

POLITICS –ADMINISTRATION DICHOTOMY: IMPLICATIONS FOR SEPARATION OF POWER IN NIGERIA

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ABSTRACT

This study dwells on Politics-Administration dichotomy for separation of power in Nigeria's governance. The main objective of the study is to highlight the importance of restricting powers to each arm of government and ensuring that powers and authorities of each arm do not overlap or clash. Content analytical approach was used for data collection. It was discovered that the principle of separation powers appears to be a mirage in Nigeria because politician usurp both political and administrative powers to Centrifuge their unending appetite for greed and corruption. The paper recommends that the 1999 constitutional provision for separation of powers for effective and efficient governance be enforced so that interference and usurpation of powers be reduced maximally.

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1. INTRODUCTION

In democratic politics, the nexus between politics and administration can never be overlooked in recent times. Policy making process involves a lot of intricacies amongst diverse interest groups leading to the incursion of politics in policy making process by bureaucrat groups amongst others. Consequently, one cannot overlook the old debate in public administration popularly known as politics-administration dichotomy. The aforementioned debate has been one of the central topics in public administration since the writing of Woodrow Wilson. It is not surprising that Agboola (2016) opined that globally, the aforementioned debate has remained unsettled in international discourse between political authorities and administrative institutions. Politics and administration dichotomy is built on the premise that “the expression of the will of the state” and “the execution of the will of the state” should be clearly stated and can be separated. Sequel to the above, lots of scholars such as Woodrow Wilson (1887), Frank Goodnow (1900) and Leonard White (1926) have made enormous contributions on the issue of politics in policy making process. As represented by Frank J. Goodnow, who attempted to describe the three categories of authority involved in carrying out the intent of the state in his work "Politics and Administration," The three are the following: judicial authorities, executive authorities, and legislative authorities (Shafritz and Hyde, 2007). He further noted that as government becomes more complex; these three authorities, all which are engaged in the execution of the will of the state become more and more differentiated”. Thus, in every state or governmental system, there are two primary functions of any government. These functions are policies or expression of the state will {as known as politics} and execution of these policies {also known as administration}. The influence of politics in the policy making process have ridicule the politics /administration dichotomy in recent time, as politicians, administrators as well as other diverse stakeholders are increasingly head bent in influencing the whole policy process in a bid to meet up with public interest/demands. If the same people who have the capacity to make laws also have the power to carry them out, it may be too tempting for their power-hungry natures to restrain them from doing so and to use the law both in its creation and in its application to their own personal gain.

The political and administrative dichotomy idea explains the separation of the political and administrative spheres in public service or government, as well as how they cooperate. The core of this idea emphasizes the value of maintaining clear lines of authority and accountability between political and administrative spheres while avoiding cross-pollination. Grant (2014) asserts that the political and administrative domains are different in character and have different responsibilities for governance. Because the capabilities of these domains are different, it is appropriate to say that political problems should not be seen as administrative matters. Therefore, when considering the development and existence of each domain, it has special qualities designed to improve the performance of tasks. It also captures the idea that because the political sphere lacks the necessary skills, the dichotomy restricts administrative activity to the administrative sphere alone. However, Mehlape (2018) contends that despite the aforementioned argument; evidence abound on the intermingling of powers and functions amongst judicial authorities, the executive authorities and finally, the administrative authorities (Shafritz and Hyde, 2007). Consequently, it is apt to affirm that for the proper functioning of any society whether developed or developing, there is need for clear cut separation of power. It is not surprising that Beyers (2016) argued and emphasized that over time, the political strength that tends to dominate administrative affairs in the majority of countries around the world dealt a heavy blow to the application of the politics/administration dichotomy in the reins of separation of powers. It is pertinent for one to understand that the

weighing of much power as well as the need to distinguish it from other administrative authorities stem from their inclination to maintain and retain political power at all cost. If not, come next election; they would be voted out of power. It is clear now, for one to understand why the political sphere tend to wield much power {particularly in terms of making key appointments} that has perturbed the proper operation of the administrative sphere. Scholars such as Naidoo (2017) and Ntliziywana (2017) have continually argued for the need to ensure adequate protection of the separation of power between political authorities and administrative authorities, as it tends to pose a cog in the wheel of administrative work. More so, Ntliziywana (2017) affirmed that the gap between political and administrative authorities have not only made administrative sphere to be subordinate to the political sphere but also created lot of social ills such as corruption, fruitless expenditure, poor performance and so much more. To achieve the overall development of any country, there is need for strict checks and balances in order to reach a harmony between these authorities that are different and related. Smith (2016) noted that for the proper functionality of all the sectors of a nation's economy, there is need for a proper alignment or collaboration between political and administrative work in order to achieve national objectives.

The aim of this work is to examine and evaluate separation of power (as it relates the three governmental powers within the Nigerian context) in terms of their relationships and differences as they walk with the view to balancing each other for the benefit of our society. Due to the fact that modern governments must consist of three organs, each must be strictly balanced and subject to reliable checks and balances in order to remain within its designated sphere of authority. More so, this work will explore the causes of legislative/executive conflict as well as its implication on good governance in the Nigerian polity.

1.1 Origin and Meaning of Separation of Power

The concept of separation of power has evolved over time with keen reference to the arms of government. The British Parliament's steady assertion of power and opposition to royal decrees in the 14th century is when the idea of separation of powers first emerged (Ogoloma, 2012). One of the earliest modern philosophers to investigate the theory of separation of powers was an English academic by the name of James Harrington. Furthermore, based on the ideas of ancient philosophers like Plato, Aristotle, and Machiavelli, Harrington envisioned a utopian political structure that contained a separation of powers in his essay *Common Wealth of Oceania* (1656). In his second *Treatise on Government*, English political theorist John Locke furthered the idea of separation of powers (1690). According to John Locke, legislative and executive powers are conceptually distinct. However, they had to be separated in public institutions. However, the influence of judicial authority on Locke's notion was negligible (Kalu, 2018).

In his book *The Spirit of Laws*, French political writer Baron de Montesquieu fervently examined the contemporary idea of separation of powers (1748). His explanation was based on his knowledge of the British government throughout the first part of the 18th century. It has been viewed as a doctrine in the following ways: When one person occupies both executive and legislative positions, there is a possibility that the legislature will pass repressive legislation that the executive will use to further its own objectives. Although it was not yet in place, Montesquieu used the occasion to propose a tripod distribution of authority in Britain amongst the parliament, the monarch, and the courts. Although he did not use the phrase "separation of powers", Montesquieu apparently believed that the British government's stability was as a result of this practice (Kalu, 2018). In nutshell, it is right to point out that early philosopher and scholars such

as Aristotle, Plato, Harrington, Locke, and Montesquieu amongst others conceive the concept as an avenue to reduce arbitrary powers that could be used to check dictatorial tendencies (Ogoloma, 2012).

Consequently, the concept of separation of power connotes that the legislative, executive, and judicial spheres of power do not interact with one another. Theoretically, judges ought to be separate from the executive and legislative branches. On the contrary, no one person should have a job among the three branches, more than one. For instance, one part of government shouldn't carry out another's duties. In other words, the legislative should pass laws; the executive should not. But the theory of checks and balances is directly tied to the separation of powers. This theory holds that governmental power should be restrained by allowing citizens to criticize state activities and remove politicians from office as well as through overlapping powers within the government. However, one may be quick to ask what could happen in despotic military or even civilian autocratic regimes found in Nigeria, North Korea, China, and Russia amongst others (Kalu, 2018). It is commonly argued amongst scholars that the principle of separation of power is not feasible in certain climes; in spite of the doctrine being codified the constitutions of countries such as France, U.S.A, Nigeria and other countries. In the United States of America and Nigeria, for example, the President and the legislature are both elected by the people and answer to them. While previously appointed judges continue to serve in good standing. However, in both the United States of America and Nigeria, for instance, the President has the authority to veto legislation, the Senate has the authority to approve appointments and treaties, and the Supreme Court has the authority to rule on the legality of laws. The Senate also has the legislative authority to veto legislation.

Contrarily, in countries like India and France with parliamentary systems of government, the executive is answerable to the legislature since the cabinet is made up of lawmakers who also serve in both executive and legislative capacities. Because the judiciary has jurisdiction over executive officers and the House of Lords conducts judicial duties, there is no separation of powers under England's legislative system. Members of the cabinet, a legislative body, are also parliamentarians (Sachdeva and Gupta; 1980:221).

1.2 Horizontal or Cooperative Separation

Malemi (2008) affirmed that the very concept of power separation is built on two major premises stated below:

- a. The Legislative, Executive, or Judicial branches should not trespass upon or use the powers of the other branches. And, within its sphere of power, No branch is under the other branches' control.
- b. This does not preclude one branch of government from exerting influence, reviewing, or requiring approval of certain actions by another as a check and balance. Furthermore, where there is an exception to the idea of separation of powers, it does not prevent another branch from using its authority.

Ikongbeh (2003) pointed out that the idea of separation of powers' primary goal or nature is to guard against tyranny, despotism, and autocratic authority. Thus, in *Myers v. United States*, Hon. Justice Brandeis captured this essence when he ruled that "the separation of powers principle" was adopted. In the above case, separation of power was apt in the prevention of the exercise of arbitrary power. Consequently, separation of powers does not always imply an equal balance of power among the three branches of government. Power, in order to be meaningful, must allow for

overlapping, cooperation, and coordination among the arms, so that government business does not come to a halt due to rigidity and opposition.' The three branches of government are inextricably linked and interdependent. They are partners in good government, and strict separation of powers will impede government's smooth operation (Malemi, 2008). The interdependence or interconnectivity of the three powers of government cannot be overstated, as powers must be interconnected for governmental affairs to run smoothly. It is not surprising that James Madison stated in Federalist Paper No. 48 that the degree of separation that the maxim requires, as essential to a free government, can never in practice be properly maintained without these departments being so far connected and blended as to give to each a constitutional control over the other (Kalu, 2018). Lack of cooperation has resulted in one form of conflicts that has ravaged one arm of government against the other. At this juncture, it is pertinent for use to explore separation of power as enshrined in the 1999 constitution of the Federal Republic of Nigeria as well as some areas of conflict that exists between or amongst the three arms of government.

1.3 Theory and Practice of Separation of Power in Nigeria

The 1999 constitution of the Federal Republic of Nigeria was succinct in stipulating the roles and duties of each arm of government. This is reflected in the fundamental principles of the constitution of Nigeria. The constitution outlines the following values:

Part I Section 231(1) stipulates that, subject to Senate confirmation, the president shall nominate a person to the position of Chief Justice of Nigeria on the proposal of the National Judicial Council. According to Part I Section 231(2), the National Judicial Council shall nominate a person for appointment to the position of a Justice of the Supreme Court, subject to confirmation by the Senate. The Supreme Court shall have such original jurisdiction as may be conferred to it by any Act of the National Assembly, according to Section 232 (2), in addition to the authority provided by Subsection (1) of this Section. Part II Section 4(8) states that the National Assembly or a House of Assembly's legislative powers, unless otherwise provided by this constitution, are subject to the jurisdiction of courts of law and judicial tribunals established by law, and that neither the National Assembly nor a House of Assembly may enact any legislation that displaces or purports to displace the jurisdiction of a court of law or a judicial tribunal established by law. The National Assembly's authority to create laws shall be exercised, as stated in Provision 5 8(1) of Chapter V of the constitution (on the Legislature), unless differently specified by that section and its sub-section ((5)), which has the President's consent. According to Section 58, a measure is brought to the President for assent after being authorized by the House where it was introduced, after being approved by the House where it was introduced, and after agreement has been reached between the two Houses on any revisions (3). The President shall react to requests for his assent to bills within thirty days after receiving them, in accordance with Section 5 8(4).

Section 100(1) of Part II of Chapter V (House of Assembly of a State) states that, "Except as otherwise provided by this section, the power of a House of Assembly to make laws shall be exercised by bills passed by the House of Assembly and assented to in accordance with the provisions of this section." A measure must be duly passed and, subject to this section's paragraph (1), assented to in line with its requirements in order to become law, according to section 100(2). A bill must be sent to the Governor for approval after the House of Assembly has approved it, according to Section 100(3).

It follows from the foregoing that the separation of powers' principles main purpose is to defend the arbitrary nature of rules. It is carried out by legislation that has received the support of

both the Senate and the House of Representatives, and it provides protection from the risk that results most frequently from the delegation of two or more functions to the same person or body. Additionally, it assures that each power is verified by another (Kaul, 2018). The executive's authority to convene the legislature and reject its enactments affirms defense even while the legislative right to impeach the executive is both necessary and sufficient to hold the executive accountable to inspection without holding him hostage. Judges must maintain the law created by the legislature or the president's binding authority, which is mostly dependent on the legislation approved by the legislature, as people look to the court for justice. The state's governmental operations will undoubtedly be paralyzed by any rigorous separation of the state agencies, regardless of the practical complexities that the constitution is coated with. According to separation of powers doctrine, the main functions of the government are to create, carry out, and apply laws to situations in accordance with the rule of law (Ogoloma, 2012).

1.4 Executive Power in Nigeria

The executive, widely regarded as the most powerful branch of government, is in charge of carrying out and enforcing laws. All government employees and organizations involved in state administration are included. It consists of the president and his cabinet, as in a presidential system of government, as well as civil employees, police, and other security agencies, as in a parliament system of government. It also includes the prime minister and his cabinet, as in a parliament system of government. Politicians are also elected or appointed to the executive branch of government (Anyim, Okereke and Chijioke, 2020). The executive is in charge of creating the budget, initiating development initiatives, carrying out laws and bylaws passed by the National, States Assembly, and councilors, defending the nation's territorial integrity, and preserving the stability and security of the nation, states, and local government areas (Igbokwe and Anazodo, 2015:20).]

1.5 The Legislature in Nigeria

The major duty of the legislature, a branch of government composed of elected members from various geopolitical regions, is to enact and amend laws and policies for the benefit of the populace. The legislature plays a key role in a democracy by giving the voiceless a voice and ensuring that all interests and cultural groups are fairly represented. The only institution or branch of government that is subjected to the sledge hammer of military juntas whenever there is a coup while the executive and judiciary continue to operate makes the legislature a symbol of liberal democracy (Uchenna, 2019). Legislative bodies can be either unicameral or bicameral. There is only one chamber in a unicameral legislature, but there are two chambers in a bicameral legislature. The lower chamber is referred to as such, and the upper chamber as such. Nigeria has two chambers: the Senate and the lower house, the House of Representatives, which is led by a Speaker (the upper house, presided over by the President of the Senate).

1.6 The Judiciary in Nigeria

The judiciary is the third branch of government, and its primary function is to interpret and apply laws enacted by the legislature to specific cases in order to resolve disputes between private citizens or between private citizens and the government. The Judiciary is made up of the court and all those who work in the justice system's vineyard. The role of the judiciary can be summarized as follows: nothing affects a citizen more than knowing that he can rely on the administration of justice to be certain, prompt, and impartial ((Obidimma and Obidimma, 2015). As a result, the Judge has a

difficult job in the community. The judiciary's function in a democracy is to interpret the law, uphold the rule of Law, and act as a powerful 'check and balance' mechanism for other government agencies. The judiciary is crucial to a democracy's ability to administer justice fairly and effectively. It has the constitutional authority to carry out justice in a fair and unbiased manner and to settle legal disputes. Judges preside over all courts, regardless of their type or jurisdiction. In many cases, the Judge decides whether the claim(s) presented by disputants are true or false. The Executive and the Legislature each have the authority to examine what the Judiciary has done. The court is the fulcrum and final refuge of long-term democracy, the unbiased judge, and the last hope of the average person. The court needs to be aware of the full range of separation of powers theory and practice in order to best carry out the onerous obligations set forth in the constitution (Yawa, 2016).

1.7 Executive and Legislative Conflicts and Relations in Nigeria

Conflict between the executive and legislative branches arise when they disagree on policy matters and how important good governance is to them. One arm is continually at odds with the other in this condition of partial or total incompatibility. Additionally, when the executive and the legislature pursue different interests or aims, executive-legislative conflict may arise. Another scenario that might be taken into account is when one of the institutions (the executive or the legislative) thinks the other is attempting to undermine or obstruct the other's goals or interests. Basically, when both institutions vie for control over the creation and execution of policy, executive and legislative conflict can arise. This competition may be so fierce that it hinders the creation and application of policies. Politics and administration need to work together in this area, among others (Nwankwo, 2021). Executive dominance, constitutional illiteracy, functional overlap, and the performance of the legislative oversight function are a few factors that can lead to executive-legislative conflict.

In Nigeria's Fourth Republic, there are two types of executive-legislative relationships: cooperative relationships and adversarial relationships. Regarding the latter, it has been noted that, "in 2001, two years into the commencement of the Fourth Republic in Nigeria's democratization process, conflict existed between the National Assembly (House of Representatives and Senate) and the executive at the Federal level of government, which was widely presented by the press" (Nwankwo, 2021). In certain places, the disagreement goes beyond the dynamic between the state administration and the legislature and even affects local government councils. One significant outcome of this struggle was the impeachment of important individuals from the legislative and executive branches, including Speakers, Deputy Speakers, and Governors. Due of the rashness and avarice of some political elites, Nigerians have worried that the Fourth Republic will be short-lived. This is because of disagreements between the executive and legislative branches, which have frequently gotten the politics hot. Soyinka (2010) contends that Nigerians must defend their nation against a group of dishonest gangsters, extortionists, and even political killers. The only way to save Nigeria, according to Uchenna (2019), is for citizens to protest and demand that the rule of law and the constitution be upheld. However, as evidenced by the crisis that arose in 2010 after President Umaru Musa Yar' Adua passed away, these institutions work together to keep the Fourth Republic from collapsing. Even though Dr. Goodluck Ebele Jonathan served as Vice President for a short time after President Yar' Adua's passing, some ministers and covert groups openly oppose allowing him to take the oath of office as the formal President and head of the armed forces (Obidimma and Obidimma, 2015).

But on February 4, 2010, Professor Dora Akunyili (a former federal minister of information) decided to break the protracted quiet surrounding the dilemma of the power void by pressing the Federal Executive Council (FEC) to immediately name Dr. Goodluck Ebele Jonathan as acting president. She openly said in her memo, "We should keep in mind that permanent secretaries have been waiting to be sworn in for two months, meaning that some ministries do not even have permanent secretaries presently." (Nwankwo, 2021) There is no constitutional provisions allowing the vice president to propose legislation to the National Assembly. Although the VP sent troops to put an end to the disturbance in Jos, many Nigerians maintained that it was unconstitutional (Obidimma and Obidimma, 2015). Because the vice president lacked true executive authority until certain constitutional requirements were completed, significant governmental posts that required executive appointment could not be filled. The executive void not only left some positions unoccupied, but it also encouraged those in those positions to misappropriate public funds (Tell in Nwankwo, 2021). This was made possible because no one was formally authorized to oversee how government business was conducted. Additionally, some ministers felt obligated to tie up any loose ends before being fired because they weren't sure if they would survive the likely chaos of a reshuffled cabinet that would follow a change in power. Further pressure was put on the cabinet to ask the president to issue a formal written proclamation temporarily transferring power to the vice president, and on the legislature to act before the democratic experiment failed as a result (Ibraheem, 2013). After the administration ultimately handed power to the National Assembly and the Senate and House of Representatives invoked the doctrine of power of necessity, Dr. Goodluck Ebele Jonathan was appointed the actual President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria. The National Assembly's boldness prevented the Fourth Republic's demise. Other times, the National Assembly threatened the President with impeachment for failing to implement its legislative enactments, while in some states, some Houses of Assembly threatened the Governor with impeachment. In response to some of these threats, some governors were ousted, such as Governor Rasheed Ladoja of Oyo State, who was impeached by the state assembly for refusing to assist President Olusegun Obasanjo (Osilon, 2012). A court removed Anambra State Governors Chris Ngige and Andy Uba from office on the grounds that the elections that elected them were manipulated, while Anambra State Governor Peter Obi was dismissed from office by the State House of Assembly. However, a number of state governors have influenced the dismissal of their house speakers and deputy governors.

Although Murray in Momodu and Matudi (2013) noted that when the executive and legislature are led by different parties, conflict is unavoidable, this is likely to make the government ineffective because of opposing perspectives on policy goals. This argument shouldn't be taken as a generalization because there are multiple instances where the executive and legislative leadership of the same party are involved in a conflict of interest. Both the government and the legislature were members of the Peoples' Democratic Party (PDP) at the start of Nigeria's Fourth Republic, but the executive, led by President Olusegun Obasanjo, was dissatisfied with the way the legislature was contesting its proposals to the parliament. The President supported his supporters in the parliament as a result, and they were successful in impeaching three other members. This instance is a typical one of this. The difficult relationship between the president and the legislature has undoubtedly hampered the legislative process and adversely affected the country's great governance.

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