

The Political Philosophy of Montesquieu: A Solution to the Problem of Ethnicism, Structure and Function of Separation of Powers at the Federal Level of Government in Nigeria

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Abstract: Separation of power as one of the major tenets of democracy was developed by Montesquieu who was seen as the father of modern democracy. Nigeria adopted this system of government since they gained independence though truncated by the military rule but still practicing it till date. Right from the time of amalgamation of Southern and Northern regions of Nigeria, there has been crisis of marginalization and domination from one part of the country to the other. In this work, we shall be looking at the standard practice of the theory of separation of powers as prescribed by Montesquieu, the way it is been practiced in Nigeria and a way out. Also will attempt to look into the constitutional relationship and examine how the executive and legislature have fared so far in the Nigerian context.

Key words: Separation of power • Democracy • Montesquieu and regions

INTRODUCTION

Separation of government powers is the central thesis of Baron De Montesquieu. Separation of powers as one of the major tenets of democracy was developed by Montesquieu who was seen as the father of modern democracy. Nigeria adopted this system of government since we gained independence though truncated by the military rule but still practicing it till date. This topic worth's discussing because of the challenges our democracy is facing in the country today. It seems we need to go back to the drawing board in order to know where we are not getting it right.

Right from the time of amalgamation of Southern and Northern regions of Nigeria, there has been crisis of marginalization and domination from one part of the country to the other. Ethnic differences have been pointed out as a major cause of this problem by conflict resolution experts. This crisis has one way or the other permutes its ugly head into the three arms of the government in Nigeria. Our supposed one Nigeria under democratic rule; its leadership has always been influenced and wielded by ethnicity. Consequently, the resultant effect is impunity and lack of respect to the rule of law by some arms of the government.

In this work, we shall be looking at the standard practice of the theory of separation of powers as

prescribed by Montesquieu, the way it is been practiced in Nigeria and a way out. Also will attempt to look into the constitutional relationship and examine how the executive and legislature have fared so far in the Nigerian context.

We shall also look at the root causes of ethnic crisis in our democratic system of government at the federal level and proffers solution especially through Montesquieu's prescriptions.

Political Philosophy of Montesquieu: Born in France on 18 January 1689 and died on 10 February 1755. Montesquieu has so much interest in political philosophy. His political ideas were shaped as a result of his background. His father was in the army and at such was part of the leadership during the reign of Louis XIV. After the death of his father, Montesquieu became a counselor of the Bordeaux parliament in 1714.

Montesquieu was greatly influenced by the political significant of his time in France. He would always refer to the long reigning Louis XIV who died in 1715 and was succeeded by the five year old Louis XV. Montesquieu stopped law practice and delves into writing. He wrote so many literatures about Human community through "Persian letters, 1721." He tried to criticize the abnormalities of the then contemporary French society.

His notable Book "The Spirit of The Law," rose to influence prominent politicians of the world today

especially in Europe and America. In fact Montesquieu was highly regarded in the British Colonies in North America as a champion of liberty. Following the American Revolution, Montesquieu's work remained a powerful influence on many of the American founders like James Madison of Virginia, the "father of the constitution".

Montesquieu's Theory of Separation of Powers

(Theoretical Framework of Analysis): The term "separation of powers" is an influential concept in modern democracies. It denotes the practice of dividing the powers of a government among different branches. The doctrine of separation of powers is geared towards efficiency but also more importantly, towards guarding against abuse of authority. Hence, it is a liberty-sensitive concept. A government of separated powers assigns different political and legal duties to the legislative, executive and judicial departments. This means that while the legislature has the power to make laws, the executive branch has the authority to administer and enforce the laws so made. The judicial division, on the other hand, tries cases brought before the courts and interprets the laws. It is this latter function that constitutes the court's power of "judicial review".

The doctrine of separation of powers was developed over many centuries. The evolution of this concept can be traced to the British Parliament's gradual assertion of power and resistance to the royal decrees during the 14th Century. The English scholar, James Harrington, was one of the first modern philosophers to analyze the doctrine. In his essay, "Commonwealth of Oceana" (1656), Harrington, building upon the works of earlier philosophers like Aristotle, Plato and Machiavelli, described a utopian political system that included a separation of powers. English political theorist, John Locke, gave the separation concept more refined treatment in his Second Treatise on Government (1690). Locke argued that legislative and executive powers were conceptually different, but that it was always necessary to separate them in government institutions. Lock noted that there was temptation to corruption which existed where the same persons who have powers of making laws also have the power to execute them.

[1] succinctly summarizes the importance and indispensability of the theory of separation of powers in achieving sustainable democracy, thus:

"The political liberty of the subject is a tranquility of mind arising from the opinions; each person has of his safety. In order to have his liberty, because apprehensions may arise, list the same Monarch or

Senate enact tyrannical laws, execute them in a tyrannical manner, there should be a separation of powers".

Thus this theory entails that human freedom and liberty will be ensured when the powers of the three organs of government separated and made distinct from each other. This way, division of powers amongst the organs of government becomes inevitable for the smooth running of government.

[2] in the *Federalist Papers* describes this principle of separation of power as an 'essential precaution in favour of liberty'

The modern idea of the separation doctrine was explored more profoundly in *The Spirit of Laws* (1748), a study by French political writer, Baron de Montesquieu. He based his exposition on the British Constitution of the first part of the 18th Century as he understood it. His statement of the doctrine has thus been interpreted: "If the executive and the legislature are the same persons, there must be a danger of the legislature enacting oppressive laws which the executive will administer to attain its own ends". Montesquieu therefore outlined a three-way division of powers in England among the *Parliament, the king and the courts*, although such a division did not de facto exist at the time. Nevertheless, Montesquieu believed that the stability of English government was due to this practice.

[3] believes that government should be set up so that no man need be afraid of another. This he showed clearly in his book the spirit of law. This made a consistent attempt to survey the verities of human society, classify and compare them and within society, to study the inter-functioning institutions. This work had a great influence on the government of the day. The administrative powers where the executive, the legislative and the judicially. These ideas were seen as radical one by the French government. This is because the theory of separation of powers, eliminates the above three classes in the society.

His theory of separation of powers opines that all the three arms of government (the Executive, legislative and judicially) should be independent of each other. Hence he writes;

"By virtue of the first, the prince or magistrate enacts temporary or perpetual laws and amends or abrogates those that have been already enacted. By the second, he makes peace or war, sends or receives embassies, establishes the public security and provides against invasions. By the third, he punishes criminals, or determines the disputes that

arise between individuals. The latter we shall call the judiciary power and the other, simply, the executive power of the state' The Spirit of the Laws, Book XI [16] [17].

Montesquieu insists that each power should only exercise its own functions, quite explicitly.

“When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner”

“Again, there is no liberty if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary controul; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression” Book XI[16][17]

The logic of the arrangement of the separation of powers is to ensure that the legislature performs the function of 'law making', the executive performs the function of 'rule implementation' and the judiciary oversees the 'interpretation of rule.'

The Legislature: The legislature is an organ of the government that comprises the elected representatives from geo-political zones whose primary function is to make laws and change laws and policies for the welfare of the citizenry. In democracy, the legislature plays a crucial role to give voice to the voiceless and ensure effective representative of all interest and cultural affiliations or segments of a country. Legislature can be described as symbol of liberal democracy, because, it is only the institution or arm of government that always receive the sledge hammer of the military juntas whenever there is coup d'état, as the executive and judiciary continue to function even during such periods.

The legislature is classified into two: unicameral and bicameral. Unicameral Legislature is the type of legislature with a single or one chamber while bicameral legislature is the type of legislature with two chambers. One of the chambers is called a lower chamber while the other is called an upper chamber. The two chambers called the House of Representatives (lower house, presided over by a Speaker) and the Senate (the upper house, presided over by the President of the Senate).

The primary function of the legislature remains enactment of laws, modification or amendment of existing laws to make them to be effective to address the multifaceted and critical needs of populace through good governance. Other functions include: amendment of the constitution, supervision of the activities of the executive, approval of the budget, provision of forum for public opinion approval of appointment, ratification of treaties and approval of state of emergency and declaration of war by the executive.

The Executive Arm of Government: The executive is regarded as the most influential organ of government, charged with the responsibility of executing and enforcing laws. It comprises all the functionaries and agencies that are concerned with the administration of the state. It consists of the president and his ministers as in the presidential system of government; the prime minister and his cabinet as in parliament system, the politicians elected or appointed to the executive arm of government, the civil servants, police and other security agencies.

The Judiciary: Is the third arm of government, whose primary role is to interpret laws enacted by the Legislature and applies such existing law to individual cases, in other to settle disputes between two private citizens or between private citizen(s) and the government. Judiciary is the court and all those who work in the vine yard of justice

However, Baron De Montesquieu's works and ideas lived beyond his time and of most all very influential even in our contemporary political climate.

Doctrine of Checks and Balances: The origin of checks and balances, like separation of powers itself, is specifically credited to Montesquieu in the *The Spirit of the Laws, 1748*. Checks and balances is the principle that each of the Branches has the power to limit or check the other two and this creates a balance between the three separate powers of the government, this principle induces that the ambitions of one branch prevent that one of the other branches become supreme and thus be eternally confronting each other and in that process leaving the people free from government abuses. Checks and Balances are designed to maintain the system of separation of powers keeping each branch in its place. This is based on the idea that it is not enough to separate the powers and guarantee their independence but to give the various branches the constitutional means to defend their own legitimate powers from the encroachments of the other branches. They guarantee that the powers of the

state have the same weight, that is, to be balanced, so that they can limit each other, avoiding the abuse of state power.

[4] viewed checks and balance as;

“That arrangement whereby an arm of government supervises and checks another arm of government against any possible abuse of powers”. This implies that checks and balances as a constitutional tool, enables the branches of government to resist any illegitimate expansion of power by other branches. In line with this, [5] argued that:

“The Madisonian solution was to structure the government in such a way that selfish interests (faction) pursuing selfish ends would encounter as many hurdles as possible. It was this idea that won the day in Philadelphia and came to be enshrined in the constitution of United States America as the famous checks and balances”.

Checks and balances therefore is a mechanism for ensuring that each of the arms of government supervises and checks one another against possible abuse of powers. Hence, the different arms of government are vested with the responsibility to monitor the activities of other arm(s) and also limit the powers of other arm(s). According to [6], *The Doctrine of Separation of Powers and Checks and Balances*: For there to be good governance, separation of powers and checks and balances must coexist. The whole argument in favour of separation of powers is meaningless if the principle of checks and balances does not, in reality, operate as it helps in limiting the powers of each arm and restricting them to operate within their constitutionally assigned duties. This implies that when an individual is vested with such powers of abating and probating or executing and adjudicating, there is every possibility that such a person will become despotic.

Fundamental Laws of Democratic Government: For Montesquieu, democracy is simply “when the body of the people possess the sovereign power in a republic” but “when only a portion of the people have a part in rule, it is an aristocracy (ii, 2, 3)

[7] compares democratic practices of different city states (Athens, Sparta and Rome), choose what is best from their various political and economic institutions.

He was looking out for anyone that had good political and economic policies for the greatest good of the people.

Montesquieu in his Book ii of *The Spirit of Laws* enumerates what he calls essential features of the democratic republic to be;

- The citizens are seen as monarchs and subjects.
- When citizens cast their votes in an open and general elections, the monarchs accepts the will of the people without compromise or imposing his interest.
- Since same citizens who are members of the state, making laws and also subjects of the laws they make, they must also be the rulers and the rule.
- In a democratic state, the citizens must defines precisely which individuals among the populace will be regarded as eligible to attend, cast votes and be voted for in the general election. By so doing, the real identity of the citizens can be ascertained, excluding slaves and aliens among the citizens of the state.

For Montesquieu, having ascertained eligible voters, recommends that voting should be by head counts for smaller democracies. While in large democracies like in ancient Rome, Montesquieu recommends that voting should be by tribes and by class division. By this, it means wealthier people votes separately from poorest people. He recommends this to avoid a situation where poorest citizens out votes weather citizens.

- Another fundamental law of a democratic state according to Montesquieu is voting by lot. He says voting by lot is natural to democracy while voting by choice is more appropriate to aristocracy.

He advocates voting by lot because it makes all citizens to feel very much involved and everyone have greatest chances of been chosen. For him, this will reduce competition, violence and friction. He further says that this method will always provide competent servants knowing fully well that they are accountable to the people.

- Montesquieu advocates for open ballots so that ignorant people will be guided by the principle. Montesquieu stipulates that society should be divided into four economic classes maintaining that only those in the top three classes would be eligible to hold political positions. In his words, he says;

“All citizens regardless of wealth, or lack thereof, should be allowed to participate in the popular assembly, vote for elected magistrates and serve on juries, but eligibility to serve in various executive capacities should be restricted to the wealthier

citizens since presumably, they will possess superior ability and judgment."

It is worthy of note that Montesquieu was a supporter of Aristotle's moderate democracy.

- This fundamental law of democracy suggests that the power to make laws must be vested in popular assembly. Since the people are sovereign, therefore let them make their own laws. Hence, he maintains that this assembly should also establish a senate empowered to pass decrees that have the force of law for one year.

Separation of Powers and Checks and Balances in Nigeria (In Practice): In theory, the 1999 constitution recognized and made provisions for the smooth relationship between the executive and judiciary by prescribing their functions based on the principle of separation of powers and checks and balances. However, when it comes to practice, we observe that there are several party and personal interests causing huge quagmire in the practical implementation and adherence to the principle of checks and balance in Nigeria.

According to [8], the constitution of the Federal Republic of Nigeria provides for a system of checks and balances to restrict the powers of each arm of government. On one hand, the constitution empowers the executive arm to veto bills passed by the legislature while on the other hand, the latter can override the veto by the former. Similarly, the executive can check the judiciary through its power to appoint or remove judges while the judiciary can declare laws made by the legislature and certain executive actions unconstitutional. Other measures to check the excesses of the executive arm by the legislature include:

- Invalidating the actions of the executive done in excess or beyond the constitutional pressures by declaring it null and void and of no effect or ultra vires.
- Removal of the head of the executive (the president) through Impeachment process in accordance with the constitutional provisions.
- Ratification or approval of the appointment of ministers and ambassadors (high commissioners) who are members of the executive.
- Control of the expenditure of public fund by the execution (e.g. approval of money bill or budget).
- Audits public account spent by the executive and carrying out oversight functions in order to obtain

firsthand information on the implementation of the budget by the executive.

However, it is not in dispute that the 1999 Constitution of the Federal Republic of Nigeria came into force on 29th May, 1999. *The Constitution of the Federal Republic of Nigeria (Promulgation) Decree 1999*, following General Sani Abacha's transition to civil rule programme which produced a draft 1995 constitution after the deliberation by a few selected persons imposed on the citizens by the then military junta that purportedly collected and collated some Nigerians views about the constitution and came out with a report.

One of the greatest mishaps to the smooth running of Nigerian polity is military dictatorship. More than two-third of its independent existence was an experience of military engineering during which people's liberty and fundamental rights were trampled underfoot. Usually, whenever the military strikes, the first legislative act is always in the form of constitution suspension and modification decree. Decrees generally become supreme laws and all other laws including the constitution are seen as inferior and subject to decrees.

The net effect is that in militarism, the concept of separation of powers endemic in democratic and federal system of government is abused. The military usurps and merges into itself the executive and legislative arms of government. The judiciary is only left with determining the question of inconsistency between an edict and a decree and between a decree and the unsuspended portions of the constitution. The judiciary is also left with adjudicating on only those matters not affected by the ouster clauses.

This can be seen when an appeal against the refusal of bail by Justice Mustafa of the Federal High Court, (allegedly instigated by the executive) 14th July, 1994. The Court of Appeal, Kaduna Division allowed the appeal and granted bail to M.K.O. pending the determination of the main charge against him by the lower court. Instead of complying with this court order, the FMG held tight to Chief Abiola and purported to appeal to the Supreme Court. This was in spite of the well known rule that an appeal does not automatically constitute a stay of execution of the order appealed against. The contempt continued until Abiola lost his dear life.

The relevance of the above adumbration of military violation of the principle of separation of powers is to help us demonstrate the fact that things have not even so much fared better even in the present 'democratic'

dispensation. The recent flouting of court orders by the executive arm of government is so alarming.

These can be seen clearly played out in 2016, when a competent courts with jurisdiction granted a bail condition four times to the leader of MASSOB Mr. Nnamdi Kanu and former NSA (National security Adviser) to the former Nigerian president Dr. GEJColonel Sambo Dasuki respectively, but the executive led by President Mohamadu Buhari flouted that order and vehemently refused to grant them bail. Similar thing happened in 2nd December 2016, when the leader of Shi'a Muslim movement, Ibrahim Yakqoub El Zakzaky was granted bail after being locked up unjustly with his wife since 2015, as usual the executive refused to grant them bail. It is pertinent to note that El Zakzaky and Sambo Dasuki are still in detention from 2015 till date after series of court (including ECOWAS court) pronouncement for their release. This can be seen as the height of impunity and lack of respect to the rule of law on the part of the executive.

The unilateral imposition of fuel tax by the chief executive of the federation in 2004, an act that violates the provisions of section 59 of 1999 constitution, is another case in direct collision with the separation theory. The section provides for the mode of exercising federal legislative power on money bills. Subsection 2 thereof requires that such bills, including "imposition of or increase in any tax, " (section 59 (1) (b)) must be passed by both houses of the National Assembly plus the presidential assent before they become laws.

But what happened in the instant case was that the bill emanated from the chief executive and was at the same time passed by the same executive without any legislative consideration. This, no doubt, was a state-of-the-art imitation of the military way in clear usurpation of the duty of the legislature.

It is also good to note that the dictatorial tendencies that characterize some of the executive fiats and polices within the present Nigerian polity speak volume of the non adherence to the separation doctrine.

Using the various state apparatuses of coercion, the federal chief executive has been galloping roughshod across the length and breadth of Nigeria playing god. In an unparalleled vindictiveness, he threw all his perceived enemies into jail, destroyed the businesses of the remaining ones and cowed the rest. This is despite the fact that the manner in which the present government assumed power is far from fair. It appears to us that since "separation of powers" is a liberty-sensitive concept, the high level of no freedom and violation of fundamental

rights of Nigerians is a clear testimony to the fact that the separation theory is never considered.

Nigeria has witnessed crisis in her *Doctrine of Separation of Powers and Checks and Balances* in democratic arrangement as one branch of government tries to check the other arm of government. For instance, when the National Assembly attempts to check the activities of the executive through its over-sight responsibility, they end up misunderstanding themselves. Similarly, when the executive uses its instrument to regulate the expense and budgeting of the National Assembly, they quickly fight back with threat of impeachment. Nigeria has never had good implementation of the principle of checks and balances in the history of her democratic experience and existence.

According to [9] Nigeria's presidential democracy there have been several instances of one form of interference of power between the legislature and executive since the inception of presidential democracy. Such interference got to its peak at the first 8 years of the Fourth Republic after the inception of the new democratic dispensation in 1999. This conflict of interests between the executive and legislature produced five senate presidents in eight years (1999- 2007). Similarly, the cold war existed between the Buhari government and the legislature over the 2015 budget is also noteworthy. This scenario delayed the passage of the 2016 budget up till the second quarter of the year. 2017 and 2018 budgets suffered the same fate between the executive and the legislature.

In 2015 when the current administration took over power, federal executive government interfered in the legislature's leadership affair by trying to impose a preferred candidature upon the senate that rejected the move and elected the current embattled Senator Bukola Saraki as the Senate President. Consequently, federal executive government instituted a trial accusing Saraki (The senate President) for false assets declaration which finally led to rest at Supreme Court in His (Saraki) favour. Incontinuous attempt to take over National Assembly by the executive, The Senate President was also accused by Executive for sponsoring armed Bank robbery in Offa Town in Kwara State.

Upon his (The Senate President Saraki) defection to the opposition party, the executive have mobilized, influencing and inducing other members of the senate to commence an impeachment process against the Senate President by all means including illegal means. This ugly move manifested itself on two different occasions; first was on Tuesday July 24 2018, when police blocked

the convoy of the Senate President restricting him from going to perform his constitutional duty in the house. This action was allegedly planned by the executive so as to buy time while they carry out their impeachment on the senate President. Second was on 7th august 2018, when an executive motivated siege was carried out by the operatives of the DSS (an agency under the executive) at the National Assembly complex barricaded the entrance of the complex shutting out lawmakers from gaining access. Upon the sack of their boss, news broke out that it was an orchestrated planed action to impeach Saraki, by the presidency but they had to sack him in order to cover up their failed plan.

However, the legislature is not left out in this flouting of rule of law as enshrined in the Nigerian constitution. The executive arm has alleged that several key appointments by the president that requires Senate approval have suffered delays hence affecting key agencies of government in carrying out their duties. With the decision by the Senate not to confirm the nominee for the chairmanship of the Economic and Financial Crimes Commission (EFCC), Mr. Ibrahim Magu. The Magu nomination has not only divided the presidency itself, it has equally caused division among members of the public. So, while some upbraid the Senate for rejecting Magu as EFCC chair, others praised it for being thorough with the process.

However, while Magu's issue was still pending, the Comptroller-General of the Customs, Col. Hameed Ali, came in with the policy to start stopping motorists on the road and asking them to produce genuine import duty payment documents. This is without doubt, an anti-people policy, which to an extent exposes the inefficiency of the agency.

When the Senate got wind of this, it invited him to come and explain the rationale behind that policy. But Ali treated the invitation with disdain by going to the media to announce that he would not honour the invitation and that there was no going back on the policy. The IG of police was also invited by the senate in one of its ways of checking the excesses of the executive; the IGP never honoured that invitation.

Just last recently, the long awaited PIB has just been passed and was sent to the president for his ascent who has vehemently refused to sign it into law. These non-respect to the rule of law has dare Consequences directly or indirectly to the citizens, the economy is in shambles. Security of life and property cannot be guaranteed anymore. Life is not worth more than a peanut as a result of this fight between the executive and the legislature.

From Odi to Zaki-Biam's cold blooded massacre of harmless children and women; from Benue to Taraba; from Nasarawa to Kaduna; from Borno to Meiduguri etc., its either vicious terrorist attack, kidnapping, armed robbery attacks to hired assassinations. Indeed, the present government has a lot of questions to answer.

The above have clearly shown us that there is no recourse to the rule of law among the three arms of government in Nigeria.

Problem of Ethnicity in Nigerian Democracy (As it Affects the Structure and Functions of Separation of Powers at the Federal Level of Government in Nigeria)

Ethnicity: [10] defines ethnic groups as '*social formations distinguished by the communal character of their boundaries*'. To him, the crucial communal factors may be language, culture or both. Similarly, [11] conceptualizes an ethnic group as a "*social collectivity whose members not only share such objectives characteristics as language, core-territory, ancestral myth, culture, religion and/or political organization, but also have some subjective consciousness or perception of common descent or identity*". This ethnic identity results from contact with other groups. But he argues that ethnic pluralism is necessary but an insufficient condition for ethnicity. *Ethnicity therefore is a 'social phenomenon associated with interactions among members of different ethnic groups'* [12]. It emerges when the members of an ethnic group become characterized by a common consciousness of their identity in relations to other groups with in-group and out-group differences becoming marked with time. Such exclusivist, identity-based discrimination undoubtedly results in conflicts over scarce economic resources and socio-political goods.

The years between 1952 and 1966 brought change in the political culture of the country, transforming the three regions into three political entities. Thus, the struggle for independence was reduced to the quest for ethnic dominance. At this time, ethnic and sub-ethnic loyalties threatened the survival of both East and West, while the North was divided religiously between Christianity and Islam. It was a period of politicized ethnicity and competition for resources, which worsened the relationships between ethnic groups. There was a high degree of corruption, nepotism and tribalism. The national interest was put aside while politicians used public money to build and maintain patronage networks. Since independence, the situation in Nigeria has been fraught with ethnic politics whereby the elite from different ethnic groups schemed to attract as many federal

resources to their regions as possible, neglecting issues that could have united the country. The anarchy, competition and insecurity led to the demise of the first republic. Military intervention culminated in the gruesome ethnic war from 1967 to 1970, when the mistreated Igbos of eastern Nigeria, called Biafrans, threatened to secede from the federation. The Igbos' grievances were because they were denied of their basic human needs of equality, citizenship, autonomy and freedom, [13]. Wherever such basic needs are denied, conflict often follows as the aggrieved groups use violent means to fight for their human rights.

Ethnocentrism in the country and evidenced corruption of the electoral and political process led in 1966 to a number of revengeful military coups in the country. The first military coup was in January when a collection of young leftists under Major Emmanuel Ifeajuna and Chukwuma Kaduna Nzeogwu led a coup, it was partially successful; the coup brought about the death of some notable figures such as the former Prime Minister, Abubakar Tafawa Balewa, Premier Ahmadu Bello of the Northern Region and Premier Ladoke Akintola of the Western Region. Though they could not set up a central government, therefore, President Nwafor Orizu was then pressured to hand over government to the Nigeria Army under the command of General J.T.U. Aguyi-Ironsi. Later, another counter coup by another successful plot, which were primarily supported by the Northern military officers and those Northerners who in favor with the NPC. This time, it was planned and carried out by the Northern officers and gave Lt. Colonel Yakubu Gowon to become head of state. This series of coups led to an increase in ethnic tension and violence. The Northern coup, which was mostly motivated by ethnic and religious reasons, the result was a bloodbath of both military officers and civilians, especially those of Igbo extraction. The violence against the Igbo increased their desire for a demand of their own autonomy and protection from the military's wrath. By May 1967, the Eastern Region had declared itself an independent state calling themselves "Republic of Biafra" with Lt. Colonel Chukwuemeka Odumekwu Ojukwu as the leader, [14].

According to [15] Ethnicity emergence of Nigeria federalism has without measure caused feelings of ethnic identity and as a result; rejection became the basis of distinguishing individuals in the cities and at the national level. [16] holds that it is natural that each ethnic groups in Nigeria belief is that they can only receive help from members of their ethnic group alone. The recent bloody conflict that was named "Christians and Muslims" conflict

at Jos, take for instance is a repeated evidences of fact or colour, which resemble the truth, but not really the root (truth) of the escalation of the action (the war). The truth behind the action was that some cow reared men took their cows into the farms of another group which destroyed the crops in those other

People's farm and when the owners of the farms came and was both angry, being hurtled because of their labored farms and crops been selfishly destroyed by other groups cows, in return against such unreasoning malpractices was the conflict. By reasoning, who will not agree that cows can destroy crops sown in any particular farm?

Critically, if view in the right perspective, could such minor incident cause so many blood shedding and finally loss of lives to such an extent, the whole world can noticed? Why and how should such unusual trespass and individual wicked behavior be taken to be "Christians' and Muslims" conflict? In education and it's ramification, does politics means injustice, assassinations, killing, violent actions, corruptions, etc., as it is being experiencing in the modern politics among the political leaders' and parties so called? In view of the above questions, let us take a look on the report below:

A new journey began for Nigeria after President; Muhammadu Buhari was elected and sworn in as President. However, from the trappings of the recent past, that journey seems to be on the same path of corruption, government ineptitude, official sleaze and waste and general hopelessness. Virtually everywhere you look on the Nigerian polity, all you see is how governance should not be done. If there is any man who owes Nigerians a huge debt, it is Buhari because of his change mantra. Despite the fact that PDP was in power then, people came out in their numbers to vote for him (Buhari). Most of these voters said something in the line "I am not voting for APC, I am voting for Buhari", hence Buhari on the ballot paper was the symbol of the broom and the acronym APC. Well, they voted the APC and Buhari won in a "free and fair" election. The question is whether Buhari will stand by the masses now he has what he asked for.

Another question is what would be the achievement of the present government in terms of making living favorable to his fellow citizens, especially, in the area of ethnic conflict management and over the daily needs of his people?

Causes of Ethnicity in Nigerian: Tribalism; loyalty to ethnic groups impedes true nationalism and unity of the

country. Most of the conflicts that take place begin from ethnic sentiments by selfish political motives. For example employment into public office, are mostly for tribal reasons and not competence. When objection is raised, it goes into ethnic fight.

Favoritism; this can be seen as preferential treatment. It is the action of somebody in power favoring their relatives and friends especially in appointing them to good positions. This is a source of conflict in the nation, as some people in authority fail to follow rules strictly when it relates to their relatives and friends.

Corruption and inept leadership; corruption and unqualified leaders cause ethnic conflict in Nigeria. Gross mismanagement of national resources and misruled by unqualified leaders, have impoverished and denied opportunities to majority of Nigerians since independence which has led to agitations by citizens.

Clearly, inequality exists in the way Nigeria shares its federal positions and allocation of infrastructure projects among the federating states.

To create a sense of balance and share appointments and projects fairly, government established Federal Character Commission but this has not stopped protests since government sometimes fail to use federal character for appointments, hence the clamour for resource control among other demands.

Resource control; this is one of the causes of ethnic conflict in Nigeria. From 1966, when Isaac Boro formed a militia group to fight for resource control till date. This is a hot issue which has refused to go away due to environmental degradation of the area and lack of real development in the Niger Delta which makes over 905 of the revenue for running the economy of Nigeria.

Marginalization of some ethnic groups in the country; this is a situation where people are fighting for justice against perceived injustice meted against them.

CONCLUSION

"Separation of powers" as currently understood implies that none of the legislative, executive and judicial powers is able to control or interfere with the others (e.g the judges should be independent of the executive and the legislature), or that the same individuals should not hold posts in more than one of the three branches (eg that ministers should not be members of the legislature or vice versa), or that one branch of government should not exercise the functions of another (eg, that executive should not make laws).

It therefore goes without saying that Harrington, Locke, Montesquieu and other writers saw the concept of separation of powers as a way to reduce or eliminate the arbitrary powers of unchecked rulers.

The political ideas of Montesquieu who advocated for the theory of separation of powers of government amongst the three organs of government gave greater Impetus towards winning the battle for the Independence of the Judiciary, at least in common law tradition. Hon. Justice Walter Onnoghen was appointed by the President and sworn in as the Acting (instead of substantive since he is the most qualified) Chief Justice of Nigeria (CJN) on the 10th November, 2016. Making him a substantive CJN was politicized by the executive on the ground of ethnicity. It was alleged that Mr. President wanted a conservative Muslim Fulani, who happens to be following Justice Walter in hierarchy of seniority at the Supreme Court, as the CJN. It took the intervention of the acting president Yemi Osinbajo upon pressure from Nigerians to send Walter's name to the Senate for confirmation on 7th of March 2017. Another disregard to the judiciary prayed out on the day of NBA conference where Mr. President literally told the eminent jurists, SAN and lawyers to "go to hell" with the rule of law. According to him, the rule of law would not be elevated over "National Interest". The question now is who determines what should constitute as national interest? Can't National Interests be protected within the ambit of the law? What is the place of other two arms of government in determining what should constitute National Interest?

It is our recommendation that the separation of power theory should be absolute in practice. This if enacted will make the judicially, executive and legislature completely independent of each other. The executive is not supposed to make appointments for the judicially nor interfere with the leadership of the National Assembly. The NJC should be saddled with the responsibilities of recommendation and appointment of CJN and other Justices in Nigeria. If this is the case, there will not be any room for unnecessary interference and abuse of power by the executive.

If the executive continues to overwhelm its powers over the other two arms, there will always be room for them to be in total control of the three arms of the government having both the Senate President and CJN come from the same ethnic group.

Having said these, winning the battle required statesmen who, with commitments translated the concept into political practice and the courageous Judges who

stood unmovable for the principle of the Independence of the Judiciary at the peril of pain of removal and imprisonment.

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