule.' Therefore this arrangement knows no political or geographic and even party boundaries as it is today reflected in the composition of many liberal democracies.

Even though separation of powers is desirable, there is great need for checks and balances to ensure that each arm of government does not abuse its powers and create unnecessary political instability in the system. Oyediran et al (2005: 64) viewed checks and balance as that arrangement whereby an arm of government supervises and check another arm of government against any possible abuse of powers”. This implies that checks and balances as a constitutional tool, enables the branches of government to resist any illegitimate expansion of power by other branches. Of course, this is in tandem with Magstadt (2006:74) view when he argued that:

The Madisonian solution was to structure the government in such a way that selfish interests (faction) pursuing selfish ends would encounter as many hurdles as possible. It was this idea that won the day in Philadelphia and came to be enshrined in the constitution of United States America as the famous checks and balances.

In all, Montesquieu advocated separation of powers between the executive, legislative and judiciary for the purpose of balancing them in order to avoid despotism. For instance, recently in Nigeria, there is the argument as to whether the three arms of government should enjoy the same level of privilege and entitlement. The legislature in Nigeria have argued that they should be entitled to 'life pension' and 'immunity' just like the president, vice president, governors, deputy governor (executive) and the judges (judicial). The advocates of this believe that if the arms of government are given the same opportunities and privileges that will enhance the efficiency and effectiveness of the application of the principle of separation of powers. Hence, the need for the principle of separation of power comes to play to help stabilize and enhance the institutions and agencies of government.

Checks and balances therefore is a mechanism for ensuring that each of the arms of government supervises and checks one another against possible abuse of powers. Hence, the different arms of government are vested with the responsibility to monitor the activities of other arm(s) and also limit the powers of other arm(s). For good governance, separation of powers and checks and balances must coexist. According to Ogoloma (2012),

the whole argument in favour of separation of powers is meaningless if the principle of checks and balances does not, in reality, operate as it helps in limiting the powers of each arm and restricting them to operate within their constitutionally assigned duties. This implies that when an individual is vested with such powers of abating and probating or executing and adjudicating, there is every possibility that such a person will become despotic.

The Executive Arm of Government

The executive regarded as the most influential organ of government is charged with the responsibility of executing and enforcing laws. It comprises all the functionaries and agencies that are concerned with the administration of the state. It consists of the president and his ministers as in the presidential system of government; the prime minister and his cabinet as in parliament system, the politicians elected or appointed to the executive arm of government, the civil servants, police, and other security agencies.

Ibekwe Ibeto and Anazodo (2015:20) outlined the functions of the executive as contained in the 1999 Constitution as follows; budget preparation, initiation of development projects, execution and maintenance of the Constitution and laws and by-laws made by the National, States Assembly and councilors, preserving, protecting and defending the territorial integrity of the nation, Ensuring the stability and security of the Nation, States and local government areas and carrying-on the business of governance in all ramifications including conducting the Nation's international relations.

The Legislature

The legislature is an organ of the government that comprises the elected representatives from geo-political zones whose primary function is to make laws and change laws and policies for the welfare of the citizenry. In democracy, the legislature plays a crucial role to give voice to the voiceless and ensure effective representative of all interest and cultural affiliations or segments of a country. Legislature can be described as symbol of liberal democracy, because, it is only the institution or arm of government that always receive the sledge hammer of the military juntas whenever there is coup d'état, as the executive and judiciary continue to function even during such periods.

The legislature is classified into two: unicameral and bicameral. Unicameral legislature is the type of legislature with a single or one chamber while bicameral legislature is the type of legislature with two chambers. One of the chambers is called a lower chamber while the other is called an upper chamber. In Nigeria, the two chambers called the House of Representatives (lower house, presided over by a Speaker) and the Senate (the upper house, presided over by the President of the Senate).

The primary function of the legislature remains enactment of laws, modification or amendment of existing laws to make them to be effective to address the multifaceted and critical needs of populace through good governance. Other functions include: amendment of the constitution, supervision of the activities of the executive, , approval of the budget, provision of forum for public opinion approval of appointment, ratification of treaties and approval of state of emergency and declaration of war by the executive.

The Checks and Balances in the Executives – Legislators Relationship

The constitution of the Federal Republic of Nigeria provides for a system of checks and balances to restrict the powers of each arm of government at both the federal, state and local government tiers. On one hand, the constitution empowers the executive arm to veto bills passed by the legislature while on the other hand, the latter can override the veto by the former. Similarly, the executive can check the judiciary through its power to appoint or remove judges while the judiciary can declare laws made by the legislature and certain executive actions unconstitutional. Other measures to check the excesses of the executive arm by the legislature include:

- i. Invalidating the actions of the executive done in excess or beyond the constitutional pressures by declaring it null and void and of no effect or ultra vires.
- ii. Removal of the head of the executive (the president or the prime minister) through impeachment process in accordance with the constitutional provisions.
- iii. Ratification or approval of the appointment of ministers and ambassadors (high commissioners) who are members of the executive.
- iv. Control of the expenditure of public fund by the execution (e.g. approval of money bill or budget).
- v. Audits public account spent by the executive and carrying out oversight functions in order to obtain firsthand information on the implementation of the budget by the executive (Nwankwo, 2002).

Separation of Powers and Checks and Balances in Nigeria

The principle of separation of powers and checks and balances is a theoretical frame work meant to help and ensure that leaders and operators of various institutions of government do not allow their selfish-interest to override public interest and common good. In theory, the 1999 constitution recognized and made provisions for the smooth relationship between the executive and judiciary by prescribing their functions based on the principle of separation of powers and checks and balances.

However, when it comes to practice, we observe that there are several party and personal interests causing huge quagmire in the practical implementation and adherence to the principle of checks and balance in Nigeria. Nigeria has witnessed crisis in her

democratic arrangement as one branch of government tries to check the other arm of government. For instance, when the National Assembly (Senate and House of Representative) attempts to check the activities of the executive through its over-sight responsibility, they end up misunderstanding themselves. Similarly, when the executive uses its instrument to regulate the expense and budgeting of the National Assembly, they quickly fight back with threat of impeachment. Nigeria has never had good implementation of the principle of checks and balances in the history of her democratic experience and existence.

Indeed, in Nigeria's presidential democracy there have been several instances of one form of interference/usurpation of power between the legislature and executive since the inception of presidential democracy in 1979. Such interference/usurpation got to its peak at the first 8 years of the Fourth Republic after the inception of the new democratic dispensation in 1999 (Obidimma and Obidimma 2015:78). This conflict of interests between the executive and legislature produced five senate presidents in eight years (1999-2007). Similarly, the cold war existing between the Buhari government and the legislature over the 2015 budget is also noteworthy. This scenario delayed the passage of the 2016 budget up till the second quarter of the year.

Conclusion

Having examined some recent issues concerning the executive-legislative relationship in the Nigeria National Assembly, it is obvious that in modern democracy absolute separation of powers is not feasible. In the first place, there is great need for the arms of government to cooperate and collaborate with each other for them to ensure good governance and deliver dividends of democracy. Secondly, a water-tight separation of powers will lead to power tussle between the executive and legislature thereby over heating the political environment and instituting political instability. In Nigeria for instance, the National and State Houses of Assembly since the dawn of this fourth republic believe that their constitutional powers and responsibilities are often usurped by their executive counterpart. The executive on the other hand feels that the legislature delay the implementation of their policies and programmes by not giving speedy attentions to executive bill, confirmation of appointments and any other collaborating assistance.

In as much as modern democracy does not support water-tight separation of powers; there is need for both organs to check the activities of each other. By doing this, the Madisonian Solution in the United States of America which was to ensure that politicians with self-interest will encounter as many hurdles as possible will be actualized. Therefore, the lesson for Nigeria nascent democracy is that both the executive and legislature should uphold the constitutional principle of separation of powers and at the same time ensure collaboration in carrying out their various over-sight functions. Again, the individuals in both institutions should ground themselves with the knowledge of

legislative and executive tenets. This will no doubt help bring to an end unnecessary executive-legislative fiasco which is not healthy Nigeria's growing democracy.

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