

## SEPARATION OF POWERS AND GOVERNANCE IN NIGERIA

**BAKO, KEFAS**

**Department of Political Science, Federal University Wukari, Taraba State  
kefasdanborno@gmail.com 08035228785**

**&**

**IBRAHIM, NUAIMU DANBALA**

**Department of Political Science, Federal University Wukari, Taraba State  
ndanbala223@gmail.com 08069531147**

**&**

**SULEIMAN, ENGAYA**

**Department of Political Science, Federal University Wukari, Taraba State  
engayansuleiman69@gmail.com 07037341621**

### **Abstract**

It is right to posit that the pace of democratization across the political landscape of Africa is producing strong chief executives that undermine the autonomy of legislative institutions. Note that the choice of the leadership of the National Assembly should entirely be the business of the National Assembly and not executive arm, political parties or any other outside forces. In Nigeria, the appointment, selection or the election of the leadership of the Senate, House of Representative, States' Assemblies, and leaders of the local governments' Council are keenly watched, monitored and are subject to the manipulations of the executives (President or Governor and other stakeholders of influence). This and many more are obstacle against the peaceful and independent relationship that should exist between both organs. This paper therefore, is an attempt to look into the constitutional relations and examine how the executive and legislature coexisted so far in Nigerian democratic dispensation. Secondary sources of data and Elite Theory were used. This paper finds out that there is a conflicting relationship between the executive and legislative arms of government and when there is a cordial relationship, the legislative is often called "robber stamp". Therefore, this paper recommends strong adherences to the principle of separation of power for effective and smooth running of governance in Nigeria. Also the two arms should see themselves as co-equal in the business of good governance not as master and servant relationship. There is urgent need to reform the political finance system in Nigeria. Thus, unless parties are funded independent of holders of executive power and moneybags, the chief executives will continue to control the proceedings in legislature.

**Keywords:** Check and Balance, Legislative, Executive, Constitution.

### **Introduction**

"This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the federal Republic of Nigeria".

This is the opening lines of the chapter one and the general provision of the 1999 constitution of Nigeria as amended. Ideally, the kind of relationship that should exist between the executive and legislature ought to be cordial and functional in nature, since their relationship is supposed to be guided by the constitution. In addition to the fact that, both institutions are ultimately working towards the same goal of administering the state for the purpose of guaranteeing the welfare and security of the citizens. Notwithstanding, it is important to mention here that the relationship that exists between the executive and legislature in democratic regimes is a complex one which vacillates, sometimes it may be cordial and peaceful, while at other times, it may be tensed and dysfunctional (Momodu & Ika,2013).

Clearly, the 1999 Constitution of the Federal Republic of Nigeria, clearly states that the legislature shall make laws; while the executive shall implement policies for the good governance of Nigeria. It is however doubtful if these institutions have been able to conceptualize the intent and meaning of the spirit and letter of these words stated in the constitution. This is due to the fact that the quest for the achievement of good governance in Nigeria has continued to be a mirage, especially with the high incidence of poverty plaguing the citizens of the country as well as high level corruption among public officers in the government (Momodu & Ika, 2013). A sane country and people are ones governed by rules that apply universally to everybody without exception. Today, the major barrier in most State in Africa is that they do not have rules that exist or only exist to apply to those who do not have the right connection, kin relationship, money to buy justice, or have no political power to abuse the justice system in their favor (Bako,2023).

According to Awolowo, (1981)"There is indeed no substitute to democracy as a form of government. This positive system is traceable to the ancient city of Athen; every government under the surface of the earth always laid claims to the virtues of democracy as prove of the people's mandate for their governance. Every modern system of

government that operates democracy also ensure a vibrant executive, legislative and judiciary which are also independent from each other to perform the functions for which each is meant for in line with the principle of "Separation of Power". The doctrine not only serves as a guide to the proper organization of powers and government, it is as well as being the most effective embodiment of the spirit underlying it, it is further founded on the existential fear that to concentrate powers in just one branch, person, or group of persons is tantamount to abuse of power, arbitrariness, and tyranny (Adegbite et al, 2019).

Democracy as a form of governance is thus organized within some institutional frameworks. For instance, participation, accountability, equality and justice, being the hallmarks of democracy are guaranteed only with the existence of certain institutional arrangements. These arrangements, though in differing contexts, facilitates active involvement of the people in governance, fair play and accountability of stewardship in public spheres (Eme, 2016). Numerous institutions count in this respect; institutions such as electoral bodies, political parties, executive arm of government, parliaments, civil society organizations (CSOs), and the media are particularly central in the regulation and functioning of a democracy at a macro level.

From its humble origin, the doctrine has had a significant influence on the running of governmental affairs and has helped put in check the morbid desires of men of ill will. However, in lieu of rapid political development of the 21st century, its relevance as the touch-bearer of contemporary constitutional governance has come under severe attack. Right from independence, successive governments in Nigeria have engineered different constitutions all providing for the doctrine of separation of powers (Adegbite et al,2019). The latest is the Constitution of the Federal Republic of Nigeria, 1999 as amended. Notwithstanding the existence of the doctrine in these documents, the practical reality is that power rather than being 'separated' has not only enjoyed an appearance of 'fusion', but most pathetically has been personalized by the Executive branch in such a manner as to make it seem as representing government in totality.

This scenario has also been replicated at the other two levels of government, i.e., the State and Local governments. Against this background, a fast-maturing notion today by legal scholars is that the doctrine is in crisis. The position is that both executive and legislature are so entangled in each other functions. So, both institutions have blurred the lines of separation. They refer to examples such as the executive encroaching on the function of law-making through the issuance of executive orders and proclamations, as well as the legislature getting involved in executive functions through congressional oversight activities as pointers to the erosion of the doctrine (Adegbite et al,2019).In Nigeria, the appointment, selection or the election of the leadership of the Senate and the house of Representative, States' Assemblies, leaders of the local governments' Council are keenly watched, monitored and are subject to the manipulations of the executives (President or Governor and other stakeholders of influence) (Bako,2023).For instance, on the eve of leaving office, the former President Olusegun Obasanjo, in a meeting of the PDP caucus held at Presidential villa on the 30th May, 2007, endorsed the candidature of David Mark and Patricia Etteh as Senate President and Speaker, respectively (Eme,2016).

This imposition came in the wake of a call on the executive and the PDP to desist from imposing leaders on NASS by the then Senate President, Ken Nnamani. In his valedictory speech, the Senate President made veiled reference to the instability of the Senate, which he attributed to the executive meddlesomeness in the emergence of its leadership. He opines that: I urge the leaders of our party, PDP and the President to allow the incoming Senators to determine who becomes Senate President so that the person will continue to enjoy the unflinching support I enjoyed for the past two years. In the last eight years of Obasanjo, the Senate has had five Senate Presidents. Thus, it can be argued that executive interference in the choice of legislative leaders influenced the high leadership turnover in NASS. Accordingly, this trend affects leadership stability and poses serious challenge to legislative autonomy in Nigeria.

It is right to posit that the pace of democratization across the political landscape of Africa is producing strong chief executives that undermine the autonomy of legislative institutions. The latter are merely seen as appendages of the former. This power play, which is skewed against the legislature hinder the institutionalization of democracy in Africa (Eme,2016). In terms of raw power, most African legislatures like legislatures worldwide, remain weak in relation to the executive.

Similarly, the organization and conduct of political parties in Africa also influence executive-legislature relations, apparently in favor of the executive in most African democracies. In Nigeria, for instance, the strong attachment of political parties to executive arm of government is obvious. This is largely on the account that the executive remains the major source of funding for political parties. Accordingly, agenda control, behavior of members and their re-election bids are influenced largely by the executive through the instrumentalities of political parties.

Party structures (both within and outside the legislature) thus limits the powers and functionality of legislatures in Nigeria. Since 1999 to date, the Nigeria's National Assembly has been struggling to curtail unnecessary interferences from both the executive and the political parties albeit with little success. Against the interest of the executive and the position of the ruling Parties are few achievements by the Nigeria's National Assembly to engender legislative assertiveness. This paper therefore is an attempt to look into the constitutional relationship and examine how the executive and legislature coexisted so far in Nigerian democratic dispensation.

### **Methodology**

This paper adopted *expos facto* research design and gathered data through secondary sources like, books, journals articles, manuscripts, internet materials, conference papers etc. We used content analysis on data gathered.

### **Theoretical Framework**

The Elite theory was propounded by Vilfredo Pareto (1939) in his work, "The Mind and Society" as a counter to the revolutionary theories anchored on social class analysis. Gaetano Mosca in his work, *The Ruling Class* published in 1939, also highlighted the concept of elite, which subsequently became a key concept of the new social science. However, this concept formed an essential part of the political science doctrine which is critical of modern democracy and hostile to modern Socialism.

The term elite in its most general sense refers to those positions in the society which are the summits of key social structure i.e. the higher positions in government, economy, politics, religion, etc (*Ikeanyibe & Mbah, 2014*). The political system is divided into two groups. The first is the elite, who are political entrepreneurs, possessing ideological commitments and manipulative skills. The second group is the masses and the citizens at large. The masses are regarded as the apolitical layer of the system, passive followers, who have little or no knowledge of political affairs. As such, they are less interested in politics. In every sphere of social life, there is elite.

These groups perform all political functions, monopolize power and enjoy the advantages that political power brings. In the words of Pareto, the upper classes are also usually the richest. These classes represent the elite in aristocracy. The success of the elite is real apparent. Which are highly esteemed and are very influential in society. The liberals argued that political power ought to be in the hands of those who own property and those who through, their own ingenuity and hard work, have demonstrated their superiority.

Both Pareto and Mosca were disturbed with elite who exercise directly or indirectly political power in society. They, however, recognized that the governing elite or political class itself consisted of distinct social groups. Pareto is of the opinion that the upper stratum of society, the elite, was composed of both military, religious and commercial aristocracies and Plutocracies. Mosca state that the composition of the elite refers to the various party organizations into which political class is divided and which have to compete for garnering electoral support of the more numerous class (*Mbah, 2014*).

These elites often do everything humanly possible to secure or retain power, sometimes, constitutions were amended or replaced, religion, ethnicity, and region were usually used. According to Castle (2004) submits that monopoly of power become pronounced when and if political actors build their importance around them and internalize them. Meanwhile, there, and associational freedoms were curbed, opposition parties eliminated or outlawed, political opponents and dissenters repressed or co-opted. Elections became largely farcical rituals designed to ensure retention of the incumbent.

Politics is often perceived as the struggle for power and domination by the elites. They occupy all corridors of power. When they are not there they install their stooges who only carry out their orders. The political space heavily dominated by the elites, actually make them to give direction to public policy. That is why public policy is perceived as elite preference. Ideally, public policy supposed to reflect the demands of "the people" but this may express the myth rather than the reality of Nigerian democracy. Elite theory suggests that the people are apathetic and ill-informed about political participation and public policy process, that the elites actually shape mass opinion on policy questions more than the masses shape elites opinion (*Aniobi & Ewuim, 2021*). This theory is relevance because the strong executive use every means necessary to monopolizes the Legislative in order to consolidate, and maintain power.

### **Results and Findings**

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 Legislative 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 party's and personal interests causing huge quagmire in the practical implementation and adherence to the principle of checks and balance in Nigeria.

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 of power between the legislature and executive since the inception of presidential democracy in 1979. Such interference got to its peak at the first 8 years of the Fourth Republic after the inception of the new democratic dispensation in 1999 (Obidimma & Obidimma 2015:78).

Abonyi,(2007) observed that the nascent democracy has recorded the highest number of impeachment in the history of Nigeria since independence. According to him the nation witnessed the first impeachment of the principal officers of the National Assembly on the 18th of November, 1999. The Senate President, Chief Evans Enwerem of blessed memory spent only five (5) months and twelve (12) days in office when Dr. Chuba Okadigbo also late was unanimously voted in as the President of the Senate, Chief Adolphus Nwabara was equally removed. The sequence was so till Chief Ken Nnamani was sworn in as the 5th Senate president in about six years. However, the House of Representative was not spared as different Speakers emerged following the unceremonious removal from office of one speaker after another starting from Hon. Salisu Buhari to Hon. Ghali Umar Na' aba, then Hon. Aminu Bello Masari managed to remain in office till the end of the 5th Assembly. In the 6th Assembly, Hon. P. O. Etteh was elected the first female Speaker with a lot of accolade only for her to be removed over what was generally referred to as "house renovation" scandal and was replaced with Hon. Oladimeji Bankole (Aniobi and Ewuim, 2021). 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 (Anyim-Bem et al, 2017).

Some States Houses of Assembly issued impeachment threats to their State Governors. In fact many governors were impeached; Governor Rasheed Ladoja of Oyo State, who was impeached by the State House of Assembly, for his alleged refusal to play along with President Olusegun Obasanjo. Governor Peter Obi of Anambra State was also impeached by the State House of Assembly while Governors Chris Ngige and Andy Uba, also from Anambra State were sacked by the court on the grounds that the elections that brought the duo to power were marred with rigging. Governor Peter Ayodele Fayose of Ekiti State was also impeached for alleged misappropriation of funds, also the Governor of Plateau State, Joshua Dariye suffered same fate on ground of financial recklessness. On the other hand, some state Governors influenced the impeachments of their Deputies and Speakers of their State Houses of Assembly like the cases of Taraba, Edo and Rivers.

Almost same fear of the intention of the executive interference led to the failure of Hon. Mulikat Akande emerging the Speaker of the House of Representative during President Goodluck Jonathan regime which saw the emergence of Hon. Aminu Waziri Tambuwal. Both President Jonathan and Speaker Tambuwal had unhidden running battles throughout the 7th Assembly. This led to the decamping of the Speaker to the opposition party which invariably led to the defeat of the President Jonathan in 2015 general election in his second term bid. The 8th Assembly is equally having running battles with the executive following Sen. Bukola Saraki and Hon. Yakubu Dugara's emergence as Senate President and Speaker of the Upper and Lower Legislative Chambers respectively (Awotokun, 2022).

In the political interplay of the period in question, the Senate withheld its power of confirmation of executive nominees into the Central Bank of Nigeria (CBN) –(Deputy Governor and Monetary Policy Committee (MPC) of the CBN); and members of the Code of Conduct Bureau (CCB). The Senate also vehemently refused to confirm Ibrahim Magu as Chairman of the Economic and Financial Crimes Commission (EFCC), ostensibly on the ground of negative intelligence report submitted to it by the Department of State Services (DSS). The DSS had retracted the earlier report on Ibrahim Magu as a mix-up. The Presidency on the other hand, refused to sack or adhere to Senate's recommendation for a fresh nomination. Hence Magu had to perform the functions of his office in an acting capacity.

Perhaps more worrisome in the face-off between the legislature (National Assembly) and the Executive as represented by the Presidency was issue of elections timetable of 2019 general elections. The Independent

National Electoral Commission (INEC) fixed the presidential and National Assembly election for Saturday, February 16, 2019 and Governorship and State House of Assembly for March 2, 2019. This arrangement appeared untenable to the National (Awotokun, 2022). In 2023 and 2024 also Akpabio and Idris Led senate and House of representative are accused of been rubber stamp because of the cordial relationship between the executive and the Legislative.

It was largely claimed that Sen. Bukola Saraki's trial at the Code of Conduct Tribunal (CCT) was more political than fight against corruption. This is because it was when he emerged the President of the Senate that the federal government dragged him to the CCT for false asset declaration he made since 2006 when he was the governor of Kwara state. His emergence was against Sen. Ahmed Lawal who was the party's preferred candidate and the Speaker Hon. Dogara also emerged instead of Hon. Femi Gbajabamila the party's anointed candidate. Note that the choice of the leadership of the National Assemble should entirely be the business of the National Assembly and not executive arm, political parties or any other outside forces.

However, unresolved power conflict usually recycles and escalates to the point of relationship breakdown and termination. Consequently, Nwokeoma, (2011) observed that the ability of any democratic government to deliver the concrete benefits of good governance to the citizens is determined by the smooth functioning of the executive, judiciary and legislative arms of government. He therefore, argued that this assumption reinforces the theory of separation of powers of the different arms of government to prevent arbitrariness, tyranny and recklessness (Awotokun, 2022). Nwosu (1998) and Ajayi (2007) have clearly pointed out the effects of executive-legislative conflicts on previous Republics in Nigeria. They insisted that the "previous republics collapsed largely not because the constitutions were bad; rather, the demise of these republics resulted from the inability of the governing elites to comply with the basic rules of the game".

Be that as it may, the type of legislative-executive relationship depends on the approaches adopted by both branches of government, especially the executive. They might choose to be diplomatic and constructive in which case, the motto is communication, conciliation, compromise and cooperation. The chief executive might adopt the horn-like approach, brandishing his veto power, resources and patronage to coerce legislators into support, or he might decide to be aloof or partisan or non-partisan in his approach, depending on his party strength and political relations.

Although, Murray (1975) has noted that when the executive and legislature are headed by different parties, there is bound to exist conflict, this is likely to render the government ineffective as a result of disagreement in policy directions. This argument should not be considered as a blanket statement, because there are many instances where the leadership of the executive and legislature belongs to the same party, yet they are enmeshed in conflict of interests. A typical example of this scenario was what happened at the beginning of Nigeria's Fourth Republic, where the leadership of both the executive and legislature belonging to the same ruling Peoples' Democratic Party (PDP), yet the executive led by President Olusegun Obasanjo, displeased with the way the parliament was querying its submissions to the parliament; the President therefore, sponsored his loyalists within the parliament and they succeeded in impeaching three consecutive Senate Presidents namely, Senators' Evans Enwerem, Chuka Okadigbo and Adolfus Wabara including the Speaker of the Federal House of Assembly, Honorable Salisu Buhari, who was impeached for forgery of certificate. Clearly, the conflict ridden relationship that exist between the executive and legislature has been slowing down the process of governance, thereby having debilitating effects on good governance in the country.

In other words, the degree of legislative compliance, executive unilateral decisions and post-hoc legislation is high. When this situation occurs in legislative-executive relationship, there are usually three possible interpretations that such could engender. First, when a legislative institution has to work hand-in-hand with a powerful charismatic leader (Executive), the legislators could become chorus singers (Awotokun, 2022). Note that the choice of the leadership of the National Assemble should entirely be the business of the National Assembly and not executive arm, political parties or any other outside forces.

### **Conclusion and Recommendations**

The model of democracy practiced in Nigeria which is premised on systemic separation of power and checks and balances however breeds all forms of anti-democratic acts which includes corruption emanating from over-sight functions performed by the legislative arm of government, a fallout of which affects the relationship between the legislative and executive arms of government therefore undermining democratic governance and sustenance. The task of nation building across the world requires a holistic determination of common good which is the responsibility of all actors in a system. Similarly, a rancor free executive-legislative relation is a major determinant of any democratic system.

The problem of legislative and Executive relationship in Nigeria is constantly in increase because of the powerful nature of the Executives both at the Federal, State and Local government which often time puts other organs at disadvantage position. In Nigeria, the appointment, selection or the election of the leadership of the Senate and the house of Representative, States' Assemblies, leaders of the local governments' Council are keenly watched, monitored and are subject to the manipulations of the executives (President or Governor and other stakeholders of influence).

It is quite unfortunate that many see constant frictions or confrontation between the executive and legislative as the only way the latter could be seen as being effective. What many do not know is that those confrontations are driven more by self interest and ego and not the collective good of the people. And in acting in that manner, the people suffer as they are denied the benefits of good governance. A legislature that is working for the people is sober, reflective and farsighted. It weighs the implication of an action and makes decisions that side with the interest of the people.

This and many more are obstacle militating against the peaceful and independent relationship that should exist both organs. Therefore, this paper recommends strong adherences to the principle of separation of power for effective and smooth running of governance in Nigeria. Also the two arms should see themselves as co-equal in the business of good governance not as master and servant relationship. There is urgent need to reform the political finance legislation in Nigeria. Thus unless parties are funded independent of holders of executive power and moneybags, the chief executives will continue to control the proceedings in legislature.

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