

## PHILOSOPHY, SEPARATION OF POWER AND CONTEMPORARY POLITICS IN NIGERIA

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### **Abstract**

*Philosophy as a discipline that is always concern about the ought of reality as a whole. As a second order discipline, it is pre-occupied with any field of endeavor. In this paper, we would like to examine the principle of separation of powers from a philosophical perspective considering the prevailing situation in Africa today, where there is an upsurge of an arm of government lording it over others using monetary and other instruments of coercion to make other arms mere puppets in playing their role in affairs of governance. It was Sir John Dalberg-Acton who once said that "powers tend to corrupt and absolute powers tend to corrupt more absolutely". To evolve effective control mechanism, man had been looking for devices to curtail the forces of tyranny and authoritarianism. Separation of powers was conceived to be one of such devices to curtail the excesses of any arm of Government. This does not seem to be the case with the news from many African States today. This paper, therefore, is aimed at reiterating the principles of separation of powers within the context of African contemporary politics, to avoid absolute power which can easily corrupt absolutely. This all-important democratic principle is more than ever before relevant in contemporary politics in Africa to ensure checks and balances. This will ensure checks and balances within our political system that limit the power of each branch in order to prevent the abuse of power.*

**Keywords:** Philosophy, Separation of Power, Contemporary, Politics, Africa

### **Introduction**

History has shown that unlimited power in the hands of one person or group in most cases means that others are suppressed or their powers curtailed. The principle of separation of powers in a democracy is to prevent abuse of power and to safeguard freedom for all. The system of separation of powers divides the tasks of the state into three arms: The legislative is saddled with the responsibility of making the laws, the judiciary with the duty of interpreting law and the executive with the role of implementing the law. These tasks are assigned to different institution in such a way that each of them can check the other. As a result, no one

institution can become so powerful in a democracy as to destroy the entire political system. Checks and balances will be ensured through this whole process of separate roles been played by each arm. Separation of powers is an essential element of the rule of law, and is enshrined in the Constitution of any country practicing democracy as a system of government.

The main aim of this paper is to use the philosophical tools of hermeneutics, exposition and analysis to examine once again this principle of separation of powers. This attempt is apt and timely considering the bastardization and contravention of political laws that are enshrined in the constitution of nation, Nigeria today. This identification and awareness of this clog in the wheel of social and political progress in Nigeria will help in no small way to proffer ways by which this all-important principle in a democratic polity can best be followed and kept to the letters of the law.

In accomplishing this set task, we shall first of all clarify the terms that are going to be applied in the work. This will be followed by an expose of the different arms of government and their relationship. This will lead to an assessment of the practicality of separation of powers in Nigeria within the context of the present political scenario. How checks and balances that emerge from this separation, do enhance the significance of democracy will be considered? And thereafter there will be a look at its practicability and thereafter a conclusion.

### **Conceptual Elucidation**

Following the view of Ludwig Wittgenstein, who stated that the problem of philosophy is the problem of language,<sup>1</sup> this research work will give clarification to some fundamental concepts necessary for the development of this study:

The term Separation of powers was coined by Charles Louis de Secondat, also known as Baron de Montesquieu, an 18th century French social and political philosopher. He deduced his ideas of separation of powers from "his observations and ideas of the relations between the Stuart King and the Parliament. He thought that Parliament would never be arbitrary, and the denial of legislative power to the king alone could make the rule by extemporary decrees impossible."<sup>2</sup> Nevertheless, the actual separation of powers amongst different branches of

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<sup>1</sup> Williams F. Lawhead, *The Voyage of Discovery: A Historical Introduction to philosophy*. Second Edition, Belmont: Wadsworth/Thomson Learning, 2002, pp. 511-553.

<sup>2</sup> Neil Parpworth, *Constitutional and Administrative Law*, Oxford, Oxford University Press, 2012, p 18.

government can be traced to ancient Greece. The framers of the American constitution decided to base the government system on this theory of separation of powers whereby the legislature, executive and judiciary branches will be separate from each other. This gave rise to the ideal of checks and balances on each other. His publication, *Spirit of the Laws*, is considered one of the greatest works in the history of Political theory and jurisprudence, and it inspired the Declaration of the rights of man and the Constitution of the United States."<sup>3</sup> Under his model, the political authority of the state is divided into legislative, executive and judicial powers. He asserted that, "to most effectively promote liberty, these three powers must be separate and acting independently."<sup>4</sup>

### **The Meaning of Separation of Power**

The theory of separation of powers means that, a different body of persons is to administer each of the three departments of government (The legislative, executive and judiciary). And that no one of them is to have a controlling power over either of the others. Such separation is necessary for the purpose of preserving the liberty of the individual and for avoiding tyranny in the polity.

This principle of separation of powers emphasizes "the mutual exclusiveness of the three organs of government."<sup>5</sup> That is legislature, executive and judiciary. The main underlying ideal is that "each of these organs should exercise only one type of function. There should not be concentration of all the functions in one organ otherwise it will pose a threat to personal freedom, for in that case, it could act in an arbitrary manner."<sup>6</sup> Furthermore, "it could enact a tyrannical law, execute it in a despotic manner and interpret it in an arbitrary manner without any external control."<sup>7</sup> The purpose underlying the separation doctrine is to diffuse government authority so as to prevent absolutism and guard against tyrannical and arbitrary powers of the state, and to allocate each function to the institution best suited to discharge it. The rationale underlying the doctrine is that if all powers are concentrated in one and the same organ, there would arise the danger of state absolutism, endangering the freedom of the people. The theory of separation of

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<sup>3</sup> <http://www.ncsl.org/research/about-state-legislature/separation-of-powers-an-overview>, accessed /30/010/2020

<sup>4</sup> Ibid

<sup>5</sup> M.P. Jain & S.N, Jain, *Principles of Administrative Law*, Nagpur, India, Wadhwa & Company, 2007, p 31

<sup>6</sup> Ibid

<sup>7</sup> Ibid

powers means that different bodies of persons are to administer each of the three departments of government. And that no one of them is to have administered each of the three departments of government. And that no one of them is to have a controlling power over either of the others.

Separation of powers, therefore, refers to the division of government responsibilities into distinct branches to limit any one branch from exercising the core functions of another. The intent is to prevent the concentration of power and provided for checks and balances.

### **The branches of Government**

The power is separated basically within three arms for the purpose of effectiveness of government function in the State. They are divided thus: The legislature is "the branch of Government responsible for enacting the laws of the state and appropriating the money necessary to operate the government."<sup>8</sup> The executive branch is responsible for implementing and administering the public policy enacted and funded by the legislative branch.<sup>9</sup> The judiciary is the arm of government responsible for interpreting the constitution and laws and applying their interpretations to controversies brought before it.<sup>10</sup>

Hitherto, the branches of Government are not isolated from each other; they interact and watch out for each other. The big question then is how does this interaction take place? Parliament exercises control over the executive, "check the work of the Federal Government and the administrative institutions. The government has to justify itself to Parliament in respect of everything it does"<sup>11</sup> or causes the administration to do.

On the other hand, "the Executive in the person of the Federal President acting on a proposal made by the Federal Government has the right to dissolve the National Council. Laws passed by the National Council can be checked by the Constitutional Court and declared null and void if they are found to be unconstitutional."<sup>12</sup> Lastly, the only medium of interaction or influence the

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<sup>8</sup> <https://www.quora.com/How-do-you-explain-the-three-arms-of-government-and-provide-each-arms-fuction> accessed on 30/1/2020.

<sup>9</sup> Ibid

<sup>10</sup> Ibid

<sup>11</sup> Iowa: Iowa Legislative Services Agency, *Legislative Guide to separation of powers*, 2005

<sup>12</sup> Ibid

legislature has on the judiciary is that it passes the laws that the courts have to comply with.<sup>13</sup>

### **Check and balances**

Checks and balances is the principle that "each of the Branches has the power to limit or check the other two and this creates a balance between the three separate powers of the state. This principle induces that the ambitions of one branch prevent that one of the other branches to become supreme, and thus be eternally confronting each other and in that process leaving the people free from government abuses."<sup>14</sup> Checks and Balances are designed to maintain the system of separation of powers, keeping each branch in order and in its place.

### **The Importance of Separation of Power**

As lucidly stated above with the aid of the federal constitution of Nigeria, the principle of separation of powers is essentially what fortifies the three pillars of democracy. Without such a demarcation, the point of such offices and such pillars is redundant, and the nation might as well be a dictatorial state, with all three pillars working in collusion. Separation of powers is important because it provides a vital system of government, as evident in both Nigerian and United States of America. The importance of the separation of power will be stated thus:

Firstly, it ensures that the different branches control each other. This is intended to make them accountable to each other; this is referred to as the checks. Secondly, the principle divides power between the different branches of government; these are the 'balances'. Balance aims to ensure that no individual or group of people in government is all powerful. Power is shared and not concentrated in one branch. That is why we also often refer to the 'separation and balance of powers'. The main purpose of the separation of powers is therefore to prevent the abuse of power.

### **Separation of powers in Nigeria and its practicality**

It is interesting to take annotation that in the 1999 constitution of the Federal Republic of Nigeria, separation of powers "is a fundamental constitutional

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<sup>13</sup> Ibid

<sup>14</sup> [https://en.wikipedia.org/wiki/Separation\\_of\\_powers](https://en.wikipedia.org/wiki/Separation_of_powers), accessed /30/1/2019

principle which spells the roles and duties of the three arms of the government."<sup>15</sup> These principles are enunciated in the constitution as follows: Part 1 Section 231(1), state 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."<sup>16</sup>

Furthermore, part 1 section 231(2) also 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 subjected to confirmation of the appointment by the Senate."<sup>17</sup> Section 232 (2) also 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."<sup>18</sup> More so, part 11 Section 4(8) of this same constitution states:

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 outs or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law.<sup>19</sup>

In chapter 5, (The legislature) Section 5 8(1) it 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."<sup>20</sup>

Consequently, section 58(3) says, where a bill has been passed by the House in which in originated, it shall be sent to the other House, and it shall be presented to the president for assent when it has passed by that other House and agreement has been reached between the two House on any amendment made on it.<sup>21</sup> 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 assent or that he withholds assent.<sup>22</sup>

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<sup>15</sup> *The 1999 Nigerian Constitution*, Lagos: Federal Government Press, 1999.

<sup>16</sup> Ibid

<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup> Ibid

<sup>20</sup> Ibid

<sup>21</sup> Ibid

<sup>22</sup> Ibid

Subsequently, chapter 5 part 11 (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."<sup>23</sup> 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."<sup>24</sup> 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."<sup>25</sup>

From the foregoing, it is obvious that "the essence of the doctrine of separation of power is to protect the arbitrariness of rules. It is by bills passed by both the senate and House of Representative that prevents the danger that is most likely to emanate by the conferment of two much powers any single person or body and check of one power by another."<sup>26</sup> The power of the executive to convene the legislature and to veto its enactments affirms of defense while the legislative power to impeach if necessary and sufficient to hold the executive accountable to examination without holding it hostage. The people also look forward to the judiciary for the dispensation of justice and that a judge must carefully, but firmly set out to administer according to the law which is established by the legislature or by the binding authority of president, which itself is substantially founded on the laws passed by the legislature.<sup>27</sup>

Despite the grammatical niceties with which the constitution is coated with, in practice, any rigid separation of the state departments as stated above is obviously going to paralyze the government activities of the state. The theory of separation of powers seems to imply that, the powers of government consist in making, executing and applying laws to cases through the rule of law.

It must be noted that separation of powers is almost impossible to carry out in actual practice. However, "in a modified form the theory has been adopted in America, Nigeria, France and other countries. The President and the legislature in Nigeria for example, are both elected by the people and are responsible to them. While the judges once appointed hold office during good behavior"<sup>28</sup>. In Nigeria for example, the president has the executive power of vetoing the bills and the senate has the legislative duties of sanctioning appointments and treaties, while,

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<sup>23</sup> Ibid

<sup>24</sup> Ibid

<sup>25</sup> Ibid

<sup>26</sup> The Tide Newspaper, Wednesday December. 8, 2010, Vol. 12, No. 23.

<sup>27</sup> Ibid

<sup>28</sup> W.F. Willoughby, *The Government of Modern States*, Appleton Century, 1936, pp. 96-97

the Supreme Court has the power to determine the constitutionality of the laws<sup>29</sup>. In England with parliamentary system in place, "there is no separation of powers because, the House of Lords performs judicial functions and the judiciary has jurisdiction over the executive officers. The cabinet performs legislative functions and its member is also the members of the parliament."<sup>30</sup>

Separation of powers is also reflected in the fact that certain functions must not be exercised by one and the same person. Thus, the President cannot at the same time be a member of the National Council, or a judge who is appointed Minister or elected to be a Member of the National Council must be temporarily suspended from his/her judicial duties. Separation of power appears not to operate any legal restrictions on power but, it provides the basis for important principles which the law protects, such as independence of the judiciary. It provides a basis adoption of structure processes and control which protects liberty now and in the future.<sup>31</sup> It guards against broad spectrum of the ills like absurd judgement avaricious and ambitious self-serving behavior and insufficient performances of functions. As our system of government evolves new conventions, political practices and events at times need legal rules will needs to be devised to protect the liberty of the people and our bourgeoning democracy.<sup>32</sup> The doctrine of separation of powers therefore provides the justification for these measures and helps to determine their nature and scope

The reality in Nigeria is that there are so many anomalies that are obviously scandalous when it comes to the practice of the principle of separation of powers. One of such is the role of partisanship in passing laws, formulation of state policies and in approving budget. There is so much consideration given to how laws made can affect the impact of the party in power on the welfare of the people. Sometimes, there are obvious calculated attempts to scuttle the passing of a bill into law, if such a bill will in any way favour the fortunes of a political party in future elections. Sometimes, I wonder if the laws that are made are not supposed to be for the interest of the people. The role of monetary gain by officers of the three arms of government goes a long way in affecting the passage of annual budgets. If their interests are largely represented, then the budget will enjoy a quick passage and vice versa. In Nigeria, for example, there have been instances in which a

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<sup>29</sup> Ibid

<sup>30</sup> Sachdeva & Gupta, *A Simple Study of Political Science Theory*, Prakashan, Delhi Ajanta 1980, p. 221.

<sup>31</sup> F. Ogoloma, "The Theory of Separation of Powers in Nigeria: An Assessment" in *African Journals Online: An International Multidisciplinary Journal*", Ethiopia, Vol. 6 (3), Serial No. 26, July, 2012. Pp. 127-134.

<sup>32</sup> Ibid

budget presented by the President was padded when it was taken to the legislative arm of government in order to ensure that they are able to get enough money for their constituency project and to ensure that much is given to estacodes and all other personal allowances that could increase their monetary fortune as individuals and groups within that arm of government. The judiciary is not also free from these anomalies as the highest bidder seems to have the upper hand especially in cases that are election related. There is so much corruption in the judicial system, such that, as an arm of government, the judiciary can hardly be regarded as the last hope of the common man. It is as if there is a different yardstick for judging cases between the rich and the poor. Ethnic, nepotistic, occultic, sectional and religious consideration does not in any way help matters in this regard as far as the judicial system is concerned. The delivery of contrary judgments by different courts of law especially before, during and after elections is a betrayal of the trust that the people reposed on the judiciary. There is so much abuse of our legal processes and procedures that one can hardly rely on the legal system of Nigeria today.

## **Conclusion**

There is an urgent need to monitor our political system and all without exception should be vigilant about our liberty and advocate new measures when the liberty is threatened. It is suggested therefore that, the state should adhere to the theory of separation of powers as is the practice in other democracies in the world, taking into account, our historical past and the urgent need to amend, where necessary. Any dictatorial tendency should be nipped in the bud. Secondly, the practice of this principle will help in no small way to dispense with executive usurpation of powers; legislative promulgation of bad laws; judicial misinterpretation of laws, manipulation of checks and balances among the three arms of government and manipulation of electoral processes.

It is paramount for the principles guiding separation of powers as enshrined in the 1999 Constitution of the Federal Republic of Nigeria are strictly adhered to, pending possible amendments, when the need arises. Its workability should not depend solely on uniformity of party leadership and membership according to political affiliation in the three arms of government, but strictly to ensure that the purpose of the principle, which according to Lord Acton, is to avoid "absolute power corrupt absolutely" can engender authentic and purposeful checks and balances among the three arms of government. This will go a long way to boost the level of trust and credibility the citizenry has on government at all levels.

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