

HISTORICAL APPRAISAL OF EXECUTIVE – LEGISLATURE RELATIONSHIP IN NIGERIA

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Abstract

The objective of this paper is to appraise the historical appraisal of executive-legislature relationship in Nigeria. This relationship which dates back to the colonial era has continued to find expression in Nigeria's 21st century government. This paper reveals that in the colonial era and the immediate past colonial era, executive-legislature relationship was fused together meaning that Nigeria practised a parliamentary system of government. In the later post colonial era, with military rule falling in between, Nigeria practised a presidential system of government where there is complete separation of power. In all, this work has concluded that whether in the colonial or post colonial era of executive-legislature relationship this relationship is woven around the constitution.

The executive-legislature relationship has had a long history in the Nigerian project. During that era, Ojo (2007:105) posited that; “the governor was His Majesty’s representative and he did everything in His Majesty’s name. He was head of government, he had power to overrule the decision of the legislative council, he exercised the prerogative of mercy, he held the powers of appointment and promotion and dictated the policy of the government subject only to the overruling of the British government represented by the secretary of state for the colonies”.

Regrettably, the lopsided, hostile and exploitative nature of executive-legislature relationship that operated during the colonial era quickly found expression in post-colonial Nigeria. In effect, though most of the institutions of the first republic in Nigeria drew their inspiration from the “Westminster model” they lacked those conventions and practices that make that model what it is.

After the abolition of the first republic, Nigeria leaped into the second republic (1979-1983) with the hope that the republic would avoid the pitfalls of the first republic. This kind of thinking was responsible for the adoption of the presidential system of government where the executive, was in principle, independent of the legislature.

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Worthy of mention is the fact that, when the second republic was halted by the military, Nigerians were unanimous in calling for an end to military rule. Nigerians succeeded, and consequently, the third republic (1991-1993) was brought to the fore. Though that republic was short lived, the fourth republic (1999-date) has continued to ride on the coattails of the presidential system of government in spite of all its short coming.

The historical appraisal of executive-legislature relationship in Nigeria will be looked at from two perspectives; these are the colonial era and the post colonial era.

Colonial Era

It is an existential truism that the present day Nigeria is a creation of the British Colonial Masters. As such, any meaningful discussion within the context of Nigeria must as a matter of fact take its root from a colonial perspective. To this end, the Executive-Legislature relationship has had a long history in the Nigeria project. The structure and operation of British administration in Africa generally was that Governors were appointed for each of the colonies with Legislative and Executive councils while the protectorates were headed by High Commissioners who ruled by proclamations. In Nigeria, the colonial Legislative and Executive councils were structured thus;

Legislative Council

- (a) The Governor as president of the council until 1951.
- (b) Official members.
- (c) Ex-official members.
- (d) Unofficial members

Executive Council

- (a) Governor
- (b) Ex-official members
- (c) Ministers
- (d) Lt. Governors from (1946).

Interestingly, in the Legislative councils of the colonies in the late 19th and early 20th centuries, British traders and a few Africans were nominated to sit with the officials (who were obviously in the majority) in the councils. The Governors of the British West African colonies were assisted by their Executive council composed of officials who were primarily heads of the technical departments. No doubt, there existed a relationship between the Executive and the Legislature in Nigeria. Hence, Ojo (2007:105) posited that;

The governor was his majesty's representative and he did everything in His Majesty's name. he was head of government, he had power to overrule the decision of the Legislative council, he exercised the prerogative of mercy, he

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held the powers of appointment and promotion over all and everybody and being all in all, he dictated the policy of the government subject only to the overruling of the British government represented by the secretary of state for the colonies. Succinctly stated, he made laws for the peace, order and good government of the territory. He however had a principal duty to account for all the affairs of the country by rendering an annual account for the progress of the country in form of a blue book sent each year to the secretary of states.

The import of the above quotation explicitly depicts an Executive –Legislature relationship which was not aimed at providing good governance for the people of Nigeria; rather, the relationship was aimed at meeting the needs of her majesty’s government in far away Britain. The governor was President of the legislative council, but he could reject any majority decision, that is, apart from the original and casting vote, he also possessed the right to veto. By the standing order of the legislative council, he had the duty of surmounting a meeting of the legislative council at least once a year, and in making his ordinances and exercising this other powers, he must consult with the Executive council.

Worthy of mention is that, laws made by the legislative council were called ordinances and by definition, ordinances are declarations by the sovereign, made without parliament’s consent. On this premise, Ojo (2007:117) submits that;

Our legislative council was no parliament but a sort of glorified advisory body, as the governor was in no way bound by any resolution of the council and the governor, being the sovereign’s representative, could make laws without the consent of the council or could even overrule council’s decisions. Anything the governor desired, whether or not the council consented, was the ordinance, subject only to the approval of the colonial secretary, acting in the name of the sovereign or on behalf of the crown.

Note however that even though the standing orders of the council had stated that relevant practice of the commons House of Parliament of Great Britain and Northern Ireland would apply in Nigeria, this was mere window dressing until 1951, when the governor ceased to function as president of the council and another person was appointed by him as president and later speaker from 1954. Until 1951, the role of the President of the council had been described by Ojo (2007:118) thus;

In a country such as Nigeria, which in too many of its areas has not yet emerged from barbarism, a strong, and within limits, an autocratic government is essential....The council is designed, therefore not to weaken or hamper the efficient administration of the country, but to aid and strengthen the government...In other words, there is no question of a government and an opposition, but instead, an endeavour to ensure closer cooperation and

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sympathy between the government and the governed, not for the promotion but for the purpose of securing the wise, just and efficient administration of the country.

Relatedly, when in 1931 a member representing Egba Division, Mr. Pearse, suggested in the Legislative council that non-native income tax proceeds be allotted to the Native Administration, a suggestion which clashed with one of the Governor's strongest principles, the Governor replied sharply that the Hon. Member was talking of the native administration as if they were sovereign powers.

Again, to an issue raised by another member on government's customs policy in the same year, suggesting that substituting specific duties for *ad valorem* duties (which policy penalized cheap foreign goods) was in the interest of British Lanchashire cotton interest, the Governor's autocratic reply according to (Ojo 2007:120) was, "this measure is entirely dictated by the fiscal reason of saving the revenue; it has nothing to do with the operatives of the Lanchashire...I do not know where the Hon. Member got it from... this is not a preferential tariff... I do hope the Hon. Member will not repeat that statement".

This was the kind of relationship that existed between the Executive and the Legislature during the colonial era in Nigeria. This relationship was facilitated and maintained by the limitations of the powers of the colonial legislature and the enormous legal powers of the Governor as the chief executive of the colony of Nigeria. On this note, the limitations of the powers of the colonial legislature were;

1. No colonial legislature may alter the general principles of English common Law as applicable in England;
2. No colonial legislature may alter the jurisdiction of the judicial committee of the privy council;
3. No colonial legislature may alter the law of allegiance;
4. No colonial legislature has the power to enact laws having extra-territorial operation;
5. It cannot pass local laws federating, dividing or uniting parts of its own territory or uniting itself with other colonies. This could be done only with the intervention of the crown or of the British parliament.

On the other side of the divide, the Governor as the chief executive of the colony had the following powers;

1. Refusing assent to Bills;
2. Reserving them for the Royal pleasure; and

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3. Declaring a bill operative even if the legislature had failed or refused to pass it.

It is imperative to note that, although the Governor was head of both the legislative and executive councils, he could not (except the legislative council was suspended) legislate for the country or colony in certain well defined circumstances. Again, even though the governor had powers of reservation and disallowance of the legislative acts of the council, his powers were all subject to the direction and control of the colonial secretary to whom he duly reported his actions. All ordinances passed by the council were subject to the approval of the colonial secretary. It was in realization of these powers that when a country consisting of a colony alone, or both colony and protectorates (as was the case with Nigeria) attained self-government status or had been granted representative constitution, the crown's power to legislate for the colony by order-in-council ceased, and only the imperial parliament had the legislative authority over the colonial legislature resulting in an independent constitution for the colony.

Consequently, the United Kingdom parliament, in July 1960 passed Nigeria Independent Act 1960 under Nigeria (constitution) order-in-council 1960, the long title of which stated as follows; "An act to make provision for, and in connection with the attainment by Nigeria of fully responsible status within the common wealth".

This independence constitution passed by the United Kingdom parliament, established the following structures;

- (a) **Central Legislature:-** This was a bicameral legislature consisting of the Senate and the House of Representatives.
- (b) **Central Executive:-** This consisted of the Prime Minister who now presided at council meetings instead of the erstwhile Governor-General;
- (c) **Regional Legislatures:-** They were bicameral, a House of Assembly and a House of Chiefs. The Assembly was presided over by a Speaker, while the House of Chiefs was presided over by one of the members.
- (d) **Regional Executive:-** It was presided over by the premier with a council of Ministers.

In fact, in consonance with the inherited parliamentary system, there was in practice, no separation of powers as such between the legislature and the Executive. This was the kind of system which the colonial masters bequeathed to the Nigerian people.

Post-Colonial Era

The Executive-Legislature relationship in the first Republic (1960-1966) began on a clean slate whereby Nigerians took control of the running of the affairs of the

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country with good governance expected from the leaders by the led. Unfortunately, this republic snowballed into what Nwosu (2007:325) described as “failed democracy”. The failure was located in the colonial authorities possessed, deprived not from the ethics of rule of law, or the will of the people but from the monopoly of the means of violence. According to Nwosu (2007:325), during the colonial days; “Political socialization ensured a role perception of the ‘subject’ population who saw the colonial boss as a father-figure, as an embodiment of law and benevolence, whose instructions should be obeyed, not questioned”.

Unfortunately, the colonial boss maintained social gap with the population who constituted a multitude farther than a people. The tradition of total despotism overtook events and socialized into a culture, which Nigerian leaders inherited.

Secondly, colonial education was oriented at socializing the individual into accepting his/her condition of life, placing a premium on the status differential as found.

Thirdly, the emergent Nigerian political elite lacked the basic attributes of elitism some degree of cohesion and hegemony, which should have been their functional leadership role. Given the lack, they could not create and institutionalize new behavioural norms, could not establish new motivational goals and values. Far from being social “innovators”, the elites became content to be “limitators”. The colonial masters’ style of socialization was, therefore, not the right leadership model/culture required for a tolerant, participant attitude necessary for a parliamentary system which was transferred to the new Nigerian elites. In other words, while the parliamentary system required a participant, civic political culture, colonialism provided a managerial model calculated to engender subjective and directive political attitudes.

The point to note from the aforementioned analysis is that, post independence leaders in Nigeria had a carryover of colonial attitudes which gave a direction to Executive-Legislature relationship. Hence, the overall verdict of the relationship between the legislature and the executive during the first republic is aptly captured by Kermode (1968:262) thus;

...the tools available to the Nigerian house for controlling the executive were either stagnating or losing their cutting edge while in Britain serious efforts were being made to increase the effectiveness of the existing tools and the plans for introducing a new method of parliamentary control had already reached an advanced stage by 1965...generally speaking, then, parliamentary control of the executive was ineffective in Nigeria throughout the period from 1960 to 1966... by 1965, the Nigerian parliament had become an expensive and irrelevant talking shop.

In effect, though most of the institutions of the first Republic in Nigeria drew their inspiration from the West minister model; they lacked those conventions and practice that makes that model what it is. For instance, in 1962, the Auditor-General of the Federation was relieved of his appointment for querying the executive's overspending by the federal minister of finance (representing the executive).

Similarly, the federal executive dissolved the public accounts committee of the House of Representatives when in 1963 members of the committee questioned items of overspending in the audited accounts of the government. On this premise, Dudley (1982:328) argues that "members of parliament were only too content and placid to let the executive have its way". Indeed the 1963 constitution, like its predecessors, spoke only in terms of power and of rights but never of duties. The constitution assumed that those who wielded state power would be conscious of and responsible to its obligations and responsibilities. So, it said nothing of the duties of government towards its subjects. As a result, power became an end in itself, pursued and used for the self-interest of the political ruling class—a class which claimed rights and privileges but refused to recognize any correlative duties or obligations to the rights claimed.

It could be argued that, one of the reasons for the failure of legislative control in the first republic was the parochial disposition of the members of that parliament. They were pre-occupied with issues concerning their respective constituencies at the expense of National policies and objectives. To this end, Dudley (1982:329) submits that;

For the most part, there was little interest in the policies of the federal government except in those spheres where the interest of the individual constituencies were most vitally concerned in the main, speeches reflected the attempt of ordinary members to obtain for their constituencies adequate water and electricity supplies, telephone and postal services and railways and trunk roads. Other members tried to influence the government's location for industry. Several others pointed out that their constituencies had been totally neglected in the federal government's six-year development plan, while others pointed to the existence of mineral resources in their constituencies and stressed the need to develop them.

Interestingly, parliamentarians were more complacent with "wooing" the executive than trying to check it. This was because the Nigerian political elites were much more concerned with protecting their respective power bases than with resolving structural deficiencies and executive accounting imbalances within the political framework. On this note, one can safely argue that the executive-legislature relationship in the first republic could not provide the "good life" for the generality of Nigerians hence the coming on board of the military in 1966 with Gen Aguiyi Ironsi as head of the supreme military council.

The supreme military council was first constituted under Decree No1 of 1966 and it exercised legislative powers over the whole of the federation. It appointed an executive council (made up of commissioners-military and civilians) which exercised executive powers. Later the constitution (suspension and modification) Decree of 1967 vested the supreme military council with both legislative and executive powers of the government of the federation. The federal executive council which had hitherto exercised general executive powers was divested of them and the council was henceforth to discharge those functions that were specifically delegated to it by the supreme military council. The council according to Ojo (1997:114) “constituted both the new law making body and the executive body”.

Interestingly, the supreme military council which under the Babangida regime was rechristened the Armed Forces Ruling Council (AFRC) was both a legislative and an executive body except that members of the executive council (commissioners/ministers had since the Murtala-Obasanjo regime in 1975 ceased to attend meetings of the SMC (later AFRC). The president, commander –in-chief was chairman of both the Armed Forces Ruling Council and the Federal Executive Council/ National Council of Ministers.

As long as the military held sway, decision-making, in general, was totally devoid of the constitutional encumbrances that democratic governments have to contend with in the face of clearly prescribed separation of powers between the various branches of government. Under the military, there was fusion of the executive and legislative branches of government in one governing body. This created a situation whereby the power of the military ruler was absolute both as the most senior general, and also as commander-in-chief, whose authority was not subject to query by subordinates, as such would constitute disloyalty.

Successive heads of military government from 1966 to 1999, had different decision-making bodies where they held absolute powers, (Fawole, W.A (2003:12). The body was called the Supreme Military Council (SMC) under the regimes of General Aguiyi-Ironsi (January-July 1966), Yakubu Gowon (July 1966-July 1973), Murtala Muhammed (August 1975-February 1976), and Muhammadu Buhari (January-August 1985). The nomenclature was changed under General Ibrahim Babangida who styled his ruling organ the Armed Forces Ruling Council (AFRC). Towards the end of his tenure, he renamed it the National Defense and Security Council in January 1993. General Sani Abacha (November 1993-June 1998) named his ruling organ the provisional Ruling Council (PRC) ostensibly to underscore the temporary tenure which he promised Nigerians. When Abacha suddenly died in office in 1998, general Abubakar who succeeded him and ruled the country from June 1998 to May 1999 did not change the name of the ruling organ.

Analysts have argued rightly or wrongly that, the master-servant relationship that exists between the executive arm of government and the legislative arm of government draws its origin from the long military rule whose executive powers were fused with its legislative powers. This however does not warrant the bad governance which the Nigerian state has experienced especially under civilian regimes.

The second Republic came on board in Nigeria in 1979 with the inauguration of a new constitution and the putting in place of an elected civilian executive president. This republic departed sharply from the form of government which was adopted in the first republic. It could be recalled that the first republic adopted the British styled parliamentary system of government where executive and legislative functions were fused together. In the second republic, the 1979 constitution was fashioned after the American Presidential system of government. Hence, there was a separation between the executive and the legislature. The executive derived its mandate from a direct popular will and its power from the constitution. Provisions were made for more or less, equal balance of power between the two houses of the legislature and for fundamental objectives and directive principles of state policy. According to Nwosu (2007:330); “Executive powers under the constitution of the second republic were reasonably informed by the specific grant theory i.e. power to execute as provided by the constitution of the law”.

Thus subject to the provisions of this constitution, section 5, sub-section 9 and 6 stated that;

The executive powers of the federation shall be vested in the president and may, subject to the provisions of any law made by the National Assembly, be exercised by him either directly or through the vice-president. . .such powers of the executive shall extend to the execution and maintenance of the constitution as provided including and restricted by and to all laws made by the National Assembly and to all matters which the legislature has power to legislate on.

Despite the constitutional checks, Nwosu (2007:331) argued that “the president was the chief executive with powers of the state vested in him, empowered to give effect to all acts of the legislature including transition from the stage of a bill to that of an act”. This was an executive overlap in relation to the legislature because a bill could not transmit to an act i.e have the force of law unless it was assented to by the chief executive. However, the same constitution recognized the power of the legislature stated clearly in sections 56(4) and 56(5) thus; “Where the president withholds his assent and the bill is again passed by each house by a two-third majority, the bill shall become law and the assent of the president shall not be required”.

The on-going 1999 constitution is almost entirely a replay of the 1979 constitution of the federal republic of Nigeria. In the aftermath of the inauguration of the National Assembly in June 1999, serious tensions arose in executive-legislature relations bordering on the interpretation of roles, responsibilities and the notion of institutional separatism. It is important to point out that, the reality of the practice of separation of powers is premised on inter-governmental, inter-dependence rather than independence. It is in furtherance of this position that the 1999 constitution, for instance, confers executive related functions on the legislature. For instance, while foreign policy is the domain of the executive, the constitution empowers the national assembly to participate in the pursuit of foreign policy objectives of the federal republic of Nigeria by granting the executive the powers to ratify treaties. Hence, section 12(1) of the 1999 constitution states clearly that; “No treaty between the federation and any other country shall have the force of law except to the extent to which, any such treaty has been enacted into law by the National Assembly”.

Worthy of note is that, the legislature also confirms appointments to certain offices and performs judicial or quasi-judicial functions such as the impeachment of public office holders.

The executive on the other hand is equally vested with powers, which are either legislative or judicial in nature, that is by exercising the power of reprieve and pardon. By the constitutional powers of appointment of people to serve on the bench, the executive is performing judicial related functions. It equally delegates legislative functions through delegated legislation, vetoing of bills etc.

Going by the above analysis, it is important to stress that, the partnership between the two arms of government break if either of them is too dominant, and that a weak executive can lead to a weak and incoherent government, deadlock and paralyzed. An overbearing executive on the other hand, can reduce parliament virtually to an ornamental rubber stamp; but parliament can play its full role by representing all of her citizens by being proactive in its passage of legislation and being fully able and willing to oversee the executive.

In conclusion, the historical background of executive –legislature relationship in Nigeria has identified one fundamental issue that is worthy of mention. The issue is that, from the colonial era to the post colonial era, executive-legislature relationship is woven around the constitution and in the case of the military. “decree”. It is from the constitution or decree that the issues of executive-legislature relationship relating to governance spring.

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