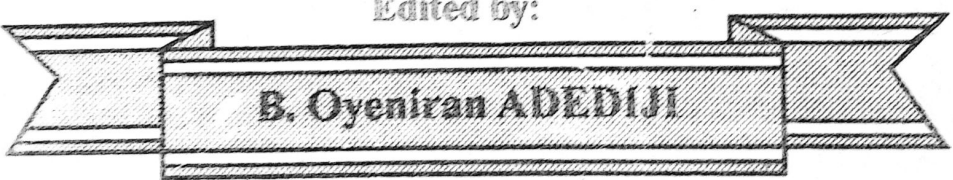


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EMERGING TRENDS
IN
NIGERIAN LOCAL GOVERNMENT

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THE DOCTRINE OF SEPARATION OF POWERS AT THE LOCAL GOVERNMENT LEVEL: THE NIGERIAN EXPERIENCE

S.O. OYEDELE

INTRODUCTION

In terms of hierarchical arrangement, local government is, in a Federation, a third-tier of government whose activities directly affect most citizens of a country. It is the government at the grassroots designed to serve as an instrument of rural transformation. It is a type of government that fosters the principle of democracy because it brings government nearer to the people by encouraging mass participation of people in the process of government. The effectiveness of this government is therefore of great importance to the citizens and for national development.

In order to raise the status of local governments and to make them more effective, various regimes, particularly since Nigeria's independence in 1960, have introduced one reform or the other in Local Government. One of such reforms and perhaps the most fundamental so far is the introduction of the Presidential system to the local government level. By the provision of Nigeria's 1989 Constitution, local governments are conferred with the same autonomy and equality of powers as those of the other two levels of government. Because the presidential system is anchored on the doctrine of separation of powers, the Babangida Administration under Decree No. 15 of 1989, abolished the structural arrangement which had hitherto fused the executive and legislative powers at the local government level. However, unlike what obtains at the Federal and State levels, no provision has yet been made for an independent judiciary at the local government level. It follows therefore that there are only two arms of government at the local government level - the executive and the legislature.

One remarkable aspect of the doctrine of separation of powers at the local government level is that its practice encourages each of the two organs of government to pursue its goals while ensuring the overlapping of functions and appropriate restraints on the exercise of powers by any of the organs. This has a number of implications for the type of relationship that exists between the organs, particularly when they are controlled by different

political parties. One of such implications is that if there is constant conflict between the two organs, the objective of the local government as an agent for national development would remain largely unrealised.

The objective of this paper therefore is to examine the impact of the doctrine of separation of powers and the inherent checks and balances on the relationship of the two organs under the presidential system of government. The paper is divided into four main sections. Section one examines the concepts of separation of powers and checks and balances. Section two reviews the evolution of the Presidential system of government at the local government level while the third section examines the relationship between the executive and the legislature.

The final section concludes the discussion.

THE CONCEPTS OF SEPARATION OF POWERS AND CHECKS AND BALANCES

1. The Concept of Separation of powers

For any government to be efficient and effective in carrying out its basic functions of providing for the welfare of its citizens and the maintenance of law and order, governmental functions, powers and functionaries are usually divided into three separate but inter-related and inter-dependent arms. The legislature has legislative powers, that is, the power to make laws; the executive has the executive powers to put the laws into effect and the Judiciary is vested with the power to enforce the laws. This simple division of labour is what is commonly known as separation of powers.

Political scientists and philosophers from the days of the Greeks agreed that it would be tyrannical to leave all these functions in one hand or in the hands of one group of people. This separation is therefore expected to eliminate abuse of power and ensure adequate freedom and liberty for the citizens. In fact, the doctrine of separation of powers has been acclaimed by many writers to be the greatest political insurance against tyranny and abuse of powers because in any system where it operates properly, the three organs of government share governmental powers and each is capable of restraining the other from over-stepping its bounds. This is why the doctrine of separation of powers provides that, in the performance of its assigned functions and use of its powers, each organ has its limits which are guided

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the doctrine of checks and balances. Thus, the concepts of separation of power and checks and balances usually go together.

The doctrine of separation of powers as understood was a 17th and 18th century political doctrine developed to protect liberty of the ruled and prevent tyranny. It first developed from the political theory of John Locke, who argued that it was necessary to confer legislative and executive powers on different organs of government, namely the legislature and the executive because the legislature by its nature would act at intervals while the executive functioned constantly. This doctrine was further developed by one French Jurist, Charles Louis de Secondat, Baron de la Brede et de Montesquieu. The essence of the doctrine according to him, is that the liberty of the citizens needed state protection and the only way to do this effectively was to distribute the three functions of the state among three different organs because a concentration of all these powers in the same body would clearly result in the suppression of political liberty of the people. Moreover, Montesquieu took a dim view of human nature and in anticipating Lord Acton's famous dictum "power corrupts and absolute power corrupts absolutely", he rightly concluded that man has the innate urge to abuse his power. The only way therefore to check him is to establish and maintain a moderate government where power must be checked by power(1).

It should be noted however that this separation of powers is not absolute. The Philosophers who developed the doctrine did not say that the three organs should be so separated from one another that the functions of one organ do not complement those of another. Similarly, it is not the intention of the writers of the doctrine that one organ should always be used as an obstacle against governmental measures that are aimed at serving common good. Essentially therefore, the separation of powers tends to be in terms of personnel because each of the organs has its members distinct from the other. Beyond that, there are shared functions and overlap of functions. This is why the doctrine of separation of powers has been complemented by the concept of checks and balances.

The Concept of Checks and Balances

This is a principle whereby one organ checks the powers of the other to keep the other organ in proper balance. By this doctrine, there is considerable overlap in the functioning of the other organs. Moreover, each

of the three organs of government has constitutional rights and means by which it can check the excesses of the other. In other words, the practice of the doctrine of checks and balances gives room for each organ to interfere with the acts of the other organ, that is, to check it in order to put it in proper balance. This also means that, although no organ is dependent on the other for the exercise of its authority in its area of jurisdiction, none can operate without sharing some of its powers with others. Checks and balances means the ability of one group to guide against arbitrariness by others vis-a-vis. In other words, what the idea of checks and balances means is that neither the legislature nor the executive should exercise the whole power of the other, but does not exclude influence on control over the acts of each other(2).

Separation of powers has been found to be significant and of immense benefit to political systems such as the American Political system where the doctrine has been in practice. For example, it has justified its basic rationale, that is, the guarantee of civil liberty through the avoidance of concentrating too much power in any particular branch of government. Because it involves specialisation, the doctrine guarantees a clear focus of responsibility, accountability and efficiency. It has also proved an appropriate device for ensuring good government and political stability because it guarantees civil liberty and efficiency by checking hasty, rash and ill-considered legislation(3).

Separation of powers and checks and balances at the local government level

The 1989 Constitution of the Federal Republic of Nigeria provided for a Presidential system of government which is anchored on the doctrine of separation of powers and checks and balances. It thus divided the powers of the Federation and state among three different branches of government. Similarly, this division of powers has been extended to the local government which constitutes the third tier of government in terms of hierarchical arrangement in a Federation. Because of the importance of local government administration as the government at the grassroots, closer to the people and their problems, the 1989 Constitution provides for the system of local government through "democratically elected local government councils"(4). Therefore, following the extension of the Presidential system of government

to the local government areas, governmental powers, functionaries and duties were divided and placed in two different arms of government: the Executive and the Legislature.

The Executive at this level comprises the Chairman, the Vice-Chairman and not less than three nor than five supervisors. The supervisors are to be appointed by the Chairman who is the chief executive. The executive is responsible for policy formulation, policy implementation, including the execution of the provisions of the bye-laws and general administration of the local government. The legislative council made up of elected Councillors exercises the powers of law-making and other functions listed in the Constitution.

The doctrine of separation of powers is also complemented by the Principles of checks and balances similar to what should obtain at the Federal and State levels. This is because the legislature and the executive at the local government level are not expected to operate in complete isolation from each other to such an extent as to paralyse the local government system. On the contrary, the legislature and the executive organs are expected to complement each others functions while at the same time each organ exercises some degree of control over the other's activities. The application of the doctrine of separation of powers and principle of checks and balances has a lot of implications for the type of relationship that exists between the executive and the legislative council. This is because the use of powers allocated to each organ to check the possible excesses of each other is exposed to abuses and misapplication. This relationship equally has a lot of implications for the stability and development of local government in Nigeria.

EVOLUTION OF THE PRESIDENTIAL SYSTEM OF GOVERNMENT AT THE LOCAL GOVERNMENT LEVEL IN NIGERIA

Local Government can be defined as a non-sovereign institution operating in a restricted geographical area, whose council members are elected or selected but which enjoys some level of political, administrative as well as financial autonomy(5). Before the advent of the British colonial administration in Nigeria, there was already in existence in different parts of

the country some form of local administration with various formal political institutions unified by the principle of indirect rule(6).

The emergence of military rule in 1966 marked the beginning of important changes in the system of local governance in Nigeria. By 1970, serious efforts were made by state governments to draw up plans for local government with each state going its own way. This led to the changing of local government to local administration. It was however believed that this replacement of local government with the local administration was in essence not to stimulate local development but to strengthen military dictatorship. This was because through the resident who was the instrument of centralised control and stability, the policy of government was monitored in all local communities(7). The search for a new system of local government started in 1971 resulting in the introduction of an American model of "Council Manager" system in 1973. However, the structural patterns of local government were dissimilar for the Northern, Eastern and Western parts of the country up till 1976 when a major reform of the local government took place(8).

THE 1976 REFORMS

The 1976 Reforms of the local government set up stands out above all past reforms in the country's local government system in many respects. According to the government, the reforms of 1976 were "intended to stimulate democratic self-government and to encourage initiative and leadership potential"(9). One of the major features of the reforms was the provision for local government councils to be elected either directly or indirectly. This was one of the provisions of the country's constitution (Enactment) Decree, 1978 which was to usher in the Second Republic under civilian administration. According to the Constitution, the system of local government by democratically elected local government councils is under this constitution guaranteed; and accordingly the Government of every State shall ensure their existence under law which provides for the establishment, structure, composition, finance and functions of such councils(10). Thus, the 1976 Reform recognised representative local government councils with a view to promoting grassroots democracy. This was a significant

development because never before had that linkage been so emphatically asserted and acted upon(11).

Because the reform was nation-wide, it established substantial uniformity in the nation's system of local government administration. Another important feature of the 1976 reforms was the bringing of local government into the vortex of Federal inter-governmental relations, particularly through the statutory grants which both Federal and state governments were required to make to local government. It was an achievement on the part of the military to have introduced the reform. In spite of these fundamental changes however, the failure of the Second Republic made the aims of the reform unrealisable to a large extent.

However, the establishment of representative local government received more recognition with the setting up of the Political Bureau in 1986 to examine the type of government that would be suitable for the country. The Bureau recommended the continuation of the presidential system of government for the country. Subsequently, Decree 23 of 1991 introduced the presidential system of government at the local government level(12).

According to the government, a major aspect of the current reforms involves the full application of the presidential system of government to the local government for structural consistency with the other two levels of government: the State and Federal Governments. Because the presidential system is anchored on the doctrine of separation of powers and checks and balances, the reform abolished the old structural arrangement which fused executive and legislative powers at the local government level. Under the presidential system, the local government council now constitutes the legislative body, while the executive arm consists of elected chairman, Vice-Chairman, appointed supervisors and Secretary to the local government. However, no separate judiciary was created at the local government level. In explaining this omission, the government claimed that its refusal to create a separate independent judiciary at the local government level is informed by history, referring to the misuse of the customary and Native authority courts in the First Republic to intimidate and incarcerate political opponents of the ruling party in each region(13).

(a) Legislative Council

The Local Government Council which now constitutes the legislative branch of the local government has been empowered by Decree No. 23 of 1991 to perform the following functions:

- (i) debating, approving and amending the annual budget of the local government, subject to the chairman's veto which may be set aside by two-thirds majority of the local government council;
- (ii) vetting and monitoring the implementation of projects and programmes in the annual budget of the local government;
- (iii) examining and debating monthly statements of income and expenditure rendered to it by the local government;
- (iv) advising, consulting and liaising with the chairman of the local government; and
- (v) performing such other functions as may be assigned to it, from time to time, by an Edict or Law of the State in which it is situated(14).

(b) Executive organ:

The executive organ is headed by the Chairman of local government whose powers and responsibilities are clearly spelt out in the Decree. According to the Decree, the Chairman shall:

- (i) be the chief executive and accounting officer provided his role as accounting officer shall exclude the signing of vouchers and cheques
- (ii) direct the affairs of the local government and shall allocate responsibilities to the Vice-chairman, supervisors and the secretary to the local government
- (iii) observe and comply fully with the existing guidelines, financial regulations and other laws operating in the local government system which governs receipts and disbursement of public funds and other assets of the local government entrusted to his care.
- (iv) hold meeting with the members of the executive arm of the government, that is, vice-chairman, secretary and supervisors, at least, once every week;
- (v) render a monthly statement of revenue and expenditure to the legislature (Local Government Council) and shall take full responsibility for failure to comply with this important aspect of his responsibility as the accounting officer of the local government;

- (vi) maintain liaison with the legislature and the leader of the legislature in the interest of the local government;
- (vii) ensure observance of the spending limit of all members of the executive and heads of departments;
- (viii) at least, once a year, address the local government council and present to the council an account of his stewardship stating clearly his achievements and problems during the year. After leaving office, he may be called upon to explain or account for his actions during his tenure of office.

From the above, it is clear that the presidential system has been firmly established at the local government level.

THE RELATIONSHIP BETWEEN THE LEGISLATIVE COUNCIL AND THE EXECUTIVE

As earlier noted, the doctrine of separation of powers exists more in relation to the legislative and executive organs of local government. The legislative organ made up of elected councillors are completely independent of the executive organ. The relationship between the legislative council and the executive organ is greatly influenced by the provisions of the decrees which assigned different responsibilities to the two organs and the perception of each of the organs of its responsibilities. In order to avoid possible conflicts in their relationships, the Decree made their functions clear. They are expected to work within their assigned roles. Similarly, in order to avoid working at cross-purposes, thereby interfering with each other, the Decree made it clear that the relationship between the executive and legislative arms of local government shall be consistent with the constitutional requirements for such relationship as between the States Houses of Assembly on the one hand and the State Governors and their commissioners(15).

Decree 23 of 1991 assigned the functions of law-making to the legislature. This could be exercised through bye-laws that must be assented to by the chairman. Where, however, the chairman withholds his assents, within thirty days of its presentation to him, the legislature could pass the bye-law by a two-third majority vote of its members in favour of the bill. The legislature also debates and approves the yearly appropriation bill of the local government presented to it by the Chairman. It has the power to amend

part of the bill and to demand explanation on certain aspects of it from the executive.

On the other hand, the executive organ of the local government is exclusively responsible for policy formulation, policy implementation, including the execution of the provisions of the bye-laws, and general administration of the local government.

As already noted however, this separation of powers does not imply that the two organs should operate in complete isolation from each other to such an extent as to destroy the local government system. The two organs are expected to complement each others' functions while at the same time each organ exercises some degree of control over other's activities in line with the principles and practice of separation of powers and checks and balances. In other words, a harmonious relationship between the two organs is a necessary condition for smooth administration. This is because, following the introduction of the presidential system of government at the local government level and its attendant separation of powers and checks and balances, there is bound to be some area of conflict requiring compromise or co-operation.

One of such areas of co-operation is that the bye-law passed by the Local Government Council must be assented to by the Chairman of the local government before it becomes valid. But the bye-law can become law if passed by two-thirds majority of members of the legislature(16). This effectively neutralises the veto power of the chairman of the local government. However, the existence of power of the chairman and power of the council to overturn the veto suggests that both the executive and the legislative organs need to reach a compromise on the content of a bye-law. It is only through co-operation that political embarrassment can be avoided. For example, the veto of a popular chairman can cause political embarrassment and may also be seen as opposing a bye-law that seems by its provisions to meet the expectations of the electorate at the local level.

In addition, by virtue of its powers to vet, monitor and supervise the implementation of projects, examine and debate monthly statements of income and expenditure presented by the chairman, local government council exercises power of the purse and through this can curtail any financial recklessness of the executive.

However, in the process of exercising its powers and performing its duties, the legislative council is bound to run into conflict with the executive. Indeed, there are, from the Decree, some areas where conflict is inevitable and only the willingness or otherwise of the legislative council and the Chairman to reach a compromise will determine the extent of political crisis and tension that will be generated. One important constitutional issue which has often resulted in the executive-legislature rancour is how to use the powers assigned to the two branches of government. For example, by exercising its powers of vetting and monitoring of the implementation of the projects and programmes in the approved budget as well as power to scrutinize the monthly statements of income and expenditure rendered by the executive, all in an effort to ensure accountability of the executive. While the legislature is constitutionally justified to do so, it is possible that, given the extremely partisan nature of debates in most legislative organs, the council could use its demand for accountability to witch-hunt the chairman or to stop the implementation of programmes that are beneficial to the people.

Moreover, by virtue of section 292(1-11) of the 1989 Constitution, the legislative council has power to remove the chairman or Vice-chairman through the process of impeachment if in its opinion, has committed an act of gross misconduct.

Impeachment is one of the major features of the Presidential system. The clause is inserted in the constitution as a mechanism to check the excesses of executives at any level of government. This is one type of power that one expects any legislative organ to use sparingly. However, evidences abound to show that the legislative councils in the local governments are not careful in exercising their power of impeachment. The arbitrary use of this power or even the constant threat of its use have become rampant in Nigeria today. In fact, it has become a ready weapon in the hand of law-makers whenever there is a disagreement between the executive and the legislature. Records available show that to date, the power to impeach the local government chairman or vice-chairman has been abused by the legislative councils. Many chairmen have been threatened and where some of them have been impeached, they have been re-insated by the orders of the courts which ruled against the legislative council for not following the constitutional procedure for impeachment. In most cases, the accusations that have led to some of the impeachments were neither serious nor fully substantiated as demanded by

the Constitution which states that before impeachment can succeed there has to be a clear evidence of a "grave violation of the Oath of office or grave breach of the provisions of the constitution or misconduct of such nature as amounts in the opinion of the local government council to gross misconduct"(17) The use and misuse of this power of impeachment has therefore been causing some ill-feelings between the two organs of government in many states.

CONCLUSIONS AND RECOMMENDATIONS

We have examined the concept of separation of powers and the checks and balances that go with it. We have also examined the evolution of the presidential system of government at the local government level and the type of relationship that exists, and which should exist, under the operations of this new system of government at the local level. The study has shown that the doctrine of separation of powers is an inevitable corollary of the executive presidential system of government. The two organs of government at that level are the legislature and the executive with each organ legally empowered to perform its functions. We have also noted that the legislative and executive organs complement each other's work while at the same time each is vested with some powers of control over the other, although the legislature seems to have more powers of control over the executive organ because the legislative council can constitutionally curb any reckless spending of public funds by the executive and even remove the chief executive. It has been shown too, that political maturity, co-operation, compromise and mutual accommodation of political differences are required from actors at the local government level.

Recommendations

But unfortunately, the presidential system as practised at State and local government levels in Nigeria has witnessed more conflicts than co-operation between the legislative and executive organs as has been discussed in this paper. In order to ensure a more stable and enduring presidential system, particularly at the local government level, the following suggestions should be considered:

1. One constitutional issue that needs a review is the process of appointing supervisory councillors by the local government chairman. The relevant decree is silent on the capability or otherwise of the confirmation of the appointment made by the Chairman by the legislative council. This omission is capable of generating political tension between the legislature and the executive. For instance, it is possible for a chairman that lacks political tact or who is nepotistic to ignore the competence and fair play when making his appointments. The legislature should therefore be given the power to screen the nominees of the chairman. This will make it impossible for a chairman to appoint his relatives or people with little or no integrity and competence to be appointed by the chairman(18). The same should apply at the state and federal levels because it is the practice in any pure presidential system of government such as in America. We therefore consider this as a grave violation of one of the principles of checks and balances.
2. There is the need to properly educate the legislators on what impeachment entails and the correct procedure for doing so. Many cases of impeachment have not followed the constitutional procedures. They should know that not all disagreements between the organs should result in impeachment or threat of impeachment.
3. Both the executive and the legislature should be adequately educated on the essence of the doctrines of separation of powers and checks and balances. They should know that, in the practical application of the system, conflict is inevitable but compromise is a necessity. The two organs of government at the local level must respect each other and work in consonance with the provisions of the Constitution. No organ of government should attempt to show that it is superior to the other. It is only through this that a conflict free local government under a presidential system could be guaranteed in Nigeria.

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