



Friend or Foe: The Executive and the Legislature in Muhammadu Buhari Administration, 2015-2019

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Abstract

This paper investigates the relationship between the Executive and the Legislature in the regime of President Muhammadu Buhari Administration from 2015 to 2019. These two arms of government are the two pedals that wheel every developed democracy to its desired destination. Looking at the salient power struggle that manifests in the process of the Electoral Act amendment, the anti-corruption war and the late passage of appropriation bills, among other issues, it is evident that the executive and the legislature have not worked in harmony to move the nation forward as envisaged during the swearing in of the executive and inauguration of the seventh assembly in 2015. This has led to the disempowerment of the electorates and a high level of intolerance among citizens. Although conflict prevention measures are being taken by elder statesmen to douse tension between candidates, if there is no harmony between the two arms of government, the forthcoming general elections are likely to be violence-ridden because followers would likely use the discordant tunes sang by their principals to cause mayhem during or after the elections. The theoretical framework adopted is the doctrine of separation of power and elite theory. Secondary data is relied upon for evidence of power struggles among groups and a qualitative method is used to analyse the data. This paper argues that mechanisms must be put in place to check the overriding interests of groups that would always want to dominate political parties. The interest of the common people in the subsequent General Elections should be a priority to different arms of government for a sustainable democracy.

Keywords: Executive-Legislature Relationship, Separation of Power, Elite

Introduction

The executive and the legislative arms of government in the regime of President Muhammadu Buhari from 2015 to 2019 are supposed to be the two pedals that move the wheels of Nigeria's democracy to her desired destination. The executive arm of government initiates bills for consideration by the legislature. The budget appropriation bill is a major link between the executive and the legislature. This is a function that affects every sphere of the nation's economic social and political activities at the end of each year. But the legislature and the executive have always sung discordant tunes in this regard.

The amended Electoral Act given to the president for assent before the 2019 General Elections was put aside by the president for some obvious reasons of lack of trust. There were insinuations that



some provisions have been tampered with. This has created mutual suspicion on the part of the executive thereby making the president withhold his assent to the amended bill. The effort made at making changes to the Electoral Act in order to witness improvement in the conduct of the 2019 General Elections has been truncated. The legislature's labour on this amended bill is in vain in this regard.

The refusal of the legislature to confirm the appointment of the Chairman of the Economic and Financial Crime Commission slowed down the pace of performance of the regime in the anti-corruption war waged against corrupt public officials in the previous and present regime. The challenge of corruption allegations against some principal officers in the legislative arm of government and claims of these legislators that they were being witch-hunt by the executive set the stage for mutual mistrust.

Premise on the tripod of foregoing challenges, it is very clear that the executive and the legislature have not interacted in a harmonious relationship as envisaged during the swearing-in of the executive and inauguration of the seventh assembly in 2015 as such the consequences were to best imagined in this scenario. This paper examined the scenario that played out in this regard interrogating the doctrine of separation of powers.

Conceptual and contextual framework

The doctrine of separation of powers could be traced to the trinity theory of organs of government. Aristotle, Cicero, Jean Bodin and John Locke in their works on the system, forms or organs of government from the classical period to when Montesquieu clearly defined the doctrine show how these three arms must be separated to preserve liberty in the society (Johari, 2011).

Madison (1999:269) in *Federalist Papers* posits that "The accumulation of all powers, legislative, executive and judiciary, in the same hands, whether hereditary, self-appointed, or elective, may be pronounced the very definition of tyranny". Madison (1999:290) also observes that "If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary".

The fear of concentrating powers in the hands of a tyrant is what moved Madison to explore the alternative that could check the excesses of elected officials in the constitution of the United States of America. The experience of some African countries whose leaders refused to leave when the ovation is loudest has led to the usurpation of powers of other arms of government. The nature of man is to dominate others. This is to exercise control over others as long as they could not resist. A control system is necessary to check his/her excesses.

Premised on the tradition established by the scholars mentioned above the doctrine according to Montesquieu is all about the executive, legislature and the judiciary performing separate functions devoid of fusing one into another. This is to show that each arm of government has its functions and boundary that should not overlap. This is why constitutions usually spell out the functions of the executive in the president, the legislature in the assembly and the judiciary in the courts. These are precautionary measures put in place to serve as a mechanism to control the excess of one arm over the other in terms of harmonious relationships.



Whenever scholars espouse ideas on the executive-legislature relationship, what comes to mind is the foregoing theory. The executive, legislature and judiciary are presumed to be separate arms of government, but in actual sense, the separation may be problematic because of obvious reasons. Heywood (2005:315) posits that:

The purpose of the doctrine of separation of powers is to fragment government power in such a way as to defend liberty and keep tyranny at bay. In its formal sense, it demands independence, in that there should be no overlap of personnel between and branches. However, it also implies independence in the form of shared powers to ensure that there are checks and balances.

The theory of separation of powers is criticised on the following grounds

- a. That the three constitutionally declared powers entrusted on bodies or persons are not conclusive
- b. The notion of execution, legislation and adjudication are incapable of revealing precise definitions.
- c. The idea of separation is just a word that connotes physical separation but it is a construct that cannot show clearly the notion of separation of powers
- d. It does not show the necessity or appropriateness of transfer or delegation of these functions in case of legitimacy on branches of government (Johari, 2011).

Elite and political power

The doctrine of separation of powers alone cannot explain the challenge experience in making operational executive-legislature relations in Nigeria. The Marxist political economy could explain the reasons behind the inability of the executive to relate well with the legislative arm of government. According to Mato (2009), the Marxist Political Economy espouses ideas on how economic needs dominate the thoughts of men and action. Men place providence on the economics over religious, social and cultural aspects of life as such politicians either in the executive or legislative arm of government struggle for political power at all costs. They try to bend or brake rules in order to emerge victorious in the game of politics. Egwu (2014) argues that oil rent is the major source of motivation for the political elite who are fond of contesting politics. This implies that those seeking to be elected into either executive or legislative arm of government are concerned with how they could have access to oil revenue that accrues to the government of Nigeria.

Powers and functions of the executive

The executive consists of the public officials in-charge of applying authoritative policies and rules of a society. These officials carry out provisions of laws that are in statutes, constitutions, treaties or decrees. They carry out the following functions and have the following powers:

- a. The executive arm of government carries out legislative functions. It initiates bills to be considered by the legislature, delegates legislation (takes decisions on the line of action during emergencies)
- b. The executive arm of government carries out administrative functions. It directs, supervises and controls the execution of laws, appoints and removes administrative officials, controls the defence and security forces and coordinates foreign relations on behalf of the state.



- c. The executive arm of government carries out judicial functions. It issues pardons to offenders in form of release from prison, reduction of sentence or grant amnesty to offenders within the powers of the executive (Anifowose, 1999).

Powers and functions of the executive arm of government as outlined in the constitution

The 1999 Constitution of the Federal Republic of Nigeria section 5 (1) (a) and (b) executive powers

- (a) Shall be vested in the President and may, as aforesaid and to the provisions of any law made by the National Assembly, be exercised by him either directly or through the vice president and Ministers of the Government of the Federal Republic or Officers in the Public Service of the Federation;
- (b) Shall extend to the execution and maintenance of this constitution, all laws made by the National Assembly and to all matters with respect to which the National assembly has, for the time being, power to make laws.

The executive needs the support of the legislature to function well. It needs to cultivate continuous mutual cooperation. Hostility between them will frustrate the execution of policies (Anifowose, 1999).

Almond, Powell Jr, Strom, and Dalton (2007:104) observe that "Different presidential regimes provide their presidents with a variety of different powers over government appointments and policy-making, such as the authority to veto legislation or to make policy by executive decree under some conditions"

Pocket veto and override veto could be a major source of conflict between the executive and the legislature. Following the provisions of the 1999 constitution the two vetoes mention above, the president could in Nigeria withhold assent to a bill. He would object to or refuse to sign within thirty days (pocket veto). The legislative arm could also use the powers known as "override veto". Each House could pass the bill again by the two-third majority for it to become law (which means the assent of the president would no longer be required. The power to veto laws made by the legislature has rendered the sittings made by the national assembly in the bill passage process (from the first reading to the last stage) constitute a waste of time and other resources if there was no agreement before this arm of government set in motion the process of passing a bill.

Powers and functions of the legislative arm of government

The legislature is a statute-making body. It consists of the members of the upper chamber and lower chamber at the centre and only a single chamber at the units. They carry out the following functions and have the following powers:

- a. Statute making
- b. Electoral function
- c. Financial
- d. Executive
- e. Judicial
- f. Investigative
- g. Constitutional
- h. Representation



- i. Interest articulation and aggregation
- j. Supervision and scrutiny
- k. Control administration
- l. Informing and educating the public (Anifowose, 1999).

The list of functions that the legislature is given powers to carry out in the polity makes it an organ of government that has to check both the executive and the judiciary. But, how well could the legislature exercise these powers? The legislature has always investigated the activities of the executive organs and it stops at that. They cannot check the excesses in terms of implementing the annual budgetary spending. All the results of the investigation are just for the attention of the electorate.

The challenge of the supervision and scrutiny function is also threatened by the inability of the national assembly to allocate resources to carry-out this function. They usually asked the ministry or parastatals that they were to supervise or scrutinise to provide logistics to them. This means that the legislator could be influenced in the process of carrying out this function as such the function is compromised. The result will not be of benefit to the polity in a long run. Thus, this is not implementable.

Powers and functions of the legislative arm of government as outlined in the constitution

The 1999 Constitution gave the legislature powers categorised as

- a. Express powers
- b. Implied powers
- c. Assumed powers)

The express powers are in section 4(2)

Chapter one part II Section 4 states that the legislative power of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives. These powers empower the National assembly to make laws which are binding on the executive and all citizens. Except there was a call for interpretation in which the Judiciary shall be invited to interpret.

The following are the reasons why legislative powers are declining

- a. Complex and voluminous problems in public policy intervention
- b. Inability to act on emergencies due to the deliberative nature of the legislature
- c. Technicalities in law-making prevent them from functioning well as individuals
- d. Paucity of time
- e. Excessive party discipline
- f. Public opinion and pressure groups (Anifowose, 1999).

The legislature must play the role of a watchdog for democracy to be deepened in a developing country. To also manage the executive-legislature relationship the party administration must respect the doctrine of separation of powers to prevent abuse of powers, affirm the autonomy of each arm of government and keeps tyranny at bay (Jinadu, 2014).



Executive-legislature relationship: conflict and cooperation

The feud between the executive and the legislature is being given more attention when discussing the doctrine of separation of powers. Hardly could scholars recount areas of agreement between the two arms of government. In actual fact, if the feud is given more attention it portrays a negative image of the government in power. The areas of cooperation between the two arms are budget appropriation, budget for the 2019 general elections, and salary and wage increase.

No matter the period of delay in passing the appropriation bill from 2016 to 2019 the bills were usually passed. Although, the strain in the relationship had nothing to do with the interest of the citizens. The two arms of government in the long run still agreed on some of the issues they had disagreed on earlier. This shows that the two arms must cooperate no matter their differences. It is also evident that the criticism the physical separation of powers embedded in the theory of powers is not as tangible as expressed in the theory.

There was initial disagreement on the passage of the INEC's budget for the 2019 general elections but the issues were later resolved and the budget was passed in the interest of a free, fair and credible election. The citizens are moving toward making their votes count with the passage of this bill into law. This is another area of cooperative relationship despite the strain in the relationship between the two arms of government.

In the area of a cooperative relationship between the executive and the legislature, the two arms of government agreed on the approval of the new minimum wage of thirty thousand Naira. The National Assembly gave it a speedy passage and the president assented to it in good time. The electorates have also benefited from the interaction between the executive and the legislative arm again. This is also an evidence that the executive could work with the legislature even when their relationship is not very cordial.

In the area of conflict between the two arms of government in the regime of President Muhammadu Buhari from 2015 to 2019 are the refusal of the National assembly to approve the appointment of Ibrahim Magu as the substantive chairman of the Economic and Financial Crime Commission. Throughout the first tenure of President Muhammadu Buhari, the anticorruption crusade was led by an EFCC chairman whose appointment was not approved by the National assembly. This means that the mantra through which the regime came into power was side-lined by the legislature.

Another evidence of a conflictual relationship between the executive and the legislature is the pocket veto wielded by the President on the amended Electoral Act passed by the National Assembly before the 2019 General Elections. There were insinuations that the Presidency accused the legislature of tampering with some provisions in order to favour them during the 2019 General elections. The Minister of Justice had issues with the bill as such the president was not expected to assent to the bill.

There were also insinuations that the Presidency usually accused the legislature of tampering with some provisions in the annual budget appropriation bills from 2016 to 2019. Vocabulary 'budget padding' among others was developed in explaining the process of interfering with the provisions of the annual budget sent to the National Assembly for scrutiny.



There are consequences of the executive-legislature feud in Nigeria. These consequences are partly responsible for the challenges observed in the consolidation of democracy in Nigeria. Those consequences include:

- a. Abuse of rule of law
- b. Unnecessary delay in the passage of bills
- c. Poor budget preparation and implementation
- d. Promotion of party indiscipline
- e. Political crisis
- f. Instability and corruption (Tifiti, 2014)

The legislative arm in Nigeria too could not perform creditably well. The reasons for this are identified in the following:

- a. The executive attempted to bring the legislature under its control
- b. The domination of the legislative arm of government by inexperienced members created delays in the passage of bills. The turnover of legislators during annual elections is very high as such new members usually dominate the older members.
- c. A high premium is placed on personal interest above national interest as such legislators usually make a frantic effort at doing their jobs whenever they envisage personal gain in the activities they are involved in (Usman, 2010).

The attempt by the executive in bringing the legislature under its control and the high premium placed on self-interest above that of the commonwealth are evidence of how the elite conduct themselves while in the position of authority. The officials of the two arms of government want to be relevant in every regime. This informs why they all struggle to get hold of these arms of government within themselves.

There were consequences of conflictual executive-legislature relations in the 2019 General elections. These consequences are highlighted in order to guide against them in the second tenure of the Muhamadu Buhari Administration.

- a) The build-up to the 2019 General elections brought about defections from All Progressive Congress (APC) (the ruling party) to Peoples Democratic Party (PDP) (the opposition) and from the opposition to the ruling party. This affected the way the primaries were conducted in APC in trying to instil party discipline and not lose the majority in the National Assembly. There was outcry (from the legislative arm of government) that the executive arm of government usurping the powers of the legislature arm of government, but in actual sense, the officials in the two arms of government were in a struggle to control the party machinery in order to sustain their relevance in the two arms of government. The elites were playing on the intelligence of the masses by claiming that they decamped to other parties in the interest of their people.
- b) There was tension between supporters of the two major parties in Kano, Kwara, Kaduna and Rivers to mention but a few. Members of the ruling party in the legislature who defected to the opposition party almost turned the election into a battleground. People lost their lives in Kano and Rivers before and during the elections.



- c) There were accusations of a lack of improvement in the performance of INEC during the 2019 General Election. The notion of inconclusive elections and the attendant consequences on the credibility of the election was more pronounced than that of the previous elections conducted by INEC.
- d) There was an accusation of wastage of effort, time and funds used by the National Assembly in deliberation on the moribund amended electoral act 2019 that the president refused to assent to due to mutual suspicion between the executive and the legislative arms of government. The sitting allowances received and hard work put into making it a reality were not of any use because it was not put into use in the 2019 General elections.

Recommendations

Based on the findings, the following recommendations are expected to add to the retinue of suggestions made to the government on the issue in focus:

- a. In the cooperative working relationship between the executive and the legislature, there must be a proper understanding and mutual respect from both arms of government. They are expected to dialogue and correct each other's mistakes.
- b. Both the executive and the legislature there is need to be objective and sincere about the interests of moving the nation forward while not belittling the dignity of actors in the two institutions.

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