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DEEPENING DEMOCRACY IN NIGERIA: FOCUS ON LEGISLATURE-EXECUTIVE COLLABORATION*

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Abstract

Separation of powers is a fundamental feature of federal democracies. The 1999 Constitution of the Federal Republic of Nigeria like its predecessors separated the legislative, executive and judicial departments of government to avoid tyranny. The expectation of the constitution makers is for cooperation between the three arms of government. Adopting a doctrinal methodology, this paper specifically examines the relationship between the legislature and the executive under the 2015 to 2019 APC/Muhammad Buhari's Presidency. The motivation for the paper is that the relationship between the two arms of government impacts on democracy as a system of governance. It can facilitate and deepen democracy in which case the nation can benefit immensely. A frosty relationship between the two can however, lead to slow or even at times bad governance. The paper argues that the relationship can make or mar democracy. Thus, concern about it is, by extension, concern about democracy. The paper found that the legislature-executive relationship in Nigeria especially between the Presidency and the 8th Senate of the National Assembly was frosty thereby hampering democracy and governance. The legislature and the executive have not collaborated enough to deepen democracy and maximize its benefit. What is the value of democracy if would not translate to good governance and then to development? The paper suggests more collaborative working relationship between the legislature

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and the executive for a more vibrant democracy, good governance and development.

1.1. Introduction

Democratic experiment in Nigeria entered another critical stage with the last February 2019 general elections. The results of the February 2019 general elections produced the executives that include the President of the Federal Republic of Nigeria, the Governors thirty six states of the Nigerian federation respectively, and members of the National Assembly as well as the members of the thirty-six States Houses of Assemblies. These are the executives and the legislature who are key players in the democracy game.[1]

From the inception of the President Muhammad Buhari lead All Progressive Congress's (APC) administration there have been several national issues that constitute a test of the extent and workability of the separation of powers especially as it relates to legislative and executive functions as spelt out under the 1999 constitution as amended. This was more pronounced before the current 2019 next level presidency of the APC and under the eighth National Assembly. It was a clear case indicating that the relationship between these two key players in the Nigerian democracy was not rosy. There were deadlocks in handling and/or execution of issues of national importance bringing to fore the need for executive collaboration between the two arms of government under scrutiny in this paper. What transpired between the legislature and the executive since the conduct of the 2015 elections and until the next level presidency in 2019 offered us enough information to assess the relationship between the two arms of government. We may (or better still need to) go beyond 2015 to examine the nature of the relationship since the reintroduction of civil rule in 1999. The choice of the topic of is therefore not only important but timely. It is coming at no better time considering the political atmosphere in the country today.

The relationship between the two arms of government can either way impact on democracy as a system of governance. It can facilitate and deepen democracy in which case the nation can benefit immensely. On the other hand, a frosty relationship can lead to slow or even at times bad governance. It

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can then be argued that the relationship can make or mar democracy. Thus, concern about it is, by extension, concern about democracy. But then and, more importantly, why should we be concerned about democracy? What is good about it? How does it affect our lives individually and collectively as citizens of Nigeria?

In an attempt to answer the above questions, this paper briefly give the origin of democracy, the philosophical underpinning of democracy and the value of democracy. The paper shall then examine the constitutional framework for the relationship between the two arms of government. It then explores the nature of the relationship in practical terms from 1999 to date and try to link the practice with the theory in order to see if the latter, by its nature, determines the form the former takes or has taken. The paper finally summarizes the issues and proffers some recommendations.

1.2 Democracy: Historical Foundation

The legislature and the executive are among the institutions of democracy. They have existed in varying forms since the evolution of democracy. In order to appreciate the dynamics of the relationship between the two, it is apposite to give a brief historical account of democracy for, according to a scholar,

> If we are to understand the hazards and opportunities of modern democratic life, we still need to grasp the odd and paradoxical past of this simple idea, the sources of its continuing force, and the reasons for the sense of disappointment and distrust which has haunted it ever since it began.[2]

It is in the light of the above that a historical context becomes imperative. In an attempt to give that, we shall see that democracy in the modern sense is an 'advanced' version of democracy in a classical form. Classical democracy emerged from the efforts to achieve political reform in the Greek city-state of Athens during the time of Cleisthenes (508/507 BC). Cleisthenes ensured that the people (*demos*) participated actively in conducting the affairs of the political community (*polis*). This was an unprecedented move, a departure from the past where the monarchs had absolute control and the people were merely objects of rule. He created ten tribes in Athens as sub-divisions of the citizen-body meant for

[2] Dunn, J. (Ed) Democracy: The Unfinished Journey, 508BC to 1993, New York: Oxford University Press, 1993, vii

political organisation. They were defined by geography, based on residence not birth. There were 140 constituencies which the tribes represented and each tribe sent 50 councilors to a Council of 500 persons. The councilors had a one-year term and they could serve only a maximum of two terms. They were drawn from the constituencies according to the population of the constituencies.[3]

There was a popular Assembly with a total membership of 30,000 persons, with a quorum of 6,000 persons. Apart from citizenship, qualifications for membership of the Assembly included being adult male, freeborn and property-owning. The Council had defined responsibilities among which was preparing the business of the Assembly and serving like an executive committee. The Assembly met monthly and with time this increased to up to four times a month subject to a maximum of forty times a year.[4]

The time of Cleisthenes saw the 'arrival' of participatory democracy in Greece. But we must hasten to add that those political reforms were brought in the context of the socio-economic reforms initiated by Solon, the ruler in Athens who came before Cleisthenes. For instance, Solon emancipated the serfs through the abolishment of the requirement of the payment of one-sixth of agricultural produce by the serfs to the oligarchy; he created a distinct identity for the citizens of Athens. He introduced the tribes and the council which his successor expanded. He also established a popular court with jurisdiction to entertain appeals from the decision of magistrates.[5]

With the reforms of Cleisthenes building on those initiated by Solon, Athens saw a political system where the citizens conducted their own affairs. They freely determined the membership of both council and assembly and they periodically met to discuss, decide on matters of common interest and give practical effect to those decisions. This system was further enhanced by subsequent rulers, for example Epilates and Pericles who increased mass participation of the commoners and introduced payment to councilors and members of the assembly. Athens became an imperial power following the Persian Wars 490-479 BC and that gave opportunity for the consolidation of the political system. The Council and Assembly now dealt with more important issues, stronger resource-base permitted

[3] Hornblower, S. "Creation and Development of Democratic Institutions in Ancient Greece", in Dunn, J. pp..1-16, 1993.
[4] Ibid, p. 13
[5] Ibid, p. 3-6

payment of salaries to political office holders and the idea of democracy was exported to other territories.[6]

Democracy suffered a setback when in 322 BC it was suppressed by Macedon and subsequently eliminated from the history of Greece and the world. It resurfaced about two thousand years later especially in the 11th century with the emergence of the Italian city-republics. The city-republics emerged in defiance of papal and imperial authority and they had democratic structures, processes and institutions. For instance, they appointed Consuls clothed with judicial authority. The Consuls were later replaced with ruling councils having both executive and judicial powers. By the middle of 13th century, large communities had acquired the status of independent city-states with written constitutions clearly providing for elections and elaborate procedures for managing public affairs. Democracy had thus been invigorated in the context of the prevailing "feudal and monarchical structures of western Europe".[7]

With the Italian city-republic experiments, some of the building blocks for the foundation of modern notion of democracy had become available. The strong foundation for this modern notion was actually laid with the cumulative effect of three revolutionary events in world political history. First was the 17th century rebellion led by Oliver Cromwell against the monarchy in England coupled with the consequences of Civil War. These forced the adoption of popular sovereignty and representative government in England. The political movement led by Cromwell, *The Levelers*, insisted on the entrenchment of civil and political rights in the constitution for the citizens including the right to vote for representatives in government and even the right to revolution when faced with tyranny.

The success of *The Levelers* and the political reforms which followed the civil war led to the establishment of the British Parliament which became a model of a democratic institution in Europe. Second was the American Revolution which led to the Declaration of Independence in 1776. A federal constitutional democracy with checks and balances was thus established in America. Third was the French Revolution of 1789 which dislodged one of the great monarchies and replaced with a republican system of government where the rights of man and citizen were protected. These had profound effect on governance that by the end of the 19th century, constitutions which gave power to the people through elected

[6] Ibid, p. 9-10

[7] Skinner, 1993, cited in Jega, A. M. Democracy, Good Governance and Development in Nigeria, Spectrum Books Ltd, Ibadan, 2007, pp. 7-8.

representatives were common among major European monarchies. Of greatest influence however is the American experience which produced a liberal democratic system that became a model for many countries of the world especially the third world.[8]

A major distinguishing feature between classical and modern notions of democracy is that while in the former there was emphasis on direct popular participation in governance; in the latter the emphasis is on personal liberty, popular sovereignty and representative government with a system of checks and balances to avert abuse of power. The journey from the classical to the modern notions of democracy was a long and tedious one, and political theorists such as Baron de Montesquieu, Jean-Jacques Rousseau, John Locke, John Stuart Mill, etc had greatly helped in the transition process.[9] The modern notion of democracy is by no means the best and/or the last. Contrary to what Francis Fukuyama would want us to believe, the journey cannot be said to have ended. A scholar had quoted Moore on this point when he observed that

> The development of a democracy is a long and certainly incomplete struggle to do three related things: 1) to check arbitrary rulers, 2) to replace arbitrary rules with just and rational ones, and 3) to obtain a share for the underlying population in the making of rules.[10]

Democracy in Nigeria like some other jurisdictions has a chequerred history. The first experiment after independence in 1960 adopted the parliamentary system. The military intervened in 1966 and civil rule returned in 1979 with the adoption now of a presidential system. This too was truncated at the end of 1983 when the military struck again. Elections were conducted at various levels in a long transition programme spearheaded by the military President, Ibrahim Babangida. The transition failed following the annulment of the June 12 1993 presidential election, believed to have been won by the SDP flag-bearer, M.K.O. Abiola. The country did not witness democratic dispensation until 1999 when the military, led by the Head of State, Abdulsalami Abubakar, handed over to Olusegun Obasanjo as an elected president under the platform of the Peoples Democratic Party (PDP). Since then, Nigerians have been having the opportunity to vote for their representatives every four years. The last general election took place in 2015

[8] Jega, A. M., ibid, pp. 9-10
[9] See for instance Wolff, J. An Introduction to Political Philosophy, Oxford University Press, 2006
[10] Ibid, p. 11

when President Muhammadu Buhari of the newly registered APC defeated the incumbent, Goodluck Jonathan of the PDP. The country is facing yet another round of general elections in 2019.

The question now is whether Nigeria has been able to transform herself, whether there has been a transition for good in the context of the democratic experimentation over the years? Have we been able to establish sustainable and sustaining institutions in our journey so far? Have the institutions of democracy facilitated the deepening of democracy in Nigeria? It may not be fair to expect any serious impact of the institutions of democracy at times of instability. But from 1999 to date, it can be argued that there is time sufficient enough to reasonably expect positive results. This paper shall therefore explore how the institutions have so far faired particularly on the relationship between the legislature and the executive.

1.3 Institutions of Democracy

History has revealed that in both its classical and modern forms, democracy has been associated with some institutions performing defined functions. Government has over the centuries been identified with three main functions: legislative, executive and judicial. From the ancient Greece to the Italian city-republics, we have seen that institutions have performed one function or the other. At times one institution had performed more than one function. For instance, while the Assembly in Greece had legislative powers, the Council had executive powers with some sort of legislative roles in that it prepared the business of the Assembly. Judicial power rested with the magistrates and other higher courts entertaining appeals. Indeed, there is no common system of sharing power even in modern times. Each country adopted a version most suitable to it by its own judgment. For instance, while the British system has a Parliament that exercises legislative powers, elected members also serve in the executive as ministers (secretaries). In the USA, the legislature is distinct from the executive, there is no overlap. Judicial powers in both are exercised by the courts exclusively.[11]

The practice of states in giving specific powers to certain bodies is what is called in popular political parlance, the doctrine of the separation of powers. Keeping the

[11] Vile, M.J.C., Constitutionalism and Separation of Powers,2nd Ed., Liberty Fund Inc., 1998 pp.1-22

three powers separate is a constitutional design for the promotion and protection of citizens from arbitrariness and for guaranteeing the efficiency of government.[12]

The doctrine is normally entrenched in constitutions and it can be understood in three ways: no single person shall belong to more than one organ of government; no organ shall perform the function of another organ, and lastly, no organ shall control another organ, i.e. each shall be independent. Evidences abound in political experiences, that it would be dangerous to concentrate more than one governmental power in the hands of an individual or a single body. There would be abuse of power if that is allowed and democracy, particularly the modern type which emphasises personal liberty, popular sovereignty and checks and balances, would suffer. Political theory has long philosophized on the need for separation of powers. Aristotle, Locke and Montesquieu are notable among the political theorists.[13] For instance, Montesquieu observed that

> Political liberty is to be found only when there is no abuse of power. But constant experience shows us that every man invested with power is liable to abuse it, and carry his authority as far as it will go. To prevent this abuse, it is necessary from the nature of things that one power should be a check on another... When the legislative and executive powers are united in the same person or body... there can be no liberty... Again there is no liberty if the judicial power is not separated from the legislative and executive. There would be an end of everything if the same person or body, whether of the nobles or of the people, were to exercise all three powers.[14]

It is germane at this juncture to pose the question whether there is an order of hierarchy among the three arms of government? Is there superiority among them or they enjoy equality of status? The question is important in order to avoid conflict and ensure smooth running of governmental affairs. Admittedly, even where superiority is determined, conflict may not be avoided where an issue, say between the legislature and the executive, is not clearly spelt out in the law thereby requiring judicial intervention. In the opinion of John Locke, the legislature should have superiority over other organs of government. Some scholars answered the question of superiority depending on the time in question.

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[12] Entin, Jonathan L. "Separation of Powers, the Political Branches, and the Limits of Judicial Review." Ohio St. LJ 51 (1990): 175.

[13] Wolff, J., op cit. pp. 96-97.

[14] Montesquieu, B. D. , The Sprit of the Law, Trans. Nugent, T., Hafner Publishing Company, New York, 1949

For instance, it has been argued that the legislature enjoyed superiority in most western constitutional democracies in the 19th century because it had tremendous powers of law-making and oversight functions over the executive. However, by the 20th century there was a shift in favour of the executive due to the nature of capitalist societies and the growth of political parties among other reasons.[15]

Nigeria has been adopting the American type of liberal democracy and from the 1979 general elections; the country started the executive presidential system. This has been maintained with the return to civil rule in 1999. And just as in the USA, power is separated among the legislature, executive and the judiciary. It is currently the 1999 Constitution (as amended) which provides the framework for the separation of the powers.[16] All members of the legislature, president and vice president, and governors and deputy governors are elected by the people through the general election. The president and governors form their cabinets through appointments approved by the legislature. Judicial officers (judges) are appointed by the executive subject, in some instances, to the approval of the legislature. Nigeria operates a federal system of government so the Constitution makes provisions that apply across the federal, state and local governments representing the three tiers recognised.[17] For the purpose of this paper, focus will be at the federal level except where occasionally reference is made to the state level.

The constitution under section 4 expressly gives legislative power to the National Assembly at the federal level and similar powers to the State Houses of Assembly at the state level. This power covers the power to make laws on subject matters spelt out by the constitution. National Assembly has power to make law for peace, order and good government of the federation or for any part in Nigeria with respect of any matter included in the exclusive legislative list set out in the constitution. The National Assembly also shares with the States Houses of Assembly the law making functions on all matters contained in the concurrent legislative list.[18] The National Assembly additionally vested with oversight powers over the executive and can remove the executive by impeachment once the grounds for the exercise of the power exist.[19] State Houses of Assemblies have power to make law for peace, order and good government of the state or any part of the state with respect to any matter not included in the exclusive legislative list, concurrent legislative list and any other matter with respect to which they are entitled to make laws in accordance with the provisions of the constitution.[20]

[15] Marcidis. R. C. and Brown B., Comparative Politics: Notes and Readings, the Doesey Press, 1977, cited in Jega. A. M., op cit, p. 13.
[16] See Sections 4,5, and 6 Constitution of Federal Republic of Nigeria 1999(as amended)
[17] See Section 3 Ibid
[18] Ibid Part I and II of the second schedule of the Constitution.
[19] Ibid ss. 88 and 143
[20] Ibid Part I and II of the Second schedule of the constitution

However, where any law enacted by the State House of Assembly in furtherance of its legislative powers under the concurrent list is in conflict with a similar law Act of the National Assembly such state law will be valid to the extent of its consistency with the provisions of the Act of the National Assembly.[21] Executive powers at both federal and state levels are conferred on the President (and his cabinet) and Governors (and their cabinets) respectively by section 5 of the Constitution. And lastly, judicial powers are conferred on the courts under section 6 of the Constitution. As in other similar jurisdictions, the dividing lines are expected to be respected so that no organ would seek to perform the function of another organ. And the system is such that no person can serve in more than one organ at the same time.

What is debatable however is whether the required independence of each organ has been or is being achieved? For the legislature, it appears to enjoy some measure of financial autonomy at least at the federal level in that it does not have to go cup in hands begging for funds from the executive arm. Same can hardly be said of the judiciary. The struggle for its financial independence has been a long one at both federal and state levels. It got to the extent of the Judiciary Staff Union obtaining a judgment against the government on judicial financial autonomy. Happily, the recent signing into law of the Constitution Fourth Alteration Bill by President Mohammad Buhari grants financial autonomy to the judiciary. This law will definitely stem the tide of undue influence the executive arm of government has on the judiciary especially at the state level.[22]

The 1999 Constitution does not expressly state which arm of government is superior to another. So the issue of hierarchy can be and is often a subject of academic debate. Can it be argued that the Constitution has impliedly put the arms in order of hierarchy when it began providing for the legislature in section 4, followed by the executive in section 5 and lastly attending to the judiciary in section 6? Proponents of legislative superiority can conveniently argue as such. But more importantly, the fact that the legislature makes law and that the law rules, i.e. everybody is subject to the law, suggests that it has a higher responsibility and, ipso facto, a higher authority. This argument can find support from the Austinian conception of law as the command of the sovereign. Thus in making law, the legislature is simply commanding everybody including the other

[21] Ibid s. 4(5) see also the case of Attorney General Abia State and Ors v. Attorney General of the Federation (2002)17 WRN 1.

[22] See the Constitution Fourth Alteration Bill. 2018

two arms of government. This view is shared by a Nigerian professor of constitutional law, Ben Nwabueze.[23]

However, a wholistic view of the constitution will reveal that the executive, particularly courtesy of its power of the purse, holds the wheels of governance and can, subject to constitutional limitations, steer it the way it wills. It is the arm that comes up with government policies and executes them, even the laws made by the legislature are not self-executing, and it is the executive arm that executes them. The President is the chief security officer of the nation and can take emergency security decisions in national interest. The lack of an unequivocal position and the room for different interpretations on this issue may well be responsible for, at times, the acrimonious relationship between the legislature and the executive. Or at times, it may be a question of the attitude of the persons in office. Where ego or superiority complex is at play, the relationship can be anything but cordial, and in the end, democracy may suffer.

1.4 Legislature-Executive Relations

The legislature and the executive are always arms of the same government. Whether or not the institutions exist separately, the functions have always been performed in the process of governance. Between the two, the legislature is more a symbol of democracy. This is for two reasons: one, the existence of the legislative institution (National Assembly or state House of Assembly) is an indicator that the country operates a democratic system of government. During military regimes the institution does not exist. Its function of law-making is normally performed by a body of military men which also performs the executive function. This was called in Nigeria by different names at different times: Supreme Military Council, Armed Forces Ruling Council, or Provisional Ruling Council. With or without democracy, the executive arm has always existed as a necessary institution in governance. In fact, it is the oldest institution. The other reason is that unlike the executive where only the chief and his vice/deputy are elected, all members of the legislative institution are voted into power.

Being independent yet necessary parts of the same system, the legislature and the executive are meant to work harmoniously. They are meant to be partners in

[23] Cited in Ashafa A. M. and Buhari, M., 'Legislature-Executive Relations in Democratic Governance in Nigeria since 1999, in Lawan, M. M. et al, (Ed.) Democracy and Governance in Nigeria: Challenges and Prospects, Hallmark Publishing Nig. Ltd. 2015, p. 35; see also Nwabueze, B., "Fostering Partnership between the Executive and the Legislature for Sustainable Democracy: A Constitutionalist Perspective", A paper presented at a Conference on Legislative-Executive Relations, NICON Hotel, Abuja, Nigeria, 14th – 16th August 2001.

progress. The constitution expects them to work in synergy. In fact, the Constitution directs them under section 13 to conform to and observe the provisions of the Chapter two dealing with Fundamental Objectives and Directive Principles of State Policy. The legislature in the discharge of its primary responsibility makes law for the peace, order and good governance of Nigeria or any part thereof. The executive is expected to execute the laws for the same purpose. Public expenditure being necessary in governance, it is made possible through the budget process which necessarily involves both the legislature and the executive. The latter raises the budget and lays it before the former for its approval in the form of passing the Appropriation Act.

The presidency cannot work alone. It is a constitutional requirement that ministers must be appointed to help in running the government. Once the nomination is done by the presidency, it requires the imprimatur of the legislature before the cabinet is formed.[24] There are other important appointments which also require Senate approval either by virtue of the constitution or by virtue of the law creating the official positions to be filled. Apart from these and other complimentary functions of the legislature, it performs oversight function to check the excesses of the executive. If there is breach of constitutional provisions or misconduct of a great nature by the president or his vice, the legislature can invoke its power of impeachment to get rid of the erring executive officer.

The intendment of the constitution is to create and maintain institution that would work for the promotion of democracy and good governance. Elected representatives are elected for a purpose and the electorates have expectations of a harmonious working relationship, good governance and development. By the constitutional arrangement, sovereignty belongs to the people and through the electoral process in a democracy; the people surrender the sovereignty to the elected representatives who control the state. As a universal political principle, what governments do in return is to guarantee the protection of the life and property of the people. From Aristotle to Hobbes, Rousseau and other political theorists, the people deserve and are entitled to the provision of 'good life'. In other words, they have a right to development and the state has a duty to provide it. This is emanating from what is popularly known as 'the social contract theory'.[25]

[24] Section 147, Constitution Federal Republic of Nigeria, 1999 (as amended).
[25] Wolff, J., op cit.

States have predated democracies. Likewise, the social contract has predated democracies. Democracy is a form of government among many others. It got 'universal' acceptability because of its 'convenience' and legitimacy. It is convenient because it strikes a 'good' balance between political power and public rights. It is legitimate because political leadership is not imposed; it is 'willingly chosen' by the majority of the electorates. It can therefore be stated that the institutions of democracy are meant for democracy to work; democracy is meant for good governance; and finally, good governance is a means to an end and that end is what is now called 'development'.

The foregoing discussion represents the ideal; a good rendition of the theory, or to make it less esoteric, what the constitutional framework envisages. What actually happens in practice may be a far cry from the theory. We have seen what they call 'the law in books'. What then is 'the law in action'? How can the relationship between the legislature and the executive in Nigeria be described especially since the return to democratic rule in 1999? Has it been a harmonious, a collaborative work? Or has it been one characterized by mutual suspicion, battle for supremacy and acrimony?

It was the Obasanjo administration that launched the fourth republic after a long military interregnum. Olusegun Obasanjo was a military Head of State and he was the one who handed over to an elected civilian president Shehu Shagari in October 1979. In the wake of the June 12 political crisis where the Yoruba ethnic group (to which the acclaimed winner of the 1993 presidential election, Abiola, belonged) was seen as suppressed and denied of the presidency, it was thought to be a good political calculation to appease with a compensation in the form of an Obasanjo (himself a Yoruba) presidency. Because of his credentials, people had hopes and plenty dividends of democracy were expected. Of course the expectation translated to expecting collaborative efforts between the legislature and the executive since the political system is structured in such a way that they must work harmoniously in order for democracy to flourish and yield the expected fruits.

Unfortunately, the military in the president did not allow the civil process to take its course. The president saw himself as an elder statesman, the alpha and omega who must be respected and followed hook line and sinker by all including entrenched institutions like the legislature. Thus he started being at loggerheads with the National Assembly right from the beginning on the election of its

leadership. It was said that all arrangements had been concluded for the election of Dr. Chuba Okadigbo of the PDP which had 57% majority as Senate President when President Obasanjo kicked against it. Huge resources were allegedly used to 'facilitate' the election of the president's preferred candidate, Evans Enwerem.

The journey did not go far and Enwerem was removed and replaced with Okadigbo, the Senate preferred candidate. The presidency was not happy and it was said to have stage-managed the removal of Okadigbo and his replacement with Anyim Pius Anyim. In the House of Representatives where the Presidency's choice, Salisu Buhari, was forced to resign due to certificate forgery scandal, the House elected Ghali Umar Na'abba as Speaker without the nod of the presidency. The situation brought about acrimony between the two arms of government so much so that despite the fact the ruling party was the majority in the legislature, "getting Bills from the executive passed into law was as difficult as the proverbial camel passing through the eye of the needle".[26]

The Yar'Adua administration which succeeded Obasanjo did comparatively well in that the relationship between the two arms went cordial. The only exception that brought about tension was when the PDP wanted Mrs. Patricia Ette as Speaker of the House, as against the wish of the Presidency. When Mrs. Ette was removed and replaced with Dimeji Bankole, there was relative peace and business went well. However, Yar'Adua did not live long. He died and his vice, Goodluck Jonathan, took over as President.

The same problem of leadership in the House was repeated. Jonathan who rejected the zoning formula of his party (PDP) in the Presidential election and contested in 2011 sought to use the same zoning argument to foist Mulikat Adeola as Speaker on the House. The Members resisted that and instead, chose Aminu Waziri Tambuwal as Speaker. The relationship between the two arms during Jonathan's time was not as bad as it was during Obasanjo. But there were occasional conflicts such as when the National Assembly passed resolutions asking Jonathan to remove some of his political appointees, e.g. Minister of Petroleum Resources (Diezanie Madueke), Minister of Aviation (Stella Oduah), the Director-General Securities and Exchange Commission (Arunma Oteh), and Minister of Interior (Abba Moro).[27]

[26] Ashafa. A. M. and Buhari. M., in Lawan. M. M. et al. op cit. p. 50.
[27] Ibid. p. 52

The 2015 general elections in Nigeria saw the unprecedented defeat of the ruling party (PDP) by an opposition, newly registered party, the APC. Muhammadu Buhari took over from Goodluck Jonathan and the APC got majority seats in both chambers of the National Assembly. It was expected therefore that arising from the euphoria of victory, the two institutions of democracy will be spurred by the popular support to work in a friendly manner to deliver the dividends of democracy. However, the emergence of the leadership of both chambers took the party, the presidency and the nation by surprise. While a meeting of APC Senators with the presidency was holding, some APC Senators along with PDP Senators and others cunningly sat in Senate and hurriedly elected Abubakar Bukola Saraki as Senate President. A similar quick action took place in the House of Representatives where Yakubu Dogara emerged as the Speaker. Although it happened against all plans by the ruling party, the President, in a gentleman spirit, quickly expressed his readiness to work with the elected legislature leadership.

A harmonious working relationship especially with the Senate became difficult for more reasons. First, President Buhari did not hide his resolve to fight corruption in the country. In fact that was one of his campaign promises and throughout his career and even as military Head of State between 1984 and 1985, he was known to be incorruptible and averse to corruption. On the other hand, some of the Senators were governors in their respective states and had charges of corruption hanging on their necks. To make matter worse, the Senate President, Saraki, had a case of false declaration of assets when he was governor of Kwara State. While the corruption charges against the former governors were pending, Saraki was arraigned by the Buhari government before the Code of Conduct Tribunal on the false declaration of assets charges. Even though Saraki as an individual is distinct from the legislature which ordinarily means that the trial should not affect the legislature-executive relationship, it became impossible to separate the personal from the official and therefore the matter adversely affected the relationship. To show that it transcended beyond Saraki as an individual, he attended court sessions along with an array of Senators showing their unalloyed support and loyalty. The message was this: it was not Saraki who was on trial, it was the Senate.

Meanwhile, government business requiring legislature-executive collaboration suffered. For instance and not unexpectedly, presidential nominee for the office of the Chairman of EFCC, Ibrahim Magu, who was submitted to Senate for statutory confirmation, was rejected by the Senate. Even though four presidential nominees for the EFCC Board membership[28] submitted along with the proposed Chairman

[28] Bayo Adeleke, Moses Ndasule, Najib Imam and the presenter of this paper were the four nominees.

had been screened by the Senate Committee on Anti-Corruption more than two years, the Senate has refused to confirm their appointments. The Senate has also sat on other confirmations such as the nominees for the Board of ICPC. The fight continued when Saraki won on his 'No Case Submission' at the Tribunal and the government decided to appeal against the decision. The Court of Appeal agreed only partly with the Tribunal and therefore decided that while no prima facie case was established on some of the charges to warrant Saraki entering defence, he certainly needed to defend himself against some of the charges. Saraki appealed to the Supreme Court and, recently, the Court ruled in his favour reverting to the decision of the Tribunal.

It was while the 'legal wars' were being fought between the 'legislature' and the 'executive' that the Presidency sent the 2018 budget proposal to the legislature for its input and approval. The budget was sent in December 2017 with the hope that the process would be completed at the beginning of 2018. The legislature did not however send back the budget to the executive until May 2018. Even then, it was discovered that the legislature had made serious alterations in the budget without consulting the executive. After some altercations, the president finally and reluctantly signed the budget in July 2018. The delay in signing the budget undoubtedly had serious economic and developmental implications. Almost everything in an economy revolves around the budget and so even investors would wait to see how it looks like before swinging to action. So delayed budget translates to retarded development.

The tug of war between the legislature and the executive took another dimension when INEC, a Commission under the executive, prepared time table for the conduct of the 2019 general elections and submitted to the legislature. In the time table, presidential election is to hold earlier than elections into the National Assembly. The legislature is not happy with this arrangement so it overruled INEC and reversed the order: Presidential election now to hold after National Assembly elections. This was politicking in action because by the calculation of the National Assembly, the order of the election would have implication on victory or otherwise of the legislators in the polls. This issue became subject of litigation. It is being contested whether the legislature had the power to alter the order of elections as given by the executive through its Commission. The court is said to have decided in favour of the legislature. In fact, the President for four times declined assent to the Electoral Act, 2015 Amendment Bill submitted to him by the National Assembly. The prohibition of the ECOWAS Protocol on Democracy and Good Governance of any reform on the electoral processes six months to election was cited by the President among the reasons for his declining

assent to the Electoral Act 2015 Amendment Bill. The National Assembly has vowed to veto the President despite the reasons advanced by the President.[29]

The issues are further being compounded. As tension between the arms kept going high, the Police suspected Saraki the President of 8th Senate of involvement in a bank robbery in Offa, Kwara State where he was governor. Saraki dismissed the allegation immediately as mere political victimization but the police insisted he has a case to answer. His trouble seemed to have been lessened when the Attorney-General of the Federation, Abubakar Malami, officially opined that the evidence gathered by the police is not strong enough against Saraki. It is not yet Uhuru for Saraki because the police vowed to investigate the case against him further.

Saraki as the Senate President of the 8th National Assembly had severally criticized the Buhari administration as if he belonged to an opposition party. His attitude and the attitude of the Eight Senate towards the executive are anything but supportive and collaborative. It was no wonder that early August 2018, Saraki along with the governor of his state, Kwara, and state legislators defected from the ruling APC to PDP. This followed the defection of some Senators and Members of the House of Representatives earlier mainly from APC to PDP. These did not come as a surprise to many. First, the defectors did not originally belong to the APC, they joined later. Second, the relationship was so frosty that the defection was seen as long overdue. The defections took place immediately before and shortly after the National Assembly went on vacation to resume on 25th of September 2018.

At some points, the debate raging was whether Saraki can, or should remain as Senate President having dumped the party that still has majority in the Senate. While on vacation, the executive requested the National Assembly to reconvene in order to consider the budget submitted by INEC for the 2019 general election. The request was not acceded to with the dispatch as it should be save that the relevant Senate Committee was said to be attending to the issue. The acrimony between the Presidency and the Eight Senate of the National Assembly was against the tenets of democracy more especially that it was an in-house fight as

[29] Kemi Busari, "UPDATED: 2019: It's official, Buhari Declines Assent to Electoral Amendment Bill," Premium Times, December 7, 2018. https://www.premiumtimesng.com/news/headlines/299704-2019-its-official-buhari-declines-assent-to-electoral-amendment-bill.html, Owede Agbajileke, "Senate set for stormy session over Electoral Act," Businessday, December 10, 2018. https://www.businessdayonline.com/news/article/senate-set-stormy-session-electoral-act/. (accessed December, 10, 2018).

the Presidency and the then Senate President belonged to the ruling party. Happily the acrimony was averted as the Abubakar Bukola Saraki lead Senate President was allowed to conclude his tenure as the President of the 8th Senate of the National Assembly.

1.5 Conclusion

The point has been made above that institutions of democracy which the legislature and executive represent are tools for the attainment of democratic ideals. The much touted democracy is not an end unto itself. It is simply a means to the end of development. Emerging from many years of both military and civil misrule amidst high level of insecurity, poverty, illiteracy, poor health facilities and other developmental challenges, it was a reasonable expectation that at least from 1999 the legislature and executive would collaborate to transform Nigeria and ensure effective transition to a developing economy where basic necessities of life would be available to the people of the country.

UNDP reports and similar reports from other development institutions show Nigeria as still a country struggling with basic developmental challenges despite its huge oil and human resources. In other words, Nigeria suffers from the paradox of want in the midst of plenty. Twenty (20) years of democratic rule is enough for Nigeria to show significant transformation and transition from bad to good and from good to better. Unfortunately, democracy has not made us achieve the needed progress. The legislature and the executive have not collaborated enough to deepen democracy and maximize its benefit. What is the value of democracy if it would not translate to good governance and then to development?

The non-cordial relationship between the legislature and the executive has persisted for long considering the age of democracy in the country. What could be responsible for this sorry state? Is there anything wrong with the structures in place? Has the constitution established the institutions in such a way to make them more effective? Or is there anything wrong with the law? Questions of this nature are necessary to ask in order to identify where the problem lies so as to find a workable solution. It is also necessary to ask because there appears to be strong connection between how a system is structured and the output expected from it. It could be that the structure is fundamentally weak, so weak that it lacks the capacity to do what is asked to do. For instance, can the eligibility of former state chief executives (governors) to vie for a legislative office not impede its work when an influential number of them get elected? Would a governor now legislator

having charges of corruption against him not impede any genuine legislative measure to fight corruption? Of course this quagmire can be approached from different perspectives. But a structural approach to it may not be out of place.

It may be argued that the institutions are structured in a workable condition only that the politicians who man them are not prepared to make them work. It then boils down to the issue of attitude and how political power is perceived and attained. When elected office becomes synonymous with stupendous wealth, the process for clinging to it will be keenly contested and so much resource will be 'invested' in vying for it. The office has thus lost its public service content and turned to a profit-making venture. Both legislative and executive offices are very attractive because of the 'legitimate' benefits attached to them. They also provide access to other untoward benefits for those occupying them. For instance, a monthly 'legitimate' pay of N13.5 million to a Senator in a country where others earn a minimum wage of N18, 000 or even less per month depicts a picture of how a class of citizens live well at the expense of the public while others are left in a state of living-dead.

The commercial attitude can still be linked to the structure of the institutions, particularly the legislature, as housing full time legislators on government's special payroll is most likely fueling the commercialization of public office. Wouldn't there be a return to selfless public service for instance when the legislature is remodeled as a part-time national assignment with a frugal sitting allowance? Would that not eliminate the do or die contest and money politics which reduces political office as a profitable business? Would it not reduce the tension and battle for supremacy with the executive? These are experiments worth trying especially that we have tested the status quo and found it to be ineffective.

The suggested experiments would however necessarily require statutory and constitutional amendments. Who has the power to amend the laws and the constitution? The answer is obviously the legislature. Law amendment is law-making and this is the exclusive function of the legislature. An amendment Bill can be sponsored by the executive or even privately, but then it cannot skip the legislature and expect to be law. This means that the correction of error lies in the hands of those who relish committing error or worst still, which do not see the error as error. The suggested amendments would entail some of the legislators disqualifying themselves and all of them forgoing the huge financial benefits they have been enjoying.

Politics they say is about interests and that is what makes it a business where there is no permanency in either friendship or enmity but permanence of the interest. The politics in politicians would hardly allow them to make such huge personal sacrifices for the benefit of the nation. Changing the structure through the normal process of statutory and constitutional amendment appears not only difficult but impossible in Nigeria. The structure is provided by law. It is the law that can change it for good. The law makers may not make the changing law for reasons of politics. Politics has therefore suppressed law. And ironically, it was the law that enabled the politics and made the politicians. The nation is now a victim, instead of a beneficiary of democracy. A mother has thus given birth to its master. It is only the master who can decide when the mother would be free from slavery if at all.