CHAPTER ONE
INTRODUCTION

1.1 Background of Study

Right from time immemorial, human beings have been concerned with the quest for power in order to dominate, subjugate, exploit, dehumanize, and oppress others. When this is not achieved in a peaceful way, they can resort to mischievous practices. Human as a selfish being prefers power to every other thing as far as life is concern. That is why people go to any length to acquire power. That is why a renowned political scientist, Nnoli defined politics as all activities directly or indirectly related to the struggle for political power, for seizure of state power and the use of state power.[1] The question now is, what is the cause of this general inclination of all mankind to perpetually and restlessly desire for power after power which ceases only in death? Thomas Hobbes answers that the cause of this, is not always that a man hopes for a more intensive delight, than he has already attained to; or that he cannot be content with a moderate power but because he cannot assure the power and means to live well, which he hath present, without the acquisition of more.[2]

Montesquieu started from a rather gloomy view of human nature, in which he saw human beings as exhibiting a general tendency towards evil, a tendency that manifests itself in selfishness, pride, envy and the seeking after power. Human being, though a rational animal, is led by his desires into immoderate acts. In the British experience, Montesquieu observes that "A people like this, being always in ferment, and more easily conducted by their passions than by reason, which never produced any great effect in the mind of man."[3] Montesquieu was concerned to combat the despotism which Louis XIV had established in France. It was Louis XIV who asserts that he is the state. Montesquieu maintained that it was to this separation of powers of government that the English people owed their liberty.[4] The accumulation of all powers–legislative, executive and judiciary in the

same hands whether hereditary, self-appointed or elective may just be pronounced the very definition of tyranny.[5]

The tyrant terrifies his subjects. Spying balefully on the world from his strongly fortified palace, as sensitive to approaching prey or predators as a spider delicately banced at the centre of a web, he dominates the life of all around him. He takes credit for the achievements of nobler men who spend their substance on civic projects, like great churches and other fine buildings. Entertaining the ambassadors of foreign powers at his own table, he makes decisions that affect the well-being of all of his subjects without consulting anyone except his favourites. He turns his entire state into a machine for his own profit and that of a few friends. And he does not shrink from robbing wealthy men of their possessions or pure young women of their virtue. All threats to his sole authority he resists with absolute ferocity.[6] Little wonder Aristotle states that:

> There is no wickedness too great for him [a tyrant]. All that we have said may be summed up under three heads, which answer to the three aims of the tyrant. These are: the humiliation of his subjects, he knows that a mean-spirited man will not conspire against anybody; the creation of mistrust among them; for a tyrant is not overthrown until men begin to have confidence in one another; and this is the reason why tyrants are at war with the good; they are under the idea that their power is endangered by them, not only because they would not be ruled despotically but also because they are loyal to one another and to other men and do not inform against one another or against other men; the tyrant desires that his subjects shall be incapable of action, for no one attempts what is impossible and they will not attempt to over throw a tyranny, if they are powerless.[7]

But constant experience shows us that every human being invested with power is apt to abuse it, and to carry his authority as far as it will go. Is it not strange, though true, to say that virtue itself has need for limits? To prevent this abuse, it is necessary from the very nature of things that power should be a check to power. A government may be so constituted; as no man shall be compelled to do things to which the law does not oblige him, nor forced to abstain from things which the law permits.[8] Montesquieu destructively excoriated France's monarchical absolutism.

It is also because of tyranny that Montesquieu advocates separation of powers that made Nigeria to go for a democratic system of government with separation of powers as one of its elements. Anybody who takes a cursory inspection of history of Nigeria will discover that:

> One of the greatest mishaps to the smooth running of Nigeria 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 of decree. By this act, ouster clauses become regnant. Decrees generally become supreme laws and all other laws including the constitution are seen as inferior and subject to decrees.[9]

Nigeria re-introduced the presidential system of government with its twin concepts of separation of powers and checks and balances enshrined in the 1999 Constitution, after about more than three decades of military occupation of the Nation's democratic space. Between 1966 and 1999, power was held by the military in Nigeria without any break-off, apart from a momentary and ephemeral return to democracy from 1979 – 1983. The Nigeria military Coup of 31st December, 1983 was led by a group of senior army officers who overthrew the democratically elected government of President Shehu Shagari. Hitherto, the country had attempted the presidential system in the second Republic (i.e. 1979 – 83) and in the aborted Third Republic (1992 – 93). The re-introduction of the presidential system of government has opened yet another critical and fundamental issue that relates very strongly to the application of the principles of separation of powers and checks and balances in the operationalization of the presidential system of government, implicit in the 1999 constitution of the Federal Republic of Nigeria.[10]

1.2 Statement of Problem

The statement that constitutes the problem of this work is the abuse, misuse and misapplication of separation of powers. Both in Montesquieu's political theory and Nigeria's democratic practice, there is a provision for separation of powers but the question is, do we really have separation of powers or coordinating and subordinating conjunction of powers in the Nigeria's democracy? Is separation of powers possible in practice or is it a figment of one's

imagination? What is the major problem associated with separation of powers? In response, Yash Vyas contends:

> The state is universally accepted as a necessity. Individuals need the state to protect their rights, although the state is a coercive mechanism which may be the greatest threat to the realization of those rights. The problem is, therefore, how to control the coercive and arbitrary powers of the state.[11]

Moreover, any union of two powers was viewed as producing the same effect. If the legislative and judicial powers were joined, the laws would be uncertain, they would reflect on the whims, caprices or the prejudices of the judge. If the executive and legislative powers were united, the security and protection of the subject would be a shadow. The executive would make itself absolute and the government would end up in tyranny.[12] Of all the political ideologies that have been constructed, is democracy the most suited polity for Nigerians? If democracy is her most preferable polity as some would answer, why are the negativities which are usually overcome in democratic polity very intractable getting over in Nigeria, even after so many years of this experiment? [13] For Ikenga Oraegbunam:

> 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 to 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 unfreedom and violation of fundamental rights of Nigerians is a clear testimony to the fact that the separation theory is never considered.[14]

The question then is, how could Nigeria overcome the anti-democratic tendencies that militate against its progress and suspend the gains of democracy too far away from her reach?[15] To answer this question, this work will focus on Montesquieu's theory of separation of powers and after that, it will take a look at how it will solve the problem of abuse of power in Nigeria's democracy.

1.3 Purpose of Study

The Nobel Laureate, Wole Soyinka says that: "human being dies in all who keeps silent … [when power is abused]".[16] The purpose of this work is to study Montesquieu's political philosophy with particular reference to his views on separation of powers. This work will take an in-depth study of his elucidations on the principles of government because the knowledge gained from this will help to have a better understanding of his theory of separation of powers and how to relate it to Nigeria's democracy. This will help to discover the flaws and shortcomings in the Nigeria's democratic practice and offer reasonable suggestions on how to make Nigeria's democracy thrive and be rid of despotic and oligarchic vestiges. This research will show how separation of powers can help to preserve the liberty of the individual and avoid tyranny.

1.4 Scope of Study

There is no doubt that Montesquieu has several works to his credit but the concern of this work is *The Spirit of Laws* (1748). The work will take a look at Montesquieu's views on laws, state of nature, the nature and corruption of different principles of government, political liberty and separation of powers. The scope of this work covers the practice of democracy in Nigeria, the abuse, misuse and misapplication of separation of powers. The work will also take a look at how Montesquieu's theory of separation of powers can help to correct the deplorable and appalling state of affairs of the Nigeria's democratic state if properly applied.

1.5 Significance of Study

The significance of this research cannot be overemphasized. The study of Montesquieu's theory of separation of powers has a great relevance to Nigeria's democracy because democracy without a proper practice of separation of powers is gibberish and despotic. The significance of this work include the following: It prescribes how separation

of powers can be used as a universal razor to cut away all tyrants, despots and totalitarians in the Nigeria's democracy. This is because it is only separation of powers that does not encourage absolute power and as government of the people by the people and for the people, democracy is not arbitrary.

This work will help to give an overview of how to maintain equality of all before the law. That is why Osita Nnamani says that separation of powers thus contributes in maintaining the equality of all before the law by ensuring that the law-makers through not enforcing the laws against themselves, would not become a special group distinct from the rest of the community, a group that cannot be reached or touched by law.[17]

This work can serve as a research material for those who will in future undertake a research similar to this, precisely, the undergraduates and postgraduates. Also, those teaching government, political science and socio-political philosophy in institutions of higher learning can equally benefit from it.

The insight into this work can make those who are influenced by separation of powers to have a rethink. In philosophy, any position held must be a justified true position. Thus, scholars can be inspired by this work to re-examine democracy especially its strict emphasis on liberty, rule of law and separation of powers to know if the assertion is justifiable or not.

This work, though not the first on separation of powers will through its emphasis on liberty, human rights and rule of law be another work that unveils how democracy and separation of powers should be practiced. It will help to change the character of the Nigerian citizens, the disposition of government to the people and the disposition of the political elite to democracy.

1.6 Methodology

The method employed in this work is phenomenological method. Phenomenology is the study of structures of consciousness as experienced from the first-person point of view. The central structure of an experience is its intentionality, its being directed toward

something, as it is an experience of or about some object. An experience is directed toward an object by virtue of its content or meaning (which represents the object) together with appropriate enabling condition.[18] Practical recommendations that if systematically applied will bring about a positive change in the Nigerian democratic state will be made. In order to give the topic a deserved explanation, primary and secondary materials are used and these include Montesquieu's own writing-The Spirit of Laws published in 1748, and that of other scholars' work in social and political philosophy in particular and other related areas to philosophy in general. Materials such as textbooks, journals, magazines and internet are also used. Chicago Manual of Style is used in this work; there are endnotes at the end of each chapter and bibliography at the end of the work.

1.7 Definition of Terms

Unanimity of opinion among human beings is a scarce resource. For this reason, the definitions of these basic concepts or terms apply only as they are used in this work. These terms are clarified to enhance precision, clarity, avoid confusion and misunderstanding. The terms are: separation of powers, power and democracy. Conceptual linkages that exist among these terms are discovered and their relationship established.

1.7.1 Separation of Powers

This is the practice of sharing the powers of government among different branches in order to ensure that there are efficiency, high productivity, accountability and to avoid abuse of power. These branches include the executive, legislative and the judiciary. According to Nwori Benjamin Chukwuma and Eje Benjamin Oda, the term separation of powers means that the governmental powers of legislating, executing and adjudicating should not be monopolized or consolidated in the hands of one person or group of persons. Political thinkers and philosophers from the days of Greeks era agreed that it would be tyrannical if all the powers are concentrated on one individual or group of people. According to them:

> Accumulation of all powers in the same hands whether one person, few people or whether hereditary, self appointed or elective may just be termed tyranny. Hence, the popular saying that power corrupts, absolute power corrupts absolutely.... The purpose of such separation is to preserve the freedom and liberty of the citizens and to avoid tyranny which would result from concentration of powers in the same people.... The main purpose of separating the three powers of government is to prevent the emergence of dictatorship and promote good governance.[19]

These are what ought to be and not what is in the Nigerian democratic dispensation where majority of our leaders are dictatorial democrats that instead of promoting good governance will promote self governance and that is why people are disappointed in the way the government is run today. The executive should not do the work of the legislature and judiciary and vice versa. That is the only way that good governance can be promoted. For if an executive becomes a judge, there will be partiality and injustice. Corroborating this point, John Locke asserts that in a well ordered commonwealth, where good of the whole is so considered as it ought, the legislative power is put into the hands of diverse persons who duly assembled have by themselves or jointly with others, a power to make laws, which when they have done, being separated again, they are themselves subject to the laws they have made; which is a new and near tie upon them to take care that they make them for public good. But because the laws that are at once and in a short time made, have a constant and lasting force, and need a perpetual execution, or an attendance there unto, it becomes necessary there should be a power always in being which should see to the execution of the laws that are made and remain in force. And because of that, the legislative and executive powers were separated.[20] Without separation of powers, there will be no difference between a democratic government and a despotic government.

Therefore, separation of powers as it is used in this work is based on how each branch of government can perform its functions to guarantee liberty, high productivity, specialization, effective working of rule of law thereby eliminating tyranny or dictatorship

among leaders. It is applied as a theory that provides enabling and conducive environment for true democracy.

1.7.2 Power

Power cannot be discussed without mentioning influence and control. The reason is that the major aim of power is to influence or control somebody. When somebody wields power over you, the person controls or influences you to act according to his dictates. Individuals use their power to ensure that their will is done and interests protected despite the resistance and unwillingness of the person to whom such power is exercised over. If Mr. A can influence and control Mr. B, then it means that Mr. A has power over Mr. B. In the view of Simon Blackburn:

> The power of an individual or institution is the ability to achieve something, whether by right or by control or influence. Power is the ability to mobilize economic, social, or political forces in order to achieve a result. It can be measured by the probability of that result being achieved in the face of various kinds of obstacle or opposition. It is not essential to this definition that the result be consciously intended by the powerful agent: power may be exercised unknowingly, although of course it is frequently deliberate.[21]

Human beings are power hungry, all his actions are aimed at power accumulation and that is why the desire for power is the most firmly established of all human desires. It is because of this that he imposes his will on others in order to dominate them. The dictum "with God all things are possible" has been equated with the political dictum "with power all things are possible.[22] Power can take different forms like economic power, political power, physical power, military power, intellectual power, normative power, expert power, and wife power. The type of power that this research is concerned with is political power which according to S.U. Ununu is the type of power that accrues to an individual in view of the political position that he or she is occupying. It is the power that enables an individual to make a decision that would be binding on the whole members of a given society. The power the president of the country and the governors of states have is the good example of political power.[23] According to E.O. Ibezim:

> Power encapsulates both the ability to command-to exact obedience to one's orders and to make or to influence decisions that affect directly or indirectly the welfare of others as well as one's own fate. When we consider that politics is a struggle for power, we then recall that it centres around who shall determine public policy and what the policy shall be-what taxes shall be levied and how the burden is to be distributed, whether government shall build industrial Estates in all the local government areas or not etc.[24]

Power as it is applied to this work has to do with the influence and control of the citizens of a state without any abuse and arbitrariness in order to provide the citizens with the common good so that they can live a happy life. The major problem in Nigeria is that there is abuse and misapplication of powers but Montesquieu's theory of separation of powers which discourages absolute power and abuse of powers remains the remedy to the Nigerian democratic ills.

1.7.3 Democracy

Etymologically, democracy is derived from two Greek words "demos" meaning people and "kratos" meaning rule. When these words are put together, democracy becomes rule by the people. The term democracy was first used in the fifth century BC in Athens, the ancient Greek City State situated in a beautiful part of Pelponez in Attica. It was around 460BC, that an individual was known to whose parents had decided to name him "Democrats" a name which may have been given as gesture of democratic loyalty. In the year 507BC, the Athenian leader Cleisthenes introduces a system of political reforms that he calls "democratia" or rule by the people.[25] It can be said that since Herodotus coined the word "*demokratia*", some 2400 years ago, "Democracy according to Sartori in F.U Onwkike has acquired diverse meaning, referring, as it has, to very different historical settings as well as to very different ideals. Thus, with the passing of time, both the denotative and connotative uses have changed.[26] The brand of democracy that allows everybody to participate in the taking of decision and running of government cannot

withstand the test of time in the contemporary period because of increase in population. That is why Chidozie J. Chukwuokolo contends:

> But as societies evolve into more complexity, it became apparent that direct democracy was no longer serving the democratic needs of the people. Representative democracy was enthroned where constituencies voted their representatives who in turn have their mandates. The greatest weakness of direct democracy rests in the inability of modern societies (for example Nigeria) to converge at a particular point to take decision. Imagine how absurd it will be when the over 150 million Nigerians converge at the Eagles Square Abuja to take decisions on issues affecting them.[27]

For the development of the idea of democracy, credit should be given to philosophers like John Locke, Jean Jacques Rousseau, Edmund Burke and Baron de Montesquieu. John Stuart Mill is of the view that the pure idea of democracy according to its definition, is the government of the whole people by the whole people, equally represented but democracy as commonly conceived and hitherto practiced, is the government of the whole people by a mere majority of the people exclusively represented. The former is synonymous with the equality of all citizens; the latter strangely confounded with it, is a government of privilege, in favour of the numerical majority, who alone possess practically any voice in the state. Mill says that this is the inevitable consequence of the manner in which the votes are now taken, to the complete disenfranchisement of minorities.[28] This is exactly the situation on ground in Nigeria today. The people in the definition of democracy is conceived as the majority but the problem with taking the people to be synonymous with majority in the definition of democracy is that democracy does not attain its ostensible object of giving the powers of government in all cases to the numerical majority. It does something very different and that is giving them to a majority of the majority; who may be, and often are but a minority of the whole.[29] It is because of this that Joseph I. Omoregbe states that democracy as it is popularly known, is a game of the majority. The opinion or view of the majority is imposed on the minority. It is a system of government that operates the tyranny of the majority. The minority is not protected or

taken care of, its view is rejected or simply ignored.[30] Shively according to Eze Nwokereke, maintains that there are certainly four basic characteristics to look for in a democratic citizen. These are tolerance, active participation, high level of interest and information and support for the state.[31]

Above all, democracy is a difficult form of government for the assumptions on which it rests are difficult of fulfillment. It assumes civic capacity on the part of the citizens. This capacity according to Bryce, involves three qualities: *intelligence*, *self control and conscience*. The citizen must be able to understand the interest of the community, to subordinate his own will to the general will and must feel his responsibility to the community and be prepared to serve it by voting and by choosing the best man.[32] Bryce, in a classic analysis, points out that in practice these assumptions have not been adequately fulfilled. Instead, *indolence* makes itself felt in the neglect to vote, the neglect to stand as a candidate for election, and the neglect to study and reflect on public questions, private *self-interest* reveals itself in the buying of votes, in class legislation and in other forms of corruption, *party spirit* kills independent judgement.[33]

Democracy as it is used in this work is a form of government that is based on the welfare and interests of the people with the people deciding for the government and not the government deciding for the people all the time as it is the case in the Nigerian situation. If government decides for the people all the time, it means that power belongs to the government but if the people can sometimes decide for themselves and the government, it means that power belongs to the people.

Endnotes

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CHAPTER TWO
LITERATURE REVIEW

The separation of powers which is one of the fundamental principles of modern constitutionalism and of government by law is indissociable from the name of Montesquieu. Those who write on the separation of powers never fail to cite the name of the Baron de la Bréde or chapter six of book XI of *L'Esprit Des Lois,* "On the English constitution" and contrariwise, when the work of Montesquieu is mentioned; it is the separation of powers that first comes to mind. This association is not without its problems. The misunderstanding is not, as is sometimes said, simply a matter of Montesquieu's failure to use that expression. It is true that he does not use it – although he writes that "there is yet no freedom if the power to judge is not separated from the legislative and executive powers"- but he could very well be the inventor of the doctrine that was later designated in this way, labeling it differently or not at all.[1]

Thus the true relationship between Montesquieu and the separation of powers can be discovered only by seeking first what is generally understood by separation of powers, then by examining whether this is indeed the doctrine exposed by Montesquieu in *L'Esprit des Lois*.[2] Separation of powers, therefore, refers to the division of responsibilities into distinct branches to limit any one branch from exercising the core functions of another. The intent is to prevent the concentration of power and provide for checks and balances.[3] B.K. Gokhale declares in his work titled *Political Science: Theory and Governmental Machinery* that concerning functional distribution of powers, that is the distribution of powers among three branches or organs of government which include the legislature which enacts laws, the executive which enforces them, and the judiciary which interprets them and settles disputes that Montesquieu, the French Scholar who lived in the time of Louis XIV, developed a theory in his book *The Spirit of Laws* which is called the theory of separation of powers. He states that before Montesquieu, that there were authors who dealt with the theory of separation of powers but none of them expounded it as scientifically and thoroughly as Montesquieu did. He says:

> In ancient times, Aristotle in his *Politics* mentioned three parts or branches of government, viz. the deliberative, the executive and the judicial. In ancient Rome, Polybius and Cicero praised the Roman constitution for the system of checks and balances. All power in the Roman Republic was not located in one body. For many centuries since Cicero wrote, there was no talk on the separation of powers; but in the fourteenth, Marsiglio of Padua drew a line of distinction between the executive functions and the legislative functions of government. In the sixteenth century, Bodin underlined the importance of separating the judiciary from the control of the king so that impartial justice was possible. In the seventeenth century, Harrington and Locke in English spoke of the principle of separation of the powers of the executive from those of the legislature.[4]

The question of distribution of powers assumed great importance in the eighteenth century, in which political philosophers were very much concerned with the problem of liberty. It is of importance to note that two mighty revolutions broke out in this century: the American (1776) and the French (1789). Montesquieu gave systematically in his classical theory the ideas embodied in the thought of his predecessors. He put fort his theory with a particular reference to the protection of liberty. Liberty has to be shielded from tyrants and autocrats, and the principle of separation of powers was to be the shield. The American and the French revolutionaries shed blood for Liberty, Equality and Fraternity.[5]

This dissertation cannot take a holistic approach to all the range of positions taken by scholars on the subject of Montesquieu's theory of separation of powers and the Nigeria's democratic practice. An examination of some works on this will be carried out in order to offer an objective assessment of scholars views. It will include both commendations and criticisms of Montesquieu's theory of separation of powers and the Nigerian democratic practice.

The first work to be reviewed is *The Theory of Separation of Powers in Nigeria: An Assessment* by Ogoloma Fineface. In this work, he argues that the guarantee of liberty in a given government to the people is the practice of the theory of the separation of powers. He says that the term "separation of powers" originated with Baron de Montesquieu, a French enlightenment writer. Nevertheless, the actual separation of powers amongst different branches of government can be traced to ancient Greece. The framers of the American constitution decided to base the

governmental system on this theory of separation of powers whereby the legislative, executive and judiciary branches will be separate from each other. This gave rise to the idea of checks and balances on each other. As a result, no one branch can gain absolute power or abuse the power given to them like in despotic military regimes. He states:

> The theory of separation of powers means that, a different of persons is to administer each of the three departments of government (the legislative, executive and judiciary). And that, no one of them is to have a controlling power over either of the others. Such separation is necessary for the purpose of preserving the liberty of the individual and for avoiding tyranny.[6]

One condition of liberty is the separation of the legislature from the executive and the existence of an independent and impartial judiciary. It is also as a result of this that Montesquieu regarded "the separation of powers as an essential safeguard of liberty. According to him, there is no liberty if the judiciary power be not separated from the legislative and executive". That is why according to Gettel, this doctrine implies that the three functions of the government "should be performed by different bodies of persons; each department limited to its own sphere of action, and within that sphere should be independent and supreme.[7]

Osita Nnamani Ogbu in his work titled *The Doctrine of Separation of Powers and the Nigerian Nascent Democracy: Theory and Practice in Focus* is of the view that Montesquieu, in his book, *L'Esprit des Lois* published in 1748 identified three branches of government –the executive, the legislative, and the judiciary. According to him, if you have any of the two or three powers in one hand, there will be no liberty. Montesquieu according to him was concerned with preventing tyranny. It has been widely accepted that undivided power amounts to despotism which is incompatible with liberty.[8] The need for separating governmental powers by constitutional fiat comes from the assumption that if unrestrained by external checks, any given individual or groups of individuals would tyrannize over others. The principle of separation of powers is a *condicio sine qua non* for constitutionalism. It cannot be accepted that a government can become, on the ground of 'efficiency' or for any other reason, a single undifferentiated monolithic structure, nor can it be

assume that government can be allowed to become simply an accidental agglomeration of purely pragmatic relationships. Some broad ideas about structure, must guide us in determining what is a desirable organization for government.[9] The principle of separation of powers was applied most vigorously in the United States of America. The American colonies experienced tyrannical rule which eventually culminated in civil wars. Americans held the view that the main defects of the system is that the principle of separation of powers had not been followed because of the influence of the king in parliament.[10] If Montesquieu thus appears as one of the fathers of modern constitutionalism, that is because he would have been one of the first to formulate this idea that power should be organized in such a way as to preserve freedom, that this organization should be expressed in a rule which is the constitution, and that it should institute specialized and independent powers, an essential connection, to the point that respect for the principle of the separation of powers was to become the touch stone of a constitution worthy of the name. That at least is how the classical doctrine interprets the formula of article 16 of the *Declaration of the Rights of Man and the Citizen* of 1789: "any society in which the guarantee of rights is not assured nor the separation of powers determined, is without a constitution.[11]

A. Appadorai in his work titled *The Substance of Politics* is of the view that the theory of separation of power was, however, clearly formulated for the first time by Montesquieu in *The Spirit of Laws* (1748). He says that 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 judicial 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 control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to

exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.[12]

Seventeen years later, Blackstone, an English jurist gave expression to similar views. In all tyrannical governments, the supreme magistracy, or the right both of *making* and of *enforcing* the laws, is vested in one and the same man, or one and the same body of men; and wherever these two powers are united together, there can be no public liberty. The magistrate may enact tyrannical laws, and execute them in a tyrannical manner, since he is possessed in quality of dispenser of justice with all the powers which he has as legislator or thinks proper to give himself. Were it (the judicial power) joined with the legislative, the life, liberty, and property of the subject would be in the hands of arbitrary judges, whose decisions would be then regulated only by their own opinions, and not by any fundamental principles of law which though legislator may depart from, yet judges are bound to observe. Were it joined with the executive, this union might soon be an over balance for the legislative.[13]

There has been some controversy whether Montesquieu, the author of the theory (and others who followed him), contemplated an absolute or only a limited separation of the three powers. There is no doubt that the sound opinion, as the federalist pointed out, is that he did not mean that the three departments ought to have no partial agency in, or no control over the acts of each other. His meaning as his own words import and still more conclusively as illustrated by the example in his eyes (viz. the British constitution) can amount to no more than this, that where the whole power of one department is exercised by the same hands which possess the whole power of another department, the fundamental principles of a free constitution are subverted.[14] Discussion over Montesquieu's paternity in reality goes to essential theoretical and practical questions. What are the functions of the state? How can they be divided up in order to guarantee freedom while preserving the efficiency of power and avoiding risks of paralysis? To these questions, Montesquieu has an answer, the pertinence and specificity of which appear more clearly when we confront them with doctrines which under the name of separation of powers purport to be a

variation on the theme developed in chapter 6 of book XI of *L' Esprit des Lois* and which in addition present very serious flaws.[15]

The separation of powers is a technique of constitutional engineering – the preferred term for which is a maxim of the political art- intended to guarantee freedom. Its discovery is attributed to Montesquieu and it is generally set forth with the support of quotations drawn from *L' Esprit des Lois,* and it consists in "separation", in other words a certain mode of distribution or repartition of the functions of the state among various authorities. The state exercises a great variety of functions of a social – political order-making war, rendering justice, maintaining order and security, etc. but it does it by means of law, producing general rules and particular commands, in other words exercising different juridical functions. In juridical language as much as in ordinary language, the word power has a plethora of meanings, sometimes it designates one of these juridical functions, sometimes the power necessary to exercise it, and sometimes again the authority or organism which is invested with it. Legislative power is thus either the legislative function, or else that authority itself, parliament for example in modern democracies. In that case the expression "separation of powers" designates a simple distribution of the functions as well as a separation of the organisms, and one speaks of functional separation or organic separation.[16]

When we distinguish two functions, what is involved is the legislative function consisting in making laws, which is to say general, impersonal rules, and the executive function by which those laws are applied to concrete cases, either by material acts (the building of roads, the employment of force to assure public order), or by particular decisions. When it is the third function that is at issue, it concerns the judiciary or jurisdictional function. If we refuse to treat it as a third function, that is because we judge that it consists in deciding the disputes by application of the law, which makes of it merely a branch of the executive function. If we consider on the contrary that disputes cannot or should not be decided exclusively by the application of laws, but that judges dispose in fact, or should of broad evaluative power, we conclude that we are indeed in the presence of a third function.[17] The demonstration is rather simple: in the first place,

Montesquieu is perfectly conscious of the hierarchy of functions. No doubt his classification of the state's juridical functions-in particular his definition of the executive function – is neither precise nor coherent. He distinguishes at the beginning of the chapter between "the legislative power, the executive power over what depends on civil law." The third is also called "power to judge" and the second executive power of the state." We could thus think that the executive power bears exclusively on international relations. Yet a few lines later he writes that if "the legislative power is joined with the executive power, there is no liberty, because it can be feared that the same monarch or the same senate might pass tyrannical laws in order to execute them tyrannically." The problem then is that the executive power does not consist solely in the execution of things that are dependent on international law, but also in the execution of concrete internal laws. In all the rest of the chapter, it is in this sense that the expression "executive power" is utilized, and he even specifies that the legislative power is but "the general will of the state, and the other but the execution of that general will." It would thus have been perfectly contradictory to try to organize a balance between an organism responsible for articulating the will of the state and another responsible for its execution.[18] M.J.C. Vile in *Constitutionalism and Separation of Powers* states that:

> Such a balance is conceivable only among non – specialized and non-independent authorities, and precisely in the English constitution such as Montesquieu describes it, the authorities are neither specialized nor independent. They are not specialized for the legislative power is entrusted not to one, but to three distinct authorities, an assembly composed of representatives of the people, an assembly of nobility and finally the king, who disposes of a faculty of prevention, which is to say a right of absolute veto. A law can be adopted only after obtaining the consent of these three authorities, and a single one can oppose it. This structure is indeed that of the English constitution such as Montesquieu's predecessors and successors describe it…. Now each of these three authorities, far from being specialized, also exercises another function. The King exercises the executive function, the House of Lords a part of the judiciary function, and the House of Commons can exercise accusation in public affairs and control the manner in which the laws are executed.[19]

In addition to this control of the House over the execution of the laws, which can lead as far as formal charges against ministers, we must underscore the king's power to convoke or dissolve the Houses. Thus, far from prescribing specialization and independence, Montesquieu praises a system that precisely is based on a contrary principle: "such is the fundamental constitution of the government in question. The legislative body there being composed of two parties, they will enchain each other by their mutual faculty of prevention. Both will be bound by the executive power, which itself will be bound by the legislative." We must underscore that if the executive power can thus bind the two parts of the legislative body, in other words the two houses, it is not really as executive power as such in so far as it is executive power, it is subordinate but in so far as it is itself, by right of veto, a part of the legislative power.[20] Eisenmann in *A Montesquieu Dictionary* by Michel Troper observers moreover that none of those who in the second half of the eighteenth century and the first half of the nineteenth explicitly claimed Montesquieu's thought that *L'Esprit des Lois* specified the specialization and independence of powers, neither Blackstone nor de Lolme, nor the authors of the federalist, nor the group of monarchists in the constituent assembly of 1789 nor Benjamin Constant. It can again be pointed out that the doctrine described under the name of separation of powers by twentieth-century French jurist presupposes a very different conception of freedom from that exposed by Montesquieu: for the author of *L'Esprit des Lois*, the freedom that is to be preserved by the separation of powers is political freedom. Book XI is, moreover, entitled "On political freedom in its relation to the constitution." Now, political freedom is quite different from civil freedom. It is not independence, nor the enjoyment of one's rights, but, he says, a situation in which one obeys only the laws. The relation of power to civil freedom can be conceived as a zero-sum game in which freedom is all the greater that power is more limited, and power all the stronger that freedom is restrained, but political freedom thus defined as obedience to the laws cannot vary in function of the extension of the sphere or intensity of power.[21]

He says that one can then, remarks that Montesquieu calls in reality for the application of two different principles. The first can be called "separation of powers", although the author of *L'Esprit des Lois* does not use that expression. He prescribes neither specialization nor independence. In truth, he prescribes nothing, for the principle in question is purely negative, in other words, it is a principle whose sole object is to indicate what one must not do. What should be avoided is very simple, the conflation of powers or the gathering of powers in the hand of one man alone. M.J.C. Vile states that:

> The verb *Separate* which he sometimes uses does not at all mean isolate. He merely uses it as the antonym of *conflate* or *combine* when he writes "There is also no freedom if the power to judge is not separated from the legislative and executive power," it is to oppose this situation to one where this power "is joined to the legislative power." Sometimes separate even has simply the meaning of *distinguish*, as in the tittle of a chapter in Book XXIX, "That laws must not be separated from the object for which they are made." Thus, for powers to be separated, it is enough that they should not be joined together. Nevertheless, if Montesquieu, is in contestably a partisan of the separation of powers, thus understood in a very different way from the twentieth – century juridical doctrine, he is neither its inventor nor its sole defender. It is even a common place of political philosophy in the enlightenment, and is even expressed in similar fashion by numerous authors whose sole point in common is hostility to despotism.[22]

In a swift response, Rene Louis in *Montesquieu's Mixed Monarchy Model and the Indecisiveness of 19th Century European Constitutionalism Between Monarchical and Popular Sovereignty* by Ulrike MülBig contends that Montesquieu cannot be cited as the progenitor of the separation of powers doctrine any more. This leads to the question, whether 'Sovereignty' and 'Separation of powers' are clearly defined around 1776 and 1789.[23] For George H. Sabine and Thomas L. Thorson in their book titled *A History of Political Theory*, the idea of separation of powers was of course, one of the most ancient in political theory. The idea of the mixed state was as old as Plato's law and had been utilized by Polybius to explain the supposed stability of Roman Government. The tempered or mixed monarchy was a familiar conception throughout the Middle Ages, medieval constitutionalism had in fact depended on a division of powers, as distinct from

the sovereign power claimed by the new monarchy. In England, the controversies between the crown and courts of common law and between the crown and parliament had given concrete importance to the separation of powers. They assert that:

> Harrington had considered it to be essential to free government and Locke had given it a subsidiary place in his theory of parliamentary priority. But in truth, the ideas of mixed government had never had a very definite meaning. It had connoted in part a participation and a balancing of social and economic interests and classes, in part a sharing of power by corporations such as communes or municipalities, and only in a small degree an organization of legal powers. Perhaps its greatest use had been as a make weight against extreme centralization and as a reminder that no political organization will work unless it can assume comity and fair dealing between its various parts.[24]

So far as Montesquieu modified the ancient doctrine, it was by making the separation of powers into a system of legal checks and balances between the parts of a constitution. He was not in fact very precise. Much of what his eleventh book contained, such for example as the general advantages of representative institutions or the specific advantages of the jury system or a hereditary nobility, had nothing to do with the separation of powers. The specific form of his theory depended upon the proposition that all political functions must of necessity be classifiable as legislative, executive or judicial, yet to this crucial point, he devoted no discussion whatever.[25]

The feasibility of making a radial separation between the legislation and the judicial process, or between the making of a policy and control over its execution, would hardly have commended itself in any age to a political realist. Montesquieu, like everyone who used his theory, did not really contemplate an absolute separation of the three powers. The legislative ought to meet at the call of the executive; the executive retains a veto on legislation; and the legislature ought to exercise extra ordinary judicial powers. The separation of powers, as Montesquieu described it and as it always remained, was crossed by a contradictory principle – the great power of the legislature – which in effect made it a dogma supplemented by an undefined privilege of making exceptions.[26]

It is a remarkable fact about Montesquieu's version of the separation of powers that he professed to discover it by a study of the English constitution. In truth, the civil wars had destroyed the vestiges of medievalism that made it appropriate to call England a mixed government and the revolution of 1688 had settled the supremacy of parliament. To be sure, when Montesquieu visited England, the status of the ministry was not very clearly fixed, but no man who relied on independent observation would have pitched upon the separation of powers as the distinctive feature of the constitution. But Montesquieu did not rely on observation. Locke and Harrington had taught him what to expect and for the rest, he adopted the myth which was current among the English themselves.[27] Montesquieu may have learned from his friend Bolingbroke according to *A Dissertation Upon Parties Letter13;* from the *Craftsman* written in 1733-34 that it is by this mixture of monarchical, aristocratically, and democratically power, blended together in one system, and by these three estates balancing one another, that our free constitution of government hath been preserved so long inviolate.[28] Henry Saint John Bolingbroke (1678-1751) praises the monarchical form of government for its potential to accommodate democratic and aristocratic elements, i.e. for the possibility of transmitting monarchical power via independent democratic or aristocratic intermediaries. Anticipating *De L'Esprit des Lois II*, 4, Bollingbroke spoke out for a strong intermediary position of the nobility in a monarchy: *The peers constitute a middle order, and are properly mediators between the other two* [Crown and people].[29]

Yash Vyas in his work entitled *Independence of the Judiciary: A Third World Perspective* contends that Montesquieu's theory of separation of powers in its extreme interpretations means complete isolation of the three departments of government from one another. The three departments must not only have separate functions but also separate agencies to perform those functions composed of different persons. He declares that the concept of separation of powers as propounded by Montesquieu was the result of an error of judgment.[30] He based his theory on the assumption that the 18th century English constitution had a strict separation of powers. There was no perfect separation in the British experience. Extreme separation of powers is impossible of

achievement and legally unworkable in a multi- functional complex government of today. Watertight compartmentalization of powers is not possible, "since the government of a constitutional government is so complex that it cannot define the area of each department in such a manner as to leave each independent and supreme in its allotted sphere.[31] In its broader sense, the doctrine of separation of powers means merely that one department of government should not be in a position to dominate the others. In the words of Hood Philips: What the doctrine must be taken to advocate is the prevention of tyranny by the conferment of too much power on any one person or body, and the check of one power by another.[32] It is in this broader sense that all modern constitutions conform, in a certain degree, to the principle of separation of powers. The doctrine of separation of powers may not have been recognized in its absolute rigidity, but a differentiation of the functions of different departments of government is an invariable feature of all written constitutions.[33]

What does Montesquieu have to say about the separation of powers? In response, Ikenga Oraegbunam in his article on ''**Separation of Powers and Nigerian Constitutional Democracy''** unveils that a remarkable degree of disagreement exists about what Montesquieu actually did say. Two broad streams of interpretation of his thought since the latter part of the eighteenth century can be detected. One, largely associated with the continent of Europe, and with jurists rather than political theorists, sees what we have called "the pure doctrine of the separation of powers", a thoroughgoing separation of agencies, functions, and persons. The other, represented principally by the Fathers of the American Constitution, French writers such as Benjamin Constant, and in a rather different way the English commentators of the eighteenth and nineteenth centuries, has seen some form of a partial separation of powers, that is the pure doctrine modified by a system of checks and balances.[34] In his words:

> Some writers go further and claim that the term "separation of powers'' as applied to Montesquieu's thought is an exaggeration or misrepresentation, that he was concerned only with the establishment of the "non- confusion'' of powers, that he was trying to establish only the juridical independence of the legislature

> and the government and not a separation of functions or persons or that he demanded only the "harmonious integration'' of the powers of government.[35]

Montesquieu's approach to the definition of the functions of government resembles a review of the history of the uses of these concepts. Chapter 6 of Book XI begins: " In every government there are three sorts of power, the legislature, the executive in respect to things dependent on the laws of nations, and the executive in regard to matters that depend on the civil law''. This is clearly a restatement of Locke's division of government functions, except that Montesquieu does not use the term "federative power" for the executive power in regard to external affairs. He still uses the term "executive" to cover all internal affairs, both governmental and judicial; in other words, he adopts, though only momentarily, the twofold division of functions into legislative and executive so familiar to the seventeenth century and earlier. Montesquieu then immediately redefines his terms.[36] He affirms that he intends to use the term "executive power" exclusively to cover the function of the magistrates to make peace or war, send or receive embassies, establish the public security, and provide against invasions. He now seems to wish to confine the term "executive power" to foreign affairs, for he does not make it at all clear that the power to "establish the public security" has any internal connotation – in other words, for Locke's "federative power" reads "executive power".[37] Furthermore, Montesquieu announces that he will call third power, by which the magistrate punishes criminals or decides dispute between individuals, the "power of judging". This appears to represent an attempt to reconcile the authority of Locke in the heightened appreciation of the separate existence of the judicial power as distinct from the royal power which had emerged in the early eighteenth century but this formulation leaves out of account any "executive" acts other than foreign affairs, for the judicial power is confined to disputes between the prince and the individual, and between individuals.[38]

He says that Montesquieu has not so far, then, managed to reconcile the seventeenth century vocabulary with the facts of eighteenth century government; the vital distinction between

the internal acts of the executive and the acts of the judiciary is obscured. However, when he goes on to use these terms, he drops both definitions and uses them in a very much more modern way; the three powers are now "that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals," clearly including internal as well as external affairs in the executive power. It is in this final sense that Montesquieu discusses the relationships between the powers of government and it is of course, basically the modern use of these terms. The importance of this transition in his use of words cannot be overemphasized. Not only does he bridge the gap between early modern and later terminology, but he also obscures one of the basic problems of a threefold definition of government functions.[39] For M.J.C. Vile:

> Locke and others had been bothered by the fact that the "ruler" had two aspects to his function. He had to carry out the law where it was clear and easily stated, principally in internal affairs, but he had also to act in areas where the law could not be laid down in detail and where his prerogative must remain almost wholly untrammeled, that is to say largely in external affairs. Thus between them, Locke and Montesquieu state at least four functions of government, not three: the legislative, the executive, the "prerogative", and the judicial. To bring the two middle ones together as "executive" obscures the fact that in large areas of government activity, those responsible for day-to-day government decisions will not be "executing the law," but exercising a very wide discretion. However, the ideas that there are three, and only three, functions of government, was now established, except perhaps in the minds of those English lawyers who had actively to define the prerogative powers of the crown?[40]

The most important aspect of Montesquieu's treatment of the functions of government is that he completes the transition from the old usage of "executive" to a new "power of judging", distinct from the putting of the law into effect, which becomes the new executive function. However, it is in his treatment of the "power of judging" that Montesquieu's greatest innovatory importance lies. He fixes quite firmly the trinity of legislative, executive, and judicial which is to characterize modern thought. Vitally important also is the fact that he detaches this power from the aristocratic part of the legislature and vests it unequivocally in the ordinary courts of the land, although the noble house of the legislature is to have the role of a court of appeal. He does not accord the judicial branch an exactly equal status with the legislative and executive branches,

although he clearly intends the judiciary to be independent of the other two. He sees these two agencies as permanent bodies of magistrates, which represent real social forces, the monarch, the nobility and the people.[41]

Montesquieu devotes considerable attention to the nature and composition of the judiciary, but his approach to this problem is very much a reflection of his general scheme, and does not bear much relation to the actual practice in England. In Book VI, he had developed his ideas about the judicial function in the differing forms of state. In a despotic government, the caprice of the prince is the basis of the law, and judging will be an arbitrary process without rules. In a monarchy, however, the prince rules according to the law; these must be relatively stable and applied in a cool, aloof fashion. The judges in a monarchy, therefore (and Montesquieu is clearly thinking of the *parlements*), must be learned in law, professional, and skilled in the reconciliation of potentially conflicting rules. But the closer the form of government approaches that of a republic, the more fixed and settled are the rules of law , and the more the judges must follow the letter of the law.[42] He avers:

> In Rome, the judges had only to decide matters of fact, and then the punishment was clearly to be found in the laws. In England, the jury gives its verdict on the fact and the judge pronounces the punishment inflicted by the law, "and for this he needs only to open his eyes. In Book XI he describes a judicial system without professional judges. He rejects the idea of the judiciary power being lodged in a "standing senate," and affirms that it should be exercised by persons drawn from the people on an ad hoc basis for fixed periods of short duration. In other words a system of juries, which would apparently be judges of both fact and law, because the laws would be so clear and explicit as to require no professional knowledge in the judges.[43]

Two further aspects of Montesquieu's treatment of the judiciary requires emphasis. First, his insistence that in republics, the judges must abide by the letter of the law is of great importance for later views of the judicial function. In England, in medieval times, the judges were well aware that they "interpreted" the law, and from time to time were aware that they were making law through "interpretation." The role of the judges in making the law was also recognized in the seventeenth century. But Montesquieu insists that to allow judges to exercise discretions is to

expose the people to danger that the private opinions of the judges might render the laws uncertain, and that people would then live in society "without exactly knowing the nature of their obligations."[44] The judges must be "no more than the mouth that pronounces the words of the law, mere passive beings, incapable of moderating either its force or rigour. This mechanical view of the proper role of the judges can be found in the writings of Lilburne and Harington during the Civil War in England, and it is perhaps from the latter that Montesquieu obtained this notion. Its influence in the nineteenth century and in the early part of the twentieth, until the rise of the "sociological" school of jurisprudence, was a formidable one indeed. Second, he emphasizes the importance of judicial procedures as a protection for the individual.[45] The speedy decision of cases may be cheaper and easier, but the set forms of justice with all their expense and delay, even the very dangers of the judicial procedure, are "the prize that each subject pays for his liberty." In despotic governments, speed is the only consideration, but in moderate governments, long inquiries and many formalities are necessary before a man is stripped of his honour or property, or of his life. This insistence upon "due process," a phrase Montesquieu does not use but which again was current in seventeenth – century England, is of the essence of the doctrine of constitutionalism, in the development of which his thought forms such an important step.[46]

By 1748, therefore, he had formulated the tripartite division of government functions in a recognizably modern form. A good deal of change still had to take place in the ensuing two hundred years in the exact connotation of these concepts, but basically the pattern was no set. To legislate is to make the law; to execute is to put it into effect; the judicial power is the announcing of what the law is by the settlement of disputes. These functions exhaust all the "power" of government, and they can be clearly differentiated from each other. Every government act can be put into one or other of these categories. He also established the idea of three branches of government – executive, legislative and judiciary.[47] M.J.C. Vile further states:

> But to demonstrate that Montesquieu had a "theory of the separation of powers" in one sense or another, we must go further. We must show that he maintained that each function should be exercised by the

> appropriate agency of government, and that he furthermore believed that the personnel of the three branches should not coincide. It will become quite clear at a later stage that he did not maintain the pure doctrine of the separation of powers, for he combined with it the ideas of mixed government and checks and balances; however, that he did advocate that each agency should exercise, in the main, only its own functions, is also perfectly clear. Montesquieu's view of the functions of government was much closer to modern usage than his predecessors' – he was one of the first writers to use "executive" in a recognizable modern sense in juxtaposition with the legislative and judicial functions.[48]

His emphasis upon the judicial function and upon the equality of this function with the other functions of government, though (as we have seen) by no means altogether new, was nevertheless of great importance. Montesquieu had gone a long way, in fact, towards the transformation of the theory of mixed government from its position as a doctrine in its own right into a set of checks and balances in a system of agencies separated on a functional basis. Perhaps the most significance difference between Bolingbroke and Montesquieu is that the latter placed the king outside the legislature.[49] What then did Montesquieu add to seventeenth and early eighteenth century English thought on the separation of powers? Clearly, the judiciary had a position of independence in his thought greater than that of earlier English writers, and greater than it was in practice at that time in England. Although, he used the idea of mixed government, he did not allow it to dominate his thought, as had the writers on the balanced constitution in England; consequently, he articulated the elements of the constitutions in a different way, and a clearer view of the separation of legislative and executive branches was now possible.[50]

In some ways, then, Montesquieu moved back towards the emphasis that was placed during the protectorate upon separate and distinct powers; he was certainly closer to the pure doctrine than his English contemporaries, but he did not go all the way. He had a more realistic, more articulated system, with an amalgam of seventeenth-and-eighteenth-century ideas woven into a new fabric. Sometimes, it is difficult to know whether changes he introduced into the stream of political thought on constitutionalism were wholly intentional, or whether they resulted rather from

his method of writing.[51] We shall never know-but it does not matter. The very defects of his style gave him an influence which a more precise and less interesting thinker would never have achieved, but more important than this is the fact that by changing the emphasis that English writers of the preceding half century had placed upon legislative supremacy and the mixed constitution, he paved the way for the doctrine of the separation of powers to emerge again as an autonomous theory of government. This theory was to develop in very different ways in Britain, in America, and on the continent of Europe, but from this time on, the doctrine of the separation of powers was no longer an English theory; it had become a universal criterion of a constitutional government.[52]

Ulrike MüBig in *Montesquieu's Mixed Monarchy Model and the Indecisiveness of 19th Century European Constitutionalism Between Monarchical and Popular Sovereignty* contends that Montesquieu mixed constitution compounds characteristics deriving from all three forms of government and principles of legitimation, the authority of a monocratic ruler, the superior knowledge of an aristocratic elite and the sense of solidarity, common bond and *esprit de corps* of a democratic community. In a mixed constitution, sovereign power is vested in the monarch, the aristocracy and the people as equal representatives of the three constitutional principles which differ but stand for undivided and uniform sovereign power. In contrast, separation of powers signifies the considerable isolation of governmental functions and their allocation to separate governmental bodies.[53] Due to the indivisibility of sovereign power in a mixed constitution, the question of the distribution of power is not a question of the limitation of sovereign power but a question of social balance in the relationship of crown, nobility and citizens. Those powers are distributed according to social rank. This shows that Montesquieu's ideal of a distribution of powers in a mixed constitution is rooted in social and legal inequalities. According to Montesquieu, the privileges of the nobility guarantee political liberty. This suggests that Montesquieu's aristocratic conviction is contrary to the concept of the sovereignty of the people, which implies equality. Furthermore, it is impossible that Montesquieu should have studied the

concept of sovereignty of the people which then in 1789 becomes a synonym for political liberty on the basis of the constitutional reality in England. In its conflict with the Stuarts from 1642 onwards, Parliament never claimed to possess the authority to overrule the royal veto in the law-making process and thus to introduce some sort of sovereignty of the people (and separation of power) that would equal the notion of Rousseau' *"Volonté générale"*.[54]

Parliament rather asserted as the highest common law court its ultimate authority to interpret the *"fundamental laws",* of which Parliament's interpretation of its right to self defence is a good example. In accordance with the aristocracy's social pre-eminence in Montesquieu concept, his ideal mixed constitution focuses on balancing Crown and nobility. The function assigned to the aristocracy as a balancing power cannot at first glance be detected in the English mixed constitution. This is due first to the fact that an intermediary position of the nobility had been abolished and second, is the existence of a strong democratic element.[55] This becomes even more apparent in Montesquieu's description of his idealized French monarchy in which the existence of a nobility positioned as intermediary, is a fundamental principle. The balance between the French Crown and the nobility as described by Montesquieu is more obvious than his description of a balance between English Crown and nobility and shows more clearly the unity of governmental authority in the French Monarch; uniform governmental authority is transmitted by those intermediary authorities.[56] According to Montesquieu, those intermediary ranks are an essential characteristic of a monarchical government conforming to the fundamental laws, namely of the moderation of governmental power. These fundamental laws require channels of transmission, through which flows governmental authority, in order to protect the subject from the momentarily prevailing will of the ruler as expressed in the Prince's Council. This is so because if there is only the momentary and arbitrary will of a single person in a state, then nothing is definite and, consequently there are no fundamental laws. The nobility is the natural intermediary check of monarchical omnipotence. The balancing or tempering of sovereign power by combining

monarchical, aristocratic and democratic principles in the right measure will only be the guarantor of political liberty if a social balance between crown, nobility and bourgeoisie can be achieved.[57]

Misconceiving Montesquieu's distribution of powers as separation of powers may result from the fact that balance of powers is the common denominator of both Montesquieu's idealized mixed monarchy (as in XI, 6 and 11, 4) and Locke's call for a separation of powers. This balance metaphor is evident in the usage of supporters of a mixed constitution as well as those who propound a separation of powers. The English Civil Wars of the 17th century provide a good example of the usage of the notion of the parliament of 1626 "the prerogative of the king and the liberty of the people must have a reciprocal relation and respect." Thomas Wentworth, Earl of Stafford, defines this vital balance for the state as "just symmetry, which maketh a sweet harmony of the whole." This same understanding is expressed by Finch in his opening speech to the Long Parliament: "Where was there a Common-Wealth so free, and the balance so equally held, as here…".[58] Also the monarchist Hyde refers to the notion of balance: "the constitution of the government so equally poised, that if the least branch of the prerogative was torn off, or parted with, the subject suffered by it and that his right was impaired and he was as much troubled when the crown exceeded its just limits, and thought its prerogative hurt by it." After the Restoration in 1660, the balance of powers is known to the academic society of the Middle Temple: "For it so harmoniously intermixes the rights of sovereignty with the liberty of the subject, that the one balances the other, nay, the least jar in the one, makes a loud discord in the other".[59] This omnipresence might also have influenced Montesquieu's characterization and description of the English constitution and thus added to the misunderstanding of the concept of distribution of powers in XI, 6. The call for balance of power with the doctrine of separation of powers as background cannot be identical with the call for balance of power based on the idea of the mixed constitution. The difference that is insurmountable is that the doctrine of separation of powers aims at an institutional balance of power between governmental bodies; the notion of balance inherent in the mixed constitution does not refer to the institutional balance of governmental bodies, but

describes the balance of the socio-political powers.[60] The English philosopher William Paley (1743 – 1805) expressly states the social importance of balance of powers in the mixed constitution. Within a general "balance of constitutional political equilibrium" he distinguishes balance of power in regard to the different state powers and balance of interest in the sense of social balance. Balance of power requires the different state organs to be organized in such a way so as to prevent abuse of one organ by another. Social balance is based on the organization of the three Estates in parliament in such a way, that attempts to usurp power of one Estate can be deterred by the other two. It is in this sense that Montesquieu discusses the distribution of powers in Ancient Rome (XI, 14 – 18). The balance of powers in the mixed constitution does not call for an institutional control of the monarchical Executive through the Legislative, but rather an equilibrium within the governmental body constituted by the different social powers.[61]

The notion of balance is not new. According to a statement of Francis Bacon, "The king's Sovereignty and the Liberty of Parliament … do not cross or destroy the one the other, but they strengthen and maintain the one the other".[62] In XI, 14 – 18, Montesquieu describes the equilibrium of the socio-political powers in the constitution. Balance is possible wherever governmental authority is undivided and thus had also been discussed by the apologists of undivided monarchical authority. Montesquieu combines the ancient notion of balance with his model of a mixed constitution. Balance of power cannot therefore be regarded as invented by or resulting from the various calls for separation of powers. Montesquieu's call for equilibrium of the socio-political powers, namely crown, nobility and bourgeoisie (representing the monarchical, aristocratic and democratic principles), aims at neither a republican nor a democratic governmental structure.[63] He expressly and exclusively applies the doctrine of balance of the socio-political powers to the monarchy. The greatest virtue and aspiration of the legislature should be the moderation of governmental power in a well-tempered mixed constitution (XXIX,I). This striving then is superior to the criteria of the different types of constitutions and indeed characterizes any non despotic form of government. The affinity of Montesquieu's *De l-Esprit des Lois* to the

nobility is evidence enough that Montesquieu has erroneously been regarded as the author of the modern constitutional principle of functional separation of powers.[64] The aristocratic bias of Montesquieu's model of a mixed monarchical constitution marks the difference between Montesquieu's concept of distribution of powers and the modern constitutional principle of separation of powers, for which the doctrine of sovereignty of the people, implying their equality before the law, is an absolute prerequisite. The notion of a balance between the socio-political powers (crown, nobility and bourgeoisie) in a mixed constitution has to be clearly distinguished from a balance of powers in the sense of a concept of "checks and balances". While the concept of a mixed constitution is directed towards achieving an equilibrium between the socio-political powers, the concept of separation of powers aims at establishing the institutional balance of governmental bodies.[65]

The theory of the mixed constitution is a genuine product of classical political theory. Based on Polybius and Cicero and transmitted by stoics, the idea of the ideal mixed constitution influences Christian political theory in the Middle Ages (Thomas Aquinas) and later humanistic political and constitutional theory. Montesquieu's *Considerations on the Causes of the Greatness of the Romans and Their Decline* 1734 draws substantially on Polybius. Montesquieu's distribution of powers as characterized in XI, 6 contains neither the superiority of the Legislative over the Executive nor the deriving of sovereign power from the Social Contract.[66] Montesquieu, the noted political philosopher of France gives the classic exposition of the idea of separation of powers. During his days, the Bouborne Monarchy in France had established despotism and the people enjoyed no freedom. The monarch was the chief law giver, executor and the adjudicator. Montesquieu, a great advocate of human dignity, developed the theory of separation of powers as a weapon to uphold the liberty of the people.[67]

In Nigeria, democracy was embraced on 29th May, 1999 as a system of government that would ameliorate the ugly situation of the Nigerian government caused by military rule.

Corroborating this statement, Philip Adeyinka Oyadiran and Obinna Innocent Nweke in an *Appraisal of the Nigerian Democratic Journey Between 1999 and 2014* state that:

> The universal acceptance of democracy as the best system of governance is incontestable. This is premised on the participatory opportunity democracy affords the citizenry in the selection and election of their leaders and representatives. It is guaranteed some recipe for good governance and the fundamental human rights of all the law abiding citizens. These enviable attractions coupled with the global urge precipitated the return of the country (Nigeria) to democracy on May 29, 1999 after a prolonged heinous military dictatorship. Upon the return, Nigerians heaped a sigh of relief that at least they are liberated from the shackles of unilateralism and arbitrariness that characterized military rule.[68]

For Aisha Muhammad Imam in *Democracy Day: The Journey So Far*, developmental projects have been evident with the return of democracy in the country. Cities and towns have worn new faces with road networks, housing estates, street lighting, small and medium industries, additional established tertiary institutions as well as advancement in the Information Communication Technology (I.C.T.) usage. Before 1999, there was nothing like Global System of Mobile Communication but today, Nigeria is the largest user of mobile communication system in Africa.[69] Are these claims of Aisha Muhammad lmam true? If they are true, why is it that majority of Nigerians are suffering and groaning in pains? Why the skyrocketing in the prices of commodity and school fees? Why do we have austerity and recession? Phillip Adeyinka Oyadiran and Obinna Innocent Nweke assert that this is accounted for by crude politics, corruption, selfishness and greed of the political leadership. For instance, despite her energy wealth, Nigeria is often mired in the dark; and despite her abundance human resource, her economic and political affairs cannot be effectively managed. This is reflective in the ongoing political cannibalism that is crippling the economy in difference to the unhindered citizen participation, tolerance of opposing views, abhorrence of arbitrary rules and unilateral decision making that political democracy involves. Since 1999, the polity has witnessed an increasing build up of authoritarian structures and institutions and human rights abuses. The resultant unstable political atmosphere has

combined with poor social infrastructure to question the viability of democracy in Nigeria. For them:

> It is a known fact that as at now, Nigerians and Nigeria as a nation have not began to experience true democracy and good governance. It is not false to say that Nigeria became democratic since 1999 but has not taken advantage of this form of government to put in place adequate measures that can ensure national security and the prevalence of good governance. The lack of governance in this country is traceable to the absence of true democracy and even more prevalent now, the increasing threat of insecurity borne out of the presence of bombings, terrorist attacks, kidnapping, poverty and hunger, unstable power supply, lack of adequate infrastructures and particularly, poor leadership etc. This situation in the country is not only killing her efforts at democracy but portends a serious threat to national security in the country.[70]

At the inception of democracy in Nigeria, people were jubilating that it is dawn, sang praises that God has answered our prayers. This raised people's hope and expectations. For Egbefor, Omolumen Dawood in *Africa Research Review,* the prevailing attitude among the citizenry was positive; the feeling was simply, "Hurray! We are free! We can do what we like". Many believed it meant that the government would provide everything. Others thought it meant that the country's struggling economy would finally improve. However, today, the average Nigerian encounters numbling frustration, disillusionment and psycho-moral dislocation owning to the failure of government to deliver the expected fruits of democratic governance. There is still unemployment, increase level of poverty, corruption and injustice in the distribution of the nation's resources thereby creating disunity among the divergent ethnic nationalities. He further contends that:

> The opening up of the political space by the return to democracy has not only raises the hopes of those group that has been hitherto marginalized or repressed, but also paradoxically raise the stakes in the competition for access to power and resources. Demands for inclusion have been strident, while the politics of exclusion has also been vicious both reactions to end legacies of the long years of military dictatorship and the militarization of politics, as power controlled by the "few" remains the only gateway to the good life.[71]

It would appear that since the return of democracy, Nigeria has witnessed an escalation of violent and disintegrative conflict. The struggles are driven by the quest to fill the power vacuum

left by the retreating military, but more fundamentally, the contestation between various groups in a context of rising demands relatives to shrinking scarce resources. These conflicts have largely been identity driven: communal, ethnic and religious. The "we" against "them" "indigenes" versus "settlers" and "insiders" versus "outsiders" relations of inclusion/exclusion have been continuously mobilized and deployed in the rivalries and violent struggles for access to power and resources. The whole issue of political space in the sense of exclusive control and rights within a claimed territory, to the exclusion of "others", has been a distinct feature of the unfolding crises. The process of discriminating against or excluding "other" Nigerian citizens on the basis of their being "non – indigenes" or belonging to "other" religions or "other" communities can be deduced from conflicts that have ravaged the Northern and Central parts of Nigeria, as well as the oil rich Niger Delta region where before now violence reached alarming levels.[72] Walter Idada and S.O. Uhunmwuangho in *Problems of Democratic Governance in Nigeria: The Way Forward* declare that it is apparent from the assessment of democratic development and its attendant challenges that the country has wobbled democratically since it had remained a mere civilian government and not a true democratic government. For them, the political leaders are not altruistic and have a vision of self aggrandizement that run counter to the aspirations of the people. While Nigerians are languishing in poverty, their rules are reveling in obscene affluence.[73] Nigeria was ousted from Commonwealth of Nations because they could not recant their violation of fundamental human rights. Where does one start to expose violation of human rights in the country? Educationally, socially, physically, materially, emotionally, and democratically, Nigeria has a long way to go.[74] In the view of Elijah Okon John and Usoro I. Usoro in *Developing Country Studies*, the current spat of violence in some northern parts of the country has been attributed to the ineffectiveness of democracy in integrating the minority of the sector. It is noted that the major characters in the Boko-Haram violence are from the Fulani –North who claim fundamentally that they have been marginalized.[75] According to them, a similar claim emanated from the Niger Delta in the South –South region of Nigeria a few years back. Although the crises of marginalization

have not ceased completely, they only abated with federal government promise to and who actually initiated programs. With the eventual ascension to the presidential throne by Jonathan, Niger Deltans' seem to have been pacified but before then, a lot of lives had been lost, hordes of properties had been damaged and hundreds of billions of naira worth of oil revenue lost.[76] In effect, the economic fortune of the country has been dragged backward each time such violence is unleashed. Such tribal loyalty has permeated the system such that even in a democracy, political parties are formed on the basis of regional or ethnic affinity. Again, as expected, the minority groups within the plural society are left out since they have no political might which in most cases translate into economic muscles, they cannot form their own parties. And even if they do form such parties, there is no guarantee that the parties would be recognized, they cannot make any impacts.[77]

We accepted democracy because we feel that it is the only political alternative to our national problem but the reverse is now the case. The brand of democracy that we practice now in Nigeria is a leadership democracy, that is, democracy for the leaders, not people oriented democracy. That is why Adeyinka Theresa Ajayi and Emmanuel Oladipo Ojo in *Democracy in Nigeria: Practice, Problems and Prospects in Developing Country Studies* say that Nigerian democracy has three outstanding features. First, it is spendthrift. Nigerian democracy is a brand of democracy that spends so much to accomplish so little (where and when it achieves anything at all). Second, it invests in the comfort of officials rather than in human and material resources. In fact, the welfare of the common man occupies the bottom rung on the ladder of the priorities of the anchors of Nigerian democracy. Third, Nigerian democracy is plagued by hydra-headed and pathological corruption that ensures that the impact of any seeming good policy is either extremely negligible or almost exactly nil.[78] Nigerian democracy should encourage political viability, economic viability, scientific advancement, technological breakthrough, educational development and life-enhancing social services. It is therefore generally taken for granted that the pursuit of the welfare of the generality of the people is the epicenter of democracy wherever it is practiced. This

may be so in some democracy but the reverse is the case in Nigerian democracy. Democracy is synonymous with holistic development and aggregated growth in some countries. It is the representation of betrayal and in human deprivation in Nigeria. Nigerians make their own brand of democracy government of the few by the few and for the social economic benefit of the few. Indeed, the most outstanding feature of Nigerian democracy is mindboggling and unpardonable waste of public funds on the comfort of a few Nigerians, the democracy of waste practiced in Nigeria invests, first and foremost in the comfort of officials rather than in human and material resources.[79]

Nigeria democracy is not driven by people oriented programmes, nationalistic and class consciousness and rural development but by primordial sentiments of ethnicity, religion, regionalism, etc. with the consequent deepening of poverty and underdevelopment in the country.[80] This is caused by lack of political will to provide the common goal for the people but impoverish them. According to the *Department for International Development (2014),* Nigeria has a quarter of Africa's extreme poor, with about 100 million of a population of 174 million living on less than £1 a day. The incidence of poverty in Nigeria is quite alarming that an average man finds it difficult eating at least three square meals a day. The Northern zones has the most significant challenge in that respect, in the sense that recent statistical survey conducted by the *National Bureau of Statistics (2012)* indicated that, North Central Zone recorded 59.5%, North East 69%, North – West 70% with people that are absolutely poor and most of them were drawn from the rural communities with attendant socio-economic problems, and this is quite alarming as compared for instance to its counterpart in the Southern Zones that recorded as follows; South East 58%, South-South 55.9% and South –West 49% poverty level respectively. The incidence of poverty in the country in terms of human settlement is 33.9% urban and 66.1% rural. This shows that Nigerian democracy has great challenges of tackling this ugly menace and emancipate its people from the shackles of being absolutely poor to a happy and wealthier society.[81]

Confirming this right, Ogunmade quoted by Vincent Nyewusira and Kenneth Nweke in *International Affairs and Global Strategy* declares that democratization process in Nigeria took a downward slide with the ranking of the country as the 15th most Failed Nation in the world. Nigeria came about the ill-fated ranking when the United States think-tank and an independent research organization tagged the *Fund For Peace*, released the 2009 Failed State Index. Nigeria was ranked 15th out of the total of 177 countries that were surveyed. The index ranks were predicated on 12 indicators of State vulnerability, out of which, four were social, two economic and six political. The indicators were meant to measure a country's vulnerability to collapse.[82] The survey considers any country a Failed State when it could no longer perform its basic security and development functions. Therefore, the ranking and description of Nigeria as a Failed State is simply a measure of the monumental failure of democratization. The democratic regime of the fourth republic is emblematic of mis-governance, corruption, insecurity, extra–judicial killings, incessant failed elections characterized by large–scale abuse of state power, disregard for constitutionalism, and manipulation of public institutions to suit selfish ends.[83]

According to Ajai Amos Kenny in *The Nigeria Voice*, the source and nature of transition in 1999 was later to constitute threat to the foundation of democracy and obliterates the current efforts at consolidating democracy. Despite the fact that Nigeria has experienced about nineteen years of uninterrupted democratic practice, there are various challenges confronting democratic consolidation and good governance in Nigeria.[84] Since the emergence of the fourth republic, election and democratic practice in Nigeria has been more of a force than a serious fact. Admittedly, Nigeria registered and voted at the elections that brought the ruling class into power, the candidates presented to them for election were chosen not by them but by political elites. Voting as observed became for Nigerians a matter of ritual performance than discharge of bounden duty.[85] It can be argued that election and democratic practice in fourth republic is characterized by electoral malpractices, political intolerance, economic mismanagement, using political office as gateway to personal enrichment, political thuggery, lack of intra party

democracy, insecurity, manipulation of religion and ethnicity to achieve self political ambitions and other countless misdemeanors were order of the day.[86] The consequence of this is that the poor masses are easily brainwashed and their right of choice terribly manipulated making an objective choice seldom to consideration. Besides, various forms of inducements and gratification which provide temporary relief from the scourge of poverty are given central attention in making democratic choices. However, many Nigerians see the election period as an opportunity to demand of the office seekers a slice of their wealth. Thus, their participation in the election process was only influenced by how much they could attract the contestants rather than by deliberate decision based on preventing issues and national interest.[87] For Chukwudi .E. Ezeugwu and Obiora Anichebe in *Nigerian Democracy and Global Democracy,* democracy is a laudable system generally acceptable to all civilized humanity, its gains are only realizable through the electoral process. Without appropriate electoral process, democracy remains a slogan. This according to them is because democracy by its definition connotes popular participation by the people, not only in exercising the right to vote but also the right to run the affairs of the state directly or through their elected representatives. A flaw in the electoral process diminishes or erodes this vital ingredient which most often turns democracy into a mere slogan since the people are alienated.[88] The level of political awareness and understanding among Nigerians is quite low. This coupled with apathy arising from the continued alienation of the people from governance has rendered the Nigerian electoral process open to manipulation. The people in most cases seem disenchanted with the process and have abandoned the terrain to the politicians to do whatever they like.[89] The Nigerian political parties have not done well in promoting democracy and the electoral process. It is on record that most of the parties lack internal democracy. It has conducted its internal political affairs in utter disregard of sound electoral process. Their primaries are marred by violence, falsehood and all forms of manipulation.[90]

For Femi Omotoso in *Mediterranean Journal of Social Sciences,* what is needed in the country is the strengthening and building of institutions of government rather than personalization

of state authority. The institution of government so strengthened will act as catalyst in promoting the goals of democracy and serve as bulwark against abuses. This is because according to him:

> The leadership is self serving, greedy, corrupt and excessively wicked. The egregious leadership problems in the country can be seen in all sectors of Nigeria. Democracy presupposes leadership accountability to the people but the situation in the country is such that the leaders are the masters and therefore too big to render their stewardship to the people they claim to be serving. One of the problems associated with leadership recruitment is that most of these leaders were forced on the people by their various political godfathers, not on the basis of performance but for their ability to serve the interests of these godfathers.[91]

In most cases, they take advantages of the poverty ravaging the land to bribe their ways to power. The issue of godfatherism has made a mockery of the Nigerian governance and democratic experience. For example, in Oyo State, the late Lamidi Adedibu held sway as the single handed enthroned and dethroned governors and other political office holders. He told whoever cared to listen that he was the one that made Rashidi Ladoja governor of the state and equally removed him when he Ladoja became obstinate.[92] The question is, can godfatherism and democracy work hand in hand? Femi Omotoso further answers that godfatherism is threatning governance and democracy in Nigeria, frustrating the people and affecting the capacity of the government to develop the country. What should have been used for development is misappropriated to maintain and appease these godfathers.[93] And the crisis that this phenomenon engenders between the godfather and godson has been seriously dysfunctional to the stability and development of the state. For example, in Kwara state, it was Saraki (godfather) versus Alabi Mohammed Lawal (godson /governor); in Anambara state, it was Chief Emeka Ofor (godfather) versus Chinwoke Mbadinuju (godson/governor) and Chris Uba (godfather) versus Chris Ngige (godson/governor). In Enugu state, Jim Nwobodo versus Chimaraoke Nnamani (godson/governor) and in Kano state, the late Alhaji Abubakar Rimi (godfather) versus Rabiu Kwankwaso (godson/governor) and so on and so forth.[94] These crises shook the various states to their foundations polarizing the states along godfather and godson/governor camps, distracting governments and destroying governance. Most of the states concerned are without development projects that are commensurate with the quantum

of the resources available to them. Such resources were diverted, misappropriated and mismanaged to the satisfaction of the godfathers but to the detriment of the people.[95] The organs of government are weak and inefficient; the executive is lawless, evasive and uninterested in citizens welfare and development. The legislature is greedy, inconsiderate and indifferent to citizens' pitiable conditions, while the judiciary is crisis ridden, coruption-prone and in capable of being the last hope of the common man.[96] It is because of this that Ado Musa in *Democracy in Nigeria and Nigerians* states that the National Assembly, as representatives of the people and who are supposed to enact laws leading to good governance in a modern democratic setting ; who are also expected to check the excesses of the executive arm of government has compromised its constitutional roles, abandoned the electorate and become praise singers to the executive and rubber-stamp legislature. It has become a hub for a corrupt practices and malevolent constitutional juggling in complete disregard to the needs of the common man.[97] The National Assembly in Nigerian democracy allocates to itself 28 percent of the total overhead Cost of the county's annual budget, in addition to the plethora of the *sidekicks* that come their way in the course of their so called oversight functions' in the ministries and parastatals.[98]

Yusuf O. Ali in *Democracy Today and the Rule of Law: Perspective of Nigeria's Democratic System* says that it cannot be gainsaid that the rule of law is driving force for the sustenance of democracy and where respect for the rule of law is absent in any so called democratic set up, such a set cannot be perceived as a democratic set up but mere civil rule. For him:

> From the happenings in Nigeria in recent times, under our own mode of democratic rule, what we have been witnessing show that we live under the rule of men, not of law; that the constitution is just an old text that means whatever the current crop of judges say it means, that all the rules are infinitely manipulatable; that law is a business like any other; and that business is just unrestrained pursuit of self interest. There is equally no doubt that the rule of law in Nigeria as of today is different from what it is universally recognized to be and that we live under the rule of me.[99]

Apart from all these, laws as it is in Nigeria of today are not meant for the elite or the political big wigs to obey but for the less privileged in the society. The so-called custodians of democracy, who are equally supposed to be custodians of the rule of law have abandoned the rule of law, for the rule of politics.[100] Tunde Bakare in *Sahara Reporters* says that we need to go further and challenge our country to give us equal rights, access and privileges to the commonwealth of our nation .We must not stop at theorizing how much our lives will forever be circumscribed by corruption and its pernicious effects. Instead, we must strive to meaningfully participate in issues that affect our lives. A government where the rich and the politically powerful trample on the right of the poor is not a system that should claim it practices democratic governance.[101] The questions are: what does the foregoing portend for Nigeria's democracy? How can a heterogeneous and culturally diverse Nigeria begin to tackle these complex hydra–headed problems in a way that strengthen democracy? Agarwal quoted in Egbefo Omolumen Dawood is of the view that:

> For the success of democracy in practice, the people must desire it and be prepared to work for it and make necessary sacrifice for it. There must be tolerance for opposing views, rationality, and openness and no dogmatism, militarism or authoritarian tradition. The leadership must be comprised by men and women of unimpeachable character and outstanding initiative rather than those lacking sense of responsibility, moral value and self enlightenment.[102]

The relevance of the above reviewed literatures is that they place too much stress on the liberty of the individuals which is achieved through separation of powers such that if the three powers, viz. legislative, executive and judiciary are in the hands of a single person, it would lead to despotism and tyranny. So to avoid this, power should be a check to power. Montesquieu should be applauded for this but the lacuna which I have identified with most of these literatures is their failure to point out the need for a government that the constituents or power wielders should be meritocrats, moralists and educated. Today, some people who are morally depraved and debauched are our legislature, executive and judiciary, and that is why they go to the National Assembly to fight instead of making laws. Today, engineers, medical doctors and agriculturists are law makers and one should wonder if the laws they make are for animals or human beings. Some of our

representatives have poor behavioural background, some were cheats before they assumed office and this is very bad. Our democracy is embedded in the principle of separation of powers but is that enough? Any government that the leaders are not elected based on merit, be that monarchy, autocracy, gerontocracy, plutocracy or democracy etc. will degenerate into despotism, tyranny and dictatorship and that is exactly what we have in Nigeria today. Our leaders are not elected but selected and the selection is not based on merit. That is why there are monetization of democracy and representational corruption in Nigeria because not everybody is qualified to rule. So, this work is advocating for managerial meritocratic democracy as a panacea for the contemporary Nigerian democratic predicaments.

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CHAPTER THREE

MONTESQUIEU'S THEORY OF SEPARATION OF POWERS

3.1 Historical Background of Baron de Montesquieu

Charles- Louis de Secondat, Baron de la Brede et de Montesquieu, was born on January 19th, 1689 at La Brede near Bordeaux to a nobel and prosperous family. His father, Jacques de Secondat belongs to an old military family of modest wealth that had been ennobled in the 16th century for services to the crown while his mother Marie- Francoise de Pesnel, was a pious lady of partial English extraction. She brought to her husband a great increase in wealth in the valuable wine-producing property of La Brede.[1] When she died in 1696, the barony of La Brede passed to Charles-Louis who was her eldest child, then aged seven. His father died in 1713 and he became the ward of his uncle, the Baron de Montesquieu. Educated first at home and then in the village, he was sent away to school in 1700. The school was the College de Juilly, close to Paris and in the diocese of Meaux. It was much patronized by the prominent families of Bordeaux and the priests or the Oratory to whom it belonged, provided a sound education on enlightened and modern lines.[2]

Young Charles de la Brede as he was then known was sent to the Oratorian College at Juilly (1700-11), where he received a wholly literary and classical education in which religion held out a minor place. When at twenty-five years of age, he returned home after having been called to the bar, he received from his paternal uncle the style and title of Baron de Montesquieu by which he was afterwards known, and became councilor of the Bordeaux Parliament. He married a Protestant, Jeanne Lartigue and they had three children but neither his profession nor his family seems to have claimed much of his attention.[3] At the end of nine years he sold his office, and gave himself up entirely to study which henceforth became his life's one and only passion. "Study", he wrote afterwards, "has been my sovereign remedy against the worries of life. I have never had a care that an hour's reading could not dispel". As a matter of fact, the story of his life is but the chronicle of the preparation and composition of his books. His earliest productions were read before the Academy of Bordeaux, of which he became a member in 1716. They deal with a variety

of subjects but mainly with scientific topics, history, and politics. For a time he thought of writing a "physical history of the Earth" for which he began to collect material in 1719 but two years later, he was busy in a very different direction, publishing the "*Lettres Persanes"* (Amsterdam, 1721), so named because it pretended to be a correspondence between two Perisan gentlemen travelling in Europe, and their friends in Asia who sent them the gossip of the seraglio.[4]

He surprised all but a few close friends by publishing his *Lettres Persanes* (Persian Letters) in which he gave a brilliant satirical portrait of French and particularly Parisian civilization, supposedly seen through the eyes of two Persian travelers.[5] Under this fictitious guise, he goes on to describe or rather satirize French, and especially Parisian manners between 1710 and 1720. The king, the absolute monarchy, the Parliament, the Academy and the university are all very transparently ridiculed but it was the Catholic religion, its dogmas, its practices, its ministers from pope to monks that came in for his bitterest raillery. Because of ideal of celibacy, the Catholic Church is accused of being a cause of depopulation and because of its teaching concerning this world's goods, it is charged with weakening the prosperity of the nation while its intolerant proselytism is a source of disturbance to the state. On the other hand, Protestantism is held up as more favourable to material progress. Coming ostensibly from Mohammedans, these criticisms may have seemed less shocking to thoughtless minds but they were none the less one of the first and rudest attacks directed against the church during the eighteenth century.[6] In them, he showed himself as incapable of understanding the church's dogmas as he was of appreciating her services to society. Though in later years, his witty criticisms in their lively setting of romance and sensuality quite to the taste of that age, assured a great success for the "*Lettres Persanes*". Eight editions were published within a year. Montesquieu had not signed his name to them but the author was quickly discovered, and the public nominated him for the French Academy. He was elected in 1726, but owing to the scandal the "*Lettres Persanes"* had caused, the king did not approve and an excuse was given that the author did not live in Paris as the rules of the Academy required.

Montesquieu took up his residence in Paris, and was elected once more, and admitted in 1728.[7] This exceeding successful work mocks the reign of Louis XIV which had only recently ended; pokes fun at all social classes; discusses in its allegorical story of the Troglodytes and the theories of Thomas Hobbes relating to the state of nature. It also makes an original contribution to the new science of demography, continually compares Islam and Christianity; reflects the controversy about the papal bull *unigenitus* which was directed against the dissident Catholic group known as the *Jansenists;* satirizes Roman Catholic doctrine and is infused throughout with a new spirit of vigorous, disrespectful, and iconoclastic criticism.[8] The work's anonymity was soon penetrated, and Montesquieu becomes famous. The new ideas fermenting in Paris had received their most scintillating expression. Montesquieu then sought to reinforce his literary achievement with social success. Going to Paris in 1722, he was assisted in entering court circles by the duke of Berwick, the exiled Stuart prince whom he had known when Berwick was military governor at Bordeaux. The tone of life at court was set by rakish regent, the duc d'Orleans and Montesquieu did not disdain its dissipations. It was during this period that he made the acquaintance of the English politician Viscount Bolingbroke, whose political views were later to be reflected in Montesquieu's analysis of the English constitution.[9]

In Paris, his interest in the routine activities of the Parliament in Bordeaux, however, had dwindled. He resented seeing that his intellectual inferiors were more successful than he in court. His office was marketable and in 1726, he sold it, a move that served both to reestablish his fortunes depleted by life in the capital and to assist him by lending colour to his claim to be resident in Paris in his attempt to enter the *Academie Francaise.* A vacancy there arose in October 1727. Montesquieu had powerful supporters with Madame de Lambert's salon firmly pressing his claims, and he was elected taking his seat on January 24, 1728.[10] This official recognition of his talent might have caused him to remain in Paris to enjoy it. On the contrary, he resolved to complete his education by foreign travel. Leaving his wife at la Brede with full powers over the

estate, he set off for Vienna in April 1728, with Lord Waldegrave, nephew of Berwick and lately British ambassador in Paris as travelling companion. He wrote an account of his travels as interesting as any other of the 18th century. In Vienna, he met the soldier and statesman Prince Eugene of Savoy and discussed French politics with him. He made a surprising detour into Hungary to examine the mines.[11]

He entered Italy, and after tasting the pleasures of Venice proceeded to visit most of the other cities. Conscientiously examining the galleries of Florence with note book in hand, he developed his aesthetic sense. In Rome, he heard the French minister cardinal Polignac and read his unpublished Latin poem *Anti- Lucretius***.** In Naples, he skeptically witnessed the lique faction of the blood of the city's patron saint. From Italy, he moved through Germany to Holland and thence (at the end of October 1729), in the company of the statesman and wit Lord Chester field to England where he remained until the spring of 1731.[12] Montesquieu had a wide circle of acquaintances in England. He was presented at court and he was received by the Prince of Wales at whose request he later made an anthology of French songs. He became a close friend of the dukes of Richmond and Montagu. He was elected a fellow of the Royal Society. He attended parliamentary debates and read the political journal of the day. He became a freemason and bought extensively for his library. His stay in England was one of the most formative periods of his life.[13]

The *Lettres persanes* contain some profound observations on history and politics. It is Montesquieu meditation on the laws and customs of mankind, from which was to result his later work, "L Espirit des lois." As a preparation for this work, he set out in 1728 on a long series of travels through Europe and visited Vienna and Hungary, spent some time in Venice, Florence, Naples, Genoa, and Rome where he was received by Cardinal de Polignac and Benedict XIII. In the suite of Lord chesterfield, he went to England where he stayed for eighteen months, and was the guess of prime minister Walpole of Swift and Pope.[14] Wherever he went, he made the acquaintance of statesmen, took copious notes of what he saw, heard, and read with avidity. After

three years, he returned to his family, his business, his vineyard and the farming of his estates at Chateau de la Brede. As a relaxation, he paid occasional visits to Paris, and mixed with literary men and their friends in the salons of Madame Geoffrey and Madame du Deffand. Yet he studiously avoided over familiarity with what was known as the philosophical set. Though his religious convictions were not deep, his serious and moderate turn of mind had nothing in common with the noisy and aggressive impiety of Voltaire and his friends.[15]

Hence forth, his great aim in life was to write the "Esprit des lois," and all his spare time in the studious seclusion at La Brede was devoted to it. To begin with, ancient Rome gave him ample material for thought, but took up so much space in his work that in order not to mar the proportions of his book, he published all that concerned it as a distinct work, "*les considerations sur les causes de la grandeur et de la decadence des Romains"* (Amsterdam 1734). In this book, he shows successively the glorious progress and slow decay which the Empire experienced from the foundation of Rome to the capture of Constantinople by the Turks.[16] He does not narrate events but supposing that they are already known, he seeks to discover the links in the chain of events and to point out the sources from which they sprang, choosing preferably political causes, that is institutions. By exhibiting them in their natural relationships, he throws unexpected light on certain events of ancient history and those of more recent date. Bossuet had already devoted two chapters of his "*Histoire Universelle"* to explaining "the sequence of changes at Rome."[17] Montesquieu treats the same subject in a larger way and with closer correlation of facts. His point of view is that of the statesmen rather than of the moralist and every religious preoccupation is left aside. Such indeed is his indifference that he has not a word about religion. This concession to the prejudices of his age was a mistake as modern criticism has shown especially in the works of Fustel de Coulanges that religion played a greater part in the political conduct of the Romans than Montesquieu credited it with.[18]

Montesquieu literary ambitions were far from exhausted. He had for some time been meditating the project of a major work on law and politics. After the publication of the *Considerations***,** he rested for a short time and then, undismayed by failing eyesight applied himself to this new and immense task. He undertook an extensive program of reading in law, history, economics, geography, and political theory, filling with his notes a large number of volumes of which only one survives, *Geographica, tome II*.[19] He employed a succession of secretaries sometimes as many as six simultaneously using them as readers and as amanuenses but not as precise writers. And effort of this magnitude was entirely foreign to what was publicly known of his character, for he was generally looked on as brilliant, rapid and superficial. He did not seek to disabuse the world at large. Only a small number of Friends knew what he was engaged in. He worked much at *La Brede* devoting himself also to the administration of his estates and to the maintenance of his privileges as a landed proprietor.[20] But he continued to visit Paris and to enjoy its social life. He kept there a second library and also made use of the *bibliotheque du Roi.* He attended the *Academie,* visited the salons, and enjoyed meeting Italian and English visitors. At the same time, he persistently unostentatiously pressed on with the preparation of the book that he knew would be a masterpiece. By 1740, its main lines were established and a great part of it was written. By 1743, the text was virtually complete, and he began the first of two thorough and detailed revisions which occupied him until December 1746.[21]

The actual preparation for the press was at hand. A Geneva publisher, J.Barrilot was selected, further corrections were made, several new chapters were written, and in November 1748, the work appeared under the title *De l'esprit des loix; ou du rapport que les loix doivet avoir avec la constitution de chaque government, les moeur, le climate, la religion,* e t c. (The Sprit of Laws,1750). It consisted of two quarto volumes, comprising 31 books in 1, 086 pages.[22] *L Esprit des lois* is one of the great works in the history of political theory and in the history of jurisprudence. Its author had acquainted himself with all previous schools of thought but identified himself with none. Of the multiplicity of subjects treated by Montesquieu, none remained

unadorned. His treatment of three was particularly memorable. The first of these is his classification of governments, a subject that was *de riguear* for a political theorist.[23] Abandoning the classical divisions of his predecessors into monarchy, aristocracy and democracy, Montesquieu produced his own analysis and assigned to each form of government an animating principle: the republic, based on virtue, the monarchy, based on honour, and despotism based on fear. His definitions show that this classification rests not on the location of political power but on the government's manner of conducting policy: it involves a historical and not a narrow descriptive approach.[24]

The second of his most noted arguments, the theory of the separation of powers, is treated differently. Dividing political authority into the legislative, executive, and judicial powers, he asserted that in the state that most effectively promotes liberty, these three powers must be confided to different individuals or bodies acting independently. His model of such a state was England, which he saw from the point of view of the Tory opposition to the Whig leader, Robert Walpole, as expressed in Bolingbroke' polemical writings.[25] The chapter in which he expressed this doctrine-book XI chapter 6 is the most famous of the entire book. It at once became perhaps the most important piece of political writing of the 18th Century. Though its accuracy has in more recent times been disputed, in its own century it was admired and held authoritative, even in England; it inspired the declaration of the right of man and the constitution of the United States**.**[26]

The third of Montesquieu's celebrated doctrine is that of the political influence of climate. Basing himself on doctrines met in his reading, on the experience of his travels, and on experiments-admittedly somewhat naive-conducted at Bordeaux, he stressed the effect of climate primarily thinking of heat and cold on the physical frame of the individual and as a consequence on the intellectual outlook of society. This influence he claims is not in primitive societies insuperable.[27] It is the legislator's duty to counteract it. Montesquieu took care (as his critics have not always realized) to insist that climate is but one of many factors in an assembly of secondary causes that he called the "general spirit." The other factors (laws, religion, and maxims of

government being the most important) are of a non physical nature and their influence compared with that of climate grows as civilization advances.[28]

Society for Montesquieu must be considered as a whole. Religion itself is a social phenomenon, whether considered as a cause or an effect, and the utility or harmfulness of any faith can be discussed incomplete independence of the truth of its doctrines. Here and elsewhere, undogmatic observation was Montesquieu's preferred method.[29] Sometimes, the reader is beguiled by this into the belief that Montesquieu maintains that whatever exists, though it may indeed stand in need of improvement cannot be wholly bad. Although with a bold parenthesis or a rapid summing-up, the reader is reminded that for Montesquieu, certain things are intrinsically evil like despotism, slavery, intolerance etc. Though he never attempted an enumeration of the rights of man and would probably have disapproved of such an attempt, he maintained a firm belief in human dignity. In the final books of *L' Esprit des lois* , added at the last moment and imperfectly assimilated to the rest, he addressed himself to the history of law, seeking to explain the division of much discussed controversy about the origins of the French aristocracy. Here, he displays not only prudence and common sense but also a real scholarly capacity which he had not shown before for the philological handling of textual evidence.[30]

After the book was published, praise came to Montesquieu from the most-varied headquarters. The Scottish philosopher, David Hume wrote from London that the work would win the admiration of all the ages; an Italian friend spoke of reading it in an ecstasy of admiration; the Swis scientist Charles Bonnet said that Montesquieu had discovered the laws of the intellectual world as Newton had those of the physical world.[31] The philosophers of the Enlightenment accepted him as one of their own, as indeed he was. The work was controversial, however, and a variety of denunciatory articles and pamphlets appeared. Attacks made in the Sorbonne and in the general assembly of the French clergy were deflected but in Rome, in spite of the intervention of the French ambassador and of several liberal-minded high ecclesiastics and notwithstanding the favourable disposition of the pope himself, Montesquieu's enemies were successful, and the work

was placed on the *Index Librorum Prohibitorum* in 1751.[32] This, though it dismayed Montesquieu, was but a momentary set back. He had already published his Defense *De L' Esprit des lois* (1750). Subtle and good-humoured, but forceful and incisive, this was the most brilliantly written of all his works. His fame was now world wide.[33]

Montesquieu advocates gentler treatment of criminals, toleration in religious belief, and freedom of worship. But far from thinking that there can be a conflict between religion and society, he insists that one is useful to the other. Something he says must be fixed and permanent, and religion is that something. He says again, more clearly what a wonderful thing is the Christian religion! It seems to aim only at happiness in a future life, and yet it secures our happiness in this life also. He neither dreamt of separating Church and State nor of subjecting the former to the latter. He says that he has never claimed that the interests of religion should give way to those of the state, but that they should go hand in hand. Nevertheless on various points he seriously misunderstood Catholic teaching.[34] *Les Nouvelles Ecclesiastiques* (October, 1749) called attention to several statement of this sort, and the Sorbonne drew up a list of passages from his writing that seemed to call for censure in August, 1752. Before this in March 1752, L' *Esprit des lois* had been placed on the Roman Index but this measure created no great stir.[35] Political scientist, Donald Lutz found that Montesquieu was the most frequently quoted authority on government and politics in colonial pre-revolutionary British America, cited more by the American founders than any source except for the Bible. Following the American Revolution, Montesquieu's work remained a powerful influence on many of the American founders, most notably James Madison of Virginia.[36]

Montesquieu's philosophy that government should be set up so that no man should be afraid of another reminded Madison and others that a free and stable foundation for their new national government required a clearly defined and balanced separation of powers. According to social anthropologist D.F. Pocock, Montesquieu's *The Spirit of Laws* was the first consistent attempt to survey the varieties of human society, to classify and compare them and, within societies, to study the inter- functioning of institutions. Montesquieu's political anthropology gave

rise to his theories on government.[37] When Catherine the Great wrote her *Nakaz* (Instruction) for the Legislative Assembly, she had created to clarify the existing Russian law codes, she vowed borrowing heavily from Montesquieu's *Spirit of Laws***,** although she discarded or altered portions that did not support Russia's absolutist bureaucratic monarchy.[38]

Besides composing additional works on society and politics, Montesquieu traveled for a number of years through Europe including Austria and Hungary, spending a year in Italy and 18 months in England where he became a freemason, admitted to the *Horn Tavern* lodge in Westminster before resettling in France. He was troubled by poor eye sight, and was completely blind by the time he died from a high fever in 1755.[39] He was buried in the Eglise Saint-Sulpice, Paris. The following is the list of principal works by Montesquieu.

- *Memoirs and Discourses at the Academy of Bordeaux(1718-1721), including discourses on echoes, on the renal glands, on weight of bodies, on transparency of bodies and on natural history*
- *Gleanings, 1715*
- *System of Ideas, 1716*
- Persian Letters, 1721
- *The Temple of Gnidos, a Novel; 1725*
- *True History, a Reverie; c. 1725-c.1738*
- *Considerations on the Causes of the Greatness of the Romans and Their Decline, 1734 at Gallica*
- *Arsace and Ismenie, a Novel; 1742*
- *The Spirit of Laws 1748*
- *In Defense of the Spirit of Laws,1750*
- *Essay on Taste, 1757*
- *My Thoughts,1750-1755.*[40]

3.2 Montesquieu on Laws and the State of Nature

Montesquieu in *The Spirit of Laws***,** tries to explain the relation of laws to different beings, to explain human laws and social institutions. He says that all beings have their laws: the Deity his laws, the material world its laws, the intelligences superior to man their laws, the beasts their laws, man his laws. It is because of this that Montesquieu contends that laws in their most generally signification are the necessary relations arising from the nature of things.[41] For him, those who assert that a blind fatality produced the various effects we behold in this world talk very absurdly stating that nothing can be more unreasonable than to threaten that a blind fatality could be productive of intelligent beings.[42] For him, God is related to the universe as creator and preserver; the laws by which He created all things are those by which He preserves them. He acts according to this rule, because He knows them; He knows them because He made them, and He made them, because they are in relation to his wisdom and power. He further avers.

> Since we observe that the world, though formed by the motion of matter, and void of understanding subsists through so long a succession of ages, its motions must certainly be directed by invariable laws; and could we imagine another world, it must also have constant rules, or it would inevitably perish. Thus, the creation which seems an arbitrary act, supposes laws as invariable as those of the fatality of the Atheists. It would be absurd to say that the creator might govern the world without those rules, since without them it could not subsist; these rules are fixed and invariable relation. In bodies moved, the motion is received, increased, diminished, or lost according to the relations of the quantity of matter and velocity; each diversity is uniformity, each change is constancy.[43]

Particular intelligent beings may have laws of their own making, but they have some likewise which they never made before there were intelligent beings. Montesquieu says, they were possible they had therefore possible relations, and consequently possible laws. Before laws were made, there were relations of possible justice. Montesquieu is of the view that we must therefore acknowledge relations of justice antecedent to the positive law by which they are established as for instance, if human societies existed, it would be right to conform to their laws; if there were intelligent beings that had received a benefit of another being, they ought to show their gratitude.

If one intelligent being had created another intelligent being, the latter ought to continue in its original state of dependence; if one intelligent being injures another, it deserves a retaliation; and so on.[44]

But the intelligent world is far from being so well governed as the physical and the former has also its laws which of their own nature are invariable; it does not conform to them so exactly as the physical world. This is because, on the one hand, particular intelligent beings are of a finite nature, and consequently liable to error and on the other, their nature requires them to be free agents. Hence they do not steadily conform to their primitive laws; and even those of their own instituting, they frequently infringe.[45] For Montesquieu, we cannot determine whether brutes are governed by the general laws of motion, or by a particular movement, be that as it may, they have not a more intimate relation to God than the rest of the material world; and sensation is of no other use to them than in the relation they have either to other particular beings or to themselves. By the allurement of pleasure, they preserve the individual, and by the same allurement they preserve their species.[46] They have natural laws because they are united by sensation; positive laws they have none, because they are not connected by knowledge. And yet they do not invariably conform to their natural laws; these are better observed by vegetables that have neither understanding nor sense. Brutes are deprived of the high advantages which we have; but they have some which we have not. They have not our hopes, but they are without our fears; they are subject like us to death, but without knowing it even most of them are more attentive than we to self- preservation, and do not make so bad use of their passion.[47] Man as a physical being says Montesquieu is like other bodies governed by invariable laws. As an intelligent being, he incessantly transgresses the laws established by God, and changes those of his own instituting. He is left to his private direction, though a limited being, and subject like all finite intelligences to ignorance and error even his imperfect knowledge he loses; and as a sensible creature, he is hurried away by a thousand impetuous passion, such a being might every instant forget his Creator; God has therefore reminded him of his duty by the laws of religion. Such a being is liable every moment to forget

himself, philosophy has provided against this by the laws of morality. Formed to live in society, he might forget his fellow-creatures. Legislators have therefore by political and civil laws confined him to his duty.[48]

Antecedent to the above mentioned laws says Montesquieu is that of nature (Laws of Nature) because they derive their force entirely from our frame and existence. In order to have a perfect knowledge of these laws, Montesquieu says that we must consider man before the establishment of society; the laws received in such a state would be those of nature. The law which impressing on our minds the idea of a creator inclines us towards Him is the first in importance. Man in a state of nature would have the faculty of knowing before he had acquired any knowledge.[49] His first ideas would not be of a speculative nature; he would think of the preservation of his being before he would investigate its origin. Such a man would feel nothing in himself at first but impotency and weakness; his fears and apprehensions would be excessive as of savages found in forests, trembling at the motion of a leaf, and flying from every shadow. In this state, every man, instead of being sensible of his equality, would fancy himself inferior. There would therefore be no danger of them attacking one another. Because of this, Montesquieu says that peace would be the first law of nature. Montesquieu states that the natural impulse or desire which Hobbes attributes to mankind of subduing one another is far from being well founded.[50] For a better understanding of this, let us take a brief look at Hobbes state of nature so that we can see the reason why Montesquieu's state of nature is the obverse of Thomas Hobbes state of nature. Hobbes is of the view that the only way to ensure that security is generated and end meets, is to confer power on a man or assembly of men that would be sovereign. He discusses this extensively in his social contract theory. For Hobbes, nature has made men so equal in the faculties of body and mind; but it is found that one man sometimes is manifestly stronger in body or of quicker mind than another. He says:

> From this equality of ability, arises equality of hope in the attainment of our ends. And therefore, if any two men desire the same thing, which nevertheless they cannot both enjoy, they become enemies and in the

> way to their end, endeavour to destroy, or subdue one another. and from hence, it comes to pass that where an invader has no more to fear than another man's single power such that if one plants, sows, builds or possesses a convenient seat, others may probably be expected to come in the prepared forces united, to dispose, and deprive him not only of the fruit of his labour, but also of his life or liberty and the invader again is in the like danger of another.[51]

Hobbes says that there are three principal causes of quarrel in the state of nature. First is competition, second is diffidence and third is glory. According to him, the first makes men to invade for gain; the second for safety; and the third for reputation. The first uses violence to make themselves masters of other men, persons, wives, children, and cattle, the second to defend them; the third to trifles as a word, a smile, a different opinion, and any other sign of undervalue, either direct in their persons or by reflexion in their kindred, their friends, their nation, their profession or their name.[52] It is because of this that there is always war of every one against everyone. During that time, men lived without a common power to keep them all in awe, they were in that condition which is called war: and such a war is of every man against every man. In the state of nature, men lived without security and consequently no culture of the earth, no navigation, no use of the commodities that may be imported by sea, no commodious building, no instruments of moving and removing those things that require much force, no knowledge of the face of the earth; no account of time, no arts, no letters, no society, and the worst of all were continual fear, and danger of violent death, and the life of man was solitary, poor, nasty, brutish and short. Because of this condition of man, he armed himself when taking a journey and sought to go well accompanied, when going to sleep, he locks his doors.

Hobbes says that where there is no common power, there are no laws, where there is no law, there is no justice. The only way to erect such a common power as may be able to defend them from the invasion of foreigners, and the injuries of one another, and to secure them in such sort as that by their own industry, and by the fruits of the earth they may nourish themselves and live contentedly is to:

> Confer all their power and strength upon one man, or upon one assembly of men that may reduce all their wills, by purity of voice unto one will which is as much as to say, to appoint one man or assembly of men to bear their person; and every one to own, and acknowledge himself to be author of whatsoever he that so bears their person, shall act or cause to be acted in those things which concern the common peace and safety, and to submit their wills, every one to his will and their judgments, to his judgment.[53]

For Hobbes, this is more than consent or concord, it is real unity of them all in one and the same person made by convergent of everyman with every man in such manner as if every man should say to every man that he authorizes and gives up his right of governing himself to this man or to this assembly of men, it is on this condition that one gives up his right to him and authorizes all his actions in like manner. When this is done, the multitude so united in one person is called a commonwealth and in Latin it is called civitas. This is the generation of that great leviathan or rather that mortal god to which we owe under the immortal God, our peace and defense. For by this authority given to him by every particular man in the commonwealth, he has the use of so much power and strength conferred on him. Hobbes defines the commonwealth as:

> One person, of whose acts a great multitude by mutual convenants one with another, have made themselves everyone the author, to the end he may use the strength and means of them all, as he shall think expedient for their peace and common defense…. And he that carries this person, is called sovereign, and is said to have sovereign power, and every one besides his subject.[54]

Against this Hobbes views, Montesquieu declares that the idea of empire and dominion is so complex, and depends on so many other notions, that it could never be the first which occurred to the human understanding.[55] Hobbes inquires, "For what reason do men armed and have locks and keys to fasten their doors if they were not naturally in a state of war?"[56] But is it not obvious that he attributes to mankind before the establishment of society what can happen but in consequence of this establishment , which furnishes them for hostile attacks and self – defence?[57]

Next to a sense of his weakness, man would soon find that of his wants. Hence another law of nature would prompt him to seek for nourishment. Montesquieu observes that fear would induce men to shun one another but the marks of this fear being reciprocal would soon engage them to

associate. Besides, this association would quickly follow from the very pleasure one animal feels at the approach of another of the same species. Again, the attraction arising from the difference of sexes would enhance this pleasure, and the natural inclination they have for each other would form a third law. Beside the sense or instinct which man possesses in common with brutes, he has the advantage of acquired knowledge and thence arises a second tie which brutes have not. Mankind has therefore a new motive of uniting; and a fourth law of nature results from the desire of living in society.[58] Montesquieu states that as soon as man enters into a state of society, he loses the sense of his weakness, equality ceases, and then commences the states of war. Each particular society begins to feel its strength, whence arises a state of war between different nations. The individuals likewise of each society become sensible of their force; hence the principal advantages of this society they endeavour to convert to their own emolument which constitutes a state of war between individuals. Those two different kinds of states give rise to human laws (positive laws). Considered as inhabitants of this great planet which necessarily contains a variety of nations, they have laws relating to their mutual intercourse which is what we call the law of nations. As members of a society that must be properly supported, they have laws relating to the governors and the governed, and this we distinguish by the name of politic law. They have also another sort of law as they stand in relation to each other by which is understood the civil law[59]

The law of nations is naturally founded on this principle that different nations ought in time of peace to do one another all the good they can and in time of war as little injury as possible without prejudicing their real interests. The object of war is victory; that of victory is conquest; and that of conquest preservation. From this and the preceding principle, all those rules are derived which constitute the law of nations. All countries have a law of nations. Besides the law of nations relating to all societies, there is a polity or civil constitution for each particularly considered. No society can subsist without a form of government.[60] The general strength may be in the hands of s single person, or of many. Some think that nature having established paternal authority, the most natural government was that of a single person. But the example of paternal authority proves

nothing. For if the power of a father relates to a single government, that of brother after the death of a father and that of cousins-german after the decease of brothers, refer to a government of many. The political power necessarily comprehends the union of several families.[61]

For Montesquieu, it is better to say that the government most comfortable to nature is that which best agrees with the humour and disposition of the people in whose favour it is established. The strength of individuals cannot be united without a conjunction of all their wills. The conjunction of those wills is called the civil state. Law in general is human reason inasmuch as it governs all the inhabitants of the earth, the political and civil laws of each nation ought to be only the particular cases in which human reason is applied.[62] They should be adapted in such a manner to the people for whom they are framed that it should be a great chance if those of one nation suit another. They should be in relation to the nature and principles of each government, whether they form it as may be said of politic laws or whether they support it as in the case of civil institutions. They should be in relation to the climate of each country, to the quality of its soil, to its situation and extent, to the principal occupation of the natives, whether husbandmen, huntsmen, or shepherds, they should have relation to the degree of liberty which the constitution will bear; to the religion of the inhabitants, their inclinations, riches, numbers, commerce, manner and customs.[63] He asserts:

> They have relations to each other, as also to their origin, to the intent of the legislator, and to the order of things on which they are established; in all of which different lights they ought to be considered. This is what I have undertaken to perform in the following work. These relations I shall examine, since all these together constitute what I call the spirit of laws. I have not separated the political from the civil institutions, as I do not pretend to treat of laws, but of their spirit; and as this spirit consists in the various relations which the laws may bear to different objects, it is not so much my business to follow the natural order of laws as that of these relations and objects. I shall first examine the relations which laws bear to the nature and principle of each government; and as this principle has a strong influence on laws….[64]

3.3 The Nature and Corruption of Different Principles of Government

For Montesquieu, there is this difference between the nature and principle of government, the former is that by which it is constituted, the latter is that by which it is made to act. One is its particular structure, and the other the human passions which set it in motion. For him, when once the principles of government are corrupted, the very best laws become bad, and turn against the state but when the principles are sound, even bad laws have the same effect as good and the force of the principle draws everything to it. For him, there are three types of government, viz. republican, monarchical and despotic.

Republican Government

This type of government takes either democratic or aristocratic forms. He sees a republican government as that in which the body or only a part of the people is possessed of the supreme power.[65]

Democracy

He defines democracy as the type of government whereby the body of the people is possessed of the supreme power. In democracy, the people are in some respects the sovereign, and in others the subject.[66] They may govern through ministers or be advised by a senate but they must have the power of choosing their ministers and senators for themselves. The principle of democracy is political virtue, by which Montesquieu means the love of the laws and of our country including its democratic constitution. The form of a democratic government makes the laws governing suffrage and voting fundamental. Montesquieu says that the virtue required by a functioning democracy is not natural. It requires a constant preference of public to private interest; it limits ambition to the sole desire and happiness of doing greater services to our country than the rest of our fellow citizens and it is a self renunciation which is ever arduous and painfull.[67] A democracy must educate its citizens to identify their interests with the interests of their country and should have censors to preserve its mores. It should seek to establish frugality by law so as to prevent its citizens from being tempted to advance their own private interests at the expense of the

public good; for the same reason, the laws by which property is transferred should aim to preserve an equal distribution of property among citizens to identify with it and make it more difficult for extensive private interests to emerge.[68]

Montesquieu says that democracy can be corrupted in two ways and these include the spirit of inequality and the spirit of extreme equality. The spirit of inequality arises when citizens no longer identify their interests with the interests of their country and therefore want to advance their own private interests at the expense of their fellow citizens and to acquire political power over them. The spirit of extreme equality arises when the people are no longer content to be equal as citizens but want to be equal in every respect.[69] In a functioning democracy, the people choose magistrates to exercise executive power and they respect and obey the magistrates they have chosen. If those magistrates forfeit their respect, they replace them. When the spirit of extreme equality takes place, the citizens neither respect nor obey any magistrates. They want to manage everything themselves, to debate for the senate, to execute for the magistrates and to decide for the judges. Eventually the government will cease to function, the last remnants of virtue will disappear and democracy will be replaced by despotism.[70]

Aristocracy

In aristocracy according to Montesquieu, the supreme power is lodged in the hands of a part of the people or a certain number of persons that have both the legislative and executive authority and the rest of the people are in respect to them, the same as the subjects of a monarchy in regard to the sovereign. They do not vote here by lot for this would be productive of inconveniences only. When the nobility are numerous, there must be a senate to regulate the affairs which the bodies of the nobles are incapable of deciding and to prepare others for their decision. In this case, it may be said that aristocracy is in some nature in the senate, the democracy in the body of the nobles, and the people are a cipher.[71]

It would be a very happy thing in an aristocracy if the people in some measure could be raised from their state of annihilation. The senators ought by no means to have the right of naming

their own members for this would be the only way to perpetuate abuses. In a republic, the sudden rise of a private citizen to exhorbitant power produces monarchy, or something more than monarchy. In the latter, the laws have provided for or in some measure adapted themselves to the constitution and the principle of government checks the monarch but in a republic, where a private citizen has obtained an exhorbitant power, the abuse of this power is much greater because the laws did not foresee it and consequently made no provision against it. There is an exception to this rule when the constitution is such as to have immediate need of a magistrate invested with extra-ordinary power.[72] For him, in all magistracies, the greatness of the power must be compensated by the brevity of duration. This most legislators have fixed to a year; a longer space would be dangerous and a shorter would be contrary to the nature of government. The best aristocracy is that in which those who have no share in the legislature are so few and inconsiderable that the governing party have no interest in oppressing them. Aristocratic families ought therefore as much as possible, to level themselves in appearance with the people. The more an aristocracy borders on democracy, the nearer it approaches perfection and in proportion as it draws towards monarchy, the more it is imperfect. But the most imperfect of all is the people that obey in a state of civil servitude to those who command, as the aristocracy of Poland, where the peasants are slaves to the nobility.[73]

As virtue is necessary in a popular government, it is requisite also in an aristocracy. The people who in respect to the nobility are the same as the subjects with regard to a monarch are restrained by their laws. They have less occasion for virtue than the people in a democracy. But how are the nobility to be restrained? They who are to execute the laws against their colleagues will immediately perceive that they are acting against themselves. Virtue is therefore necessary in this body from the very nature of the constitution.[74]

An aristocratic government has an inherent vigour unknown to democracy. The nobles form a body who by their prerogative and for their own particular interest, restrain the people. It is sufficient that there are laws in being to see them executed but easy as it may be for the body of

the nobles to restrain the people, it is difficult to restrain themselves. Such is the nature of this constitution that it seems to subject the very same persons to the power of the laws, and at the same time to exempt them. Such a body can restrain itself only in two ways; either by a very eminent virtue which puts the nobility in some measure on a level with the people and may be the means of forming a great republic or by an inferior virtue which puts them at least upon a level with one another and upon this their preservation depends. Moderation is therefore the very soul of this government; moderation founded on virtue not that which proceeds from indolence and pusillanimity.[75]

Montesquieu says that if the people are virtuous in an aristocracy, they enjoy very nearly the same happiness as in a popular government and the state grows powerful. But as a great share of virtue is very rare where men's fortunes are so unequal, the laws must tend as much as possible to infuse a spirit of moderation and endeavour to re – establish that equality which was necessarily removed by the constitution. The spirit of moderation is what we call virtue in an aristocracy; it supplies the place of the spirit of equality in a popular state. As the pomp and splendour with which kings are surrounded form a part of their power, so modesty and simplicity of manners constitute the strength of aristocratic nobility. When they affect no distinction, when they mix with the people, dress like them and with them share all their pleasures, the people are apt to forget their subjection and weakness.[76] Every government says Montesquieu, has its nature and principle. An aristocracy must not therefore assume the nature and principle of monarchy which would be the case were the nobles to be invested with personal privileges distinct from those of their body; privileges ought to be for the senate, and simple respect for the senators. In aristocratic governments in the view of Montesquieu, there are two principal sources of disorder; excessive inequality between the governors and the governed and the same inequality between the different members of the body that governs. From these two inequalities, hatreds and jealousies arise which the laws ought ever to prevent or repress. The first inequality is chiefly when the privileges of the nobility are honourable only as they are ignominious to the people. He further adds that:

> Such was the law at Rome by which the patricians were forbidden to marry plebeians; a law that had no other effect than to render the patricians on the one side more hurtful and on the other more odious. The reader may see what advantages the tribunes derived thence in their harangues. This inequality occurs likewise when the condition of the citizens differs with regard to taxes which may happen in four different ways: when the nobles assume the privilege of paying none; when they commit frauds to exempt themselves; when they engross the public money under pretence of rewards or appointments for their respective employments in fine, when they render the common people tributary and divide among their own body the profit arising from the several subside. This last case is very rare; an aristocracy so instituted would be the most intolerable of all governments.[77]

The laws ought to employ the most effectual means for making the nobles do justice to the people. If they have not established a tribune, they ought to be a tribune themselves. Every sort of asylum in opposition to the execution of the laws destroys aristocracy and is soon succeeded by tyranny. They ought always to mortify the lust of dominion. There should be either a temporary or perpetual magistrate to keep the nobles in awe. There are two very pernicious things in an aristocracy and there are excess either of poverty or of wealth in the nobility. To prevent their poverty, it is necessary above all things to oblige them to pay their debts in time. To moderate the excess of wealth, prudent and gradual regulations should be made but no confiscation, no agrarian laws, no expunging of debts; these are productive of infinite mischief.[78] The laws ought to abolish the right of primogeniture among the nobles to the end that by a continual division of the inheritances, their fortunes may be always upon a level. There should be no substitutions, no powers of redemption, and no rights of adoption. The contrivances for perpetuating the grandeur of families in monarchical governments ought never to be employed in aristocracies. When the laws have compassed the equality of families, the next thing is to preserve a proper harmony and union among them. Arbiters may terminate or even prevent the rise of disputes. The laws must not favour the distinctions raised by vanity among families under pretence that they are more noble or ancient than others. Pretence of this nature ought to be ranked among the weaknesses of private persons.[79]

Aristocracy is corrupted if the power of the nobles becomes arbitrary, when this is the case, there can be no longer any virtue either in the governors or the governed. If the reigning families observe the laws, it is a monarchy with several monarchs and in its own nature one of the most excellent for almost all these monarchs are tied down by the laws. But when they do not observe them, it is a despotic state swayed by a great many despotic princes. In the latter case, the republic consists only in the nobles. The body governing is the republic and the body governed is despotic state which forms two of the most heterogeneous bodies in the world. The extremity of corruption is when the power of the nobles becomes hereditary; for then they can hardly have any moderation.[80] In an aristocracy, the laws should be designed to instill and protect this spirit of moderation. To do so, they must do three things. First, the laws must prevent the nobility from abusing the people. The power of the nobility makes such abuse a standing temptation in an aristocracy; to avoid it, the laws should deny the nobility some powers like the power to tax which would make this temptation all but irresistible and should try to foster responsible and moderate administration.[81] Second, the laws should disguise as much as possible the difference between the nobility and the people, so that the people feel their lack of power as little as possible. Thus the nobility should have modest and simple manners, since if they do not attempt to distinguish themselves from the people; the people are apt to forget their subjection and weakness. Finally, the laws should try to ensure equality among the nobles themselves and among noble families. When they fail to do so, the nobility will lose its spirit of moderation and the government will be corrupted.[82]

Monarchy

This is a type of government in which a single person governs by fixed and established laws. The intermediate, subordinate, and dependent powers constitute the nature of the monarchical government; what does Montesquieu mean here? He answers:

> I mean of that in which a single person governs by fundamental laws. I said the intermediate, subordinate, and dependent powers. And indeed in monarchies the prince is the source of all power; political and civil.

> These fundamental laws necessarily suppose the intermediate channels through which the power flows. For if there be only the momentary and capricious will of a single person to govern the state, nothing can be fixed, and of course there is no fundamental law. The most natural, intermediate, and subordinate power is that of the nobility. This in some measure seems to be essential to a monarchy, whose fundamental maxim is: no monarch, no nobility; no nobility, no monarch; but there may be a despotic prince.[83]

Montesquieu avers that in the same manner as the ocean, threatening to over flow the whole earth is stopped by weeds and pebbles that lie scattered along the shore, so monarchs whose power seems unbounded are restrained by the smallest obstacles and suffer their natural pride to be subdued by supplication and prayer. It is not enough to have intermediate power in a monarchy; there must be also a depository of the laws. This depository can only be the judges of the supreme courts of justice who promulgate the new laws and revive the obsolete. The natural ignorance of the nobility, their indolence and contempt of civil government require that there should be a body invested with the power of reviving and executing the laws which would be otherwise buried in oblivion.[84] The prince's council is not a proper depository but they are naturally the depository of the momentary will of the prince and not of the fundamental laws. Besides, the prince's council is continually changing; it is neither permanent nor numerous; neither has it a sufficient share of the confidence of the people; consequently it is capable of setting them right in difficult conjunctures or of reducing them to proper obedience. Despotic governments, where there are no fundamental laws have no such kind of depository. Hence, religion has generally so much influence in those countries because it forms a kind of permanent depository and if this cannot be said of religion, it may be of the customs that are respected instead of laws.[85]

Montesquieu says that if there is only the momentary and capricious will of a single person to govern the state, nothing can be fixed and of course, there is no fundamental law. The accountability of the king to the laws of the land is what distinguishes monarchy from despotism. For him, the fundamental principle of a monarchy is honour, since it gives people something to aspire to whether it is their personal sense of self-worth or their desire to serve their king.[86] In

monarchies, policy effects great things with as little virtue as possible. The state subsists independently of the love of a country, of the thirst of true glory, of self – denial, of the sacrifice of our dearest interests and of all those heroic virtues which we admire in the ancients and to us are known only by tradition. The laws supply here the place of those virtues; they are by no means wanted and the state dispenses with them; an action performed here in secret is in some measure of no consequence. Though all crimes are in their own nature public, yet there is a distinction between crimes really public and those that are private which are so called because they are more injurious to individuals than to the community.[87] Now in republics, private crimes are more public, that is, they attack the constitution than they do to individuals and in monarchies, public crimes are more private, that is, they are more prejudicial to private people than to the constitution. Montesquieu says that virtuous princes are so very rare but in a monarchy, it is extremely difficult for the people to be virtuous. A monarchical government supposes pre-eminences and ranks as likewise a noble descent. Now, since it is the nature of honour to aspire to preferment and titles, it is properly placed in this government. Ambition is pernicious in a republic but in a monarchy, it has some good effects; it gives life to the government and is attended with this advantage, it is in no way dangerous because it may be continually checked.[88] It is with this kind of government as with the system of the universe in which there is a power that constantly repels all bodies from the center, and a power of gravitation that attracts them to it. Honour sets all the parts of the body politic in motion and by its very action connects them; thus each individual advances the public good while he only thinks of promoting his own interest. True it is that philosophically speaking, it is a false honour which moves all the parts of the government but even this false honour is as useful to the public as true honour could possibly be to private persons.[89]

As honour is the principle of a monarchical government, the laws ought to be in relation to this principle. They should endeavour to support the nobility in respect to whom honour may be in some measure deemed both child and parent. They should render the nobility hereditary not as a boundary between the power of the prince and the weakness of the people but as the link which

connects them both. In this government, substitutions which preserve the estates of families undivided are extremely useful though in others not so proper. Here, the power of redemption is of service as it restores the noble families the land that had been alienated by the prodigality of a parent. The land of the nobility ought to have privileges as well as their persons.[90] The monarch's dignity is inseparable from that of his kingdom and the dignity of the noble man from that of his fief. All these privileges must be peculiar to the nobility and incommunicable to the people unless we intend to act contrary to the principle of government and to diminish the power of the nobles together with that of the people. In monarchies, a person may leave the bulk of his estate to one of his children – a permission improper in any other government. The laws ought to favour all kinds of commerce consistent with the constitution to the end that the subjects may without ruining themselves be able to satisfy the continual cravings of the prince and his court. They should establish some regulation that the manner of collecting the taxes may not be more burdensome than the taxes themselves.[91]

Great is the advantage which a monarchical government has over a republic as the state is conducted by a single person, the executive power is thereby enabled to act with greater expedition. But as this expedition may degenerate into rapidity, the laws should use some contrivance to slacken it. They ought not only to favour the nature of each constitution but likewise to remedy the abuses that might result from this very nature.[92] As democracies are subverted when the people despoil the senate, the magistrates and the judges of their functions, so monarchies are corrupted when the prince insensibly deprives societies or cities of their privileges. In the former case, the multitude usurp the power, in the latter, it is usurped by a single person.[93]

Monarchy is destroyed when a prince thinks he shows a greater exertion of power in changing than in conforming to the order of things; when he deprives some of his subjects of their hereditary employment to bestow them arbitrarily upon others and when he is fonder of being guided by fancy than judgment. Again, it is destroyed when the prince directing everything entirely to himself, call the state to his capital, the capital to his court and the court to his own person.[94]

It is destroyed when the prince mistakes his authority, his situation and the love of his people and when he is not fully persuaded that a monarch ought to think himself secure, as a despotic prince ought to think himself in danger. The principle of monarchy is corrupted when the first dignities are marks of the first servitude, when the great men are deprived of public respect and rendered the low tools of arbitrary power. It is still more corrupted when honour is set up in contradiction to honours and when men are capable of being loaded at the very same time with infamy and with dignities. It is corrupted when the prince changes justice into severity.[95] The danger is not when the state passes from one moderate to another moderate government as from a republic to a monarchy or from a monarchy to a republic but when it is precipitated from a moderate to a despotic government. A monarchical state ought to be of moderate extent. Where it small, it would form itself into a republic; where it very large, the nobility possessed of great estates far from the eye of the prince with a private court of their own and secure moreover, from too slow and too distant a punishment.[96]

Despotic Government

According to Montesquieu, this is a type of government in which a single person directs everything by his own will and caprice. From the nature of despotic power, it follows that the single person invested with this power commits the execution of it also to a single person. A man whom his senses continually inform that he himself is everything and that his subjects are nothing is naturally lazy, voluptuous and ignorant. In consequence of this, he neglects the management of public affairs. Hence the more nations such a sovereign has to rule, the less he attends to the cares of government; the more important his affairs, the less he makes them the subject of his delibrations.[97]

As virtue is necessary in a republic and in a monarchy honour, so fear is necessary in a despotic government. With regard to virtue, there is no occasion for it and honour would be extremely dangerous. Honour is far from being the principle of despotic government, no one person can prefer himself to another and on the other hand they are all slaves, they can give

themselves no sort of preference. Besides, as honour has its laws and rules, as it knows not how to submit; as it depends in a great measure on man's own caprice and not on that of another person; it can be found only in countries in which the constitution is fixed and where they are governed by settled laws. How can despotism abide with honour? The one glory in the contempt of life and the other is founded on the power of taking it away. How can honour, on the other hand bear with despotism? The former has its fixed rules, and peculiar caprices; but the latter is directed by no rule and its own caprices are subversive of all others.[98] Honour is something unknown in arbitrary governments, some of which have not even a proper word to express it but it is the prevailing principle in monarchies; here it gives life to the whole body politic, to the laws and even to the virtues themselves. Here, the immense power of the prince devolves entirely upon those whom he is pleased to entrust with the administration. Persons capable of setting a value upon themselves would be likely to create disturbances. Fear must therefore depress their spirits and extinguish even the least sense of ambition.[99]

The principle of despotic government is fear. This fear is easily maintained since the situation of a despot's subjects is genuinely terrifying, Education is unnecessary in a despotism; if it exists at all, it should be designed to debase the mind and break the spirit, such ideas as honour and virtue should not occur to a despot's subjects, since persons capable of setting a value on themselves would be likely to create disturbances. Fear must therefore depress their spirits and extinguish even the least sense of ambition. Their portion here like that of beasts is instinct, compliance and punishment and any higher aspirations should be brutally discouraged.[100]

According to Montesquieu, as fear is the principle of despotic government, its end is tranquility but this tranquility cannot be called a peace; strength does not lie in the state but in the army that founded it. In order to defend the state, the army must be preserved, how formidable so ever to the prince. In countries where there are no fundamental laws, the succession to the empire cannot be fixed. The crown is then elective and right of electing is in the prince who names a successor either of his own or some other family. It would be in vain to establish here the

succession of the eldest son. The prince might always choose another and the successor is declared by the prince himself or by a civil war and that is why it is said that a despot's own word are laws of the land and complete subordination to these laws is expedient.[101] When the succession is established by a fundamental law, only one prince is the successor and his brother have neither a real nor apparent right to dispute the crown with him. They can neither pretend to nor take any advantage of the will of father. There is then no more occasion to confine or kill the king's brother than any other subject. But in despotic governments, where the prince's brothers are equally his slaves and his rival, prudence requires that their persons should be secured especially in countries where religion considers victory or success as a divine decision in their favour so that they have no such thing as a monarch dejure but only de facto.[102]

There is a far greater incentive to ambition in countries where the princes of the blood are sensible that if they do not ascend the throne they must be either imprisoned or put to death than among us where they placed in such a station as may satisfy, if not their ambition, at least their moderate desires. The princes of despotic governments have ever perverted the use of marriage. They generally take a great many wives especially in that part of the world where absolute power is in some measure naturalized. Hence they come to have such a multitude of children that they can hardly have any great affection for them nor the children for one another. The reigning family resembles the state; it is too weak itself, and its head too powerful; it seems very numerous and extensive and yet is suddenly extinct. Artarxerxes put all his children to death for conspiring against him.[103]

Human nature should perpetually rise up against despotism but notwithstanding, the love of liberty so natural to mankind notwithstanding their innate detestation of force and violence, most nations are subject to this very government, it is necessary to combine the several powers; to regulate temper, and set them in motion in order to enable it to counterpoise the other.[104] In warm climates where despotic power generally prevails, the passions disclose themselves earlier and are sooner extinguished. They are less in danger of squandering their fortunes; there is less facility of

distinguishing themselves in the world; less communication between young people who are confined at home. They marry much earlier and consequently may be sooner of age and they have no such thing as a cession of goods. In a government where there is no fixed property, people depend rather on the person than on his estate. The cession of goods is naturally admitted in moderate governments but especially in republics because of the greater confidence usually placed in the probity of the citizens and the lenity and moderation arising from a form of government which every subject seems to have preferred to all others.[105]

Hence, it is that a merchant under this government is unable to carry on an extensive commerce, he lives from hand to mouth; and were he to encumber himself with a larger quantity of merchandise, he would loose more by the exorbitant interest he must give for money than he could possibly get by the goods. Hence they have no laws here relating to commerce; they are all reduced to what is called the bare police. A government cannot be unjust without having hands to exercise its injustice. Now it is impossible but that these hands will be grasping for themselves. The embezzling of the public money is therefore natural in despotic states and this is a common crime. Under such a government, confiscations are very useful. By these, the people are eased; the money drawn by this method being a considerable tribute which could hardly be raised on the exhausted subject. Neither is there in those countries any one family which the prince would be glad to preserve.[106]

In moderate governments, it is quite a different thing. Confiscations would render property uncertain, would strip innocent children, and would destroy a whole family instead of punishing a single criminal. In republics, they would be attended with the mischief of subverting equality which is the very soul of this government by depriving a citizen of his necessary subsistence. In a despotic government, the vizir himself is the despotic prince and each particular officer is the vizir. In monarchies, the power is less immediately applied being tempered by the monarch as he gives it.[107] He makes such a distribution of his authority as never to give out a part of it without reserving a greater share to himself. Under moderate governments, the law is prudent in all its

parts and perfectly well known so that even the pettiest magistrates are capable of following it and in a despotic state, the prince will is the law. Again, as the law is only the prince's will and as the prince can only will what he knows, the consequence is that there are an infinite number of people who must will for him, and make their wills keep pace with his. As the law is the momentary will of the prince, it is necessary that those who will for him should follow his sudden manner of willing.[108] The principle of despotic government is subject to a continual corruption because it is even in its nature corrupt. This is true in several senses because first, despotic governments undermine themselves. Property is not secure in a despotic state, commerce will not flourish and the state will be poor. The people must be kept in a state of fear by the threat of punishment; however, the punishment needed to keep them in will tend to become more and more severe, until further threats lose their force.[109] It is worthy of note that the despot's character is likely to prevent him from ruling effectively. Since a despot's every whim is granted, he has no occasion to deliberate, to doubt, to reason; he has only to will. For this reason, he is never forced to develop anything like intelligence, character or resolution. Instead, he is naturally lazy, voluptuous and ignorant and has no interest in actually governing his people. He will therefore choose a vizier to govern for him and retire to his seraglio to pursue pleasure.[110]

He cannot rely on his army to protect him since the more power they have, the greater the likelihood that his generals will themselves try to seize power. For this reason, the ruler in a despotic state has no more security than his people. Montesquieu says that monarchical and republican governments involve specific governmental structures and require that their citizens have specific sorts of motivation. When these structures crumble or these motivations fail, monarchical and republican governments are corrupted and the result of their corruption is that they fall into despotism. But when a particular despotic government falls, it is not generally replaced by a monarchy or a republic.[111]

The creation of a stable monarchy or republic is extremely difficult. It is particularly difficult when those who would have both to frame the laws of such a government to live by them have

previously been brutalized and degraded by despotism. Despotism requires no powers to be carefully balanced against one another, no institutions to be created and maintained in existence, no complicated motivations to be fostered and no restraints on power to be kept in place. One needs to terrify one's fellow citizens enough to allow one to impose one's will on them; and this Montesquieu claims is what every capacity may reach. For these reasons, despotism necessarily stands in a different relation to corruption than other forms of government while they are liable to corruption.[112] For Montesquieu, political liberty is to be found within balanced governments, referring not to the number of rulers but the form of government. The contrast between balanced monarchy, despotism and balanced republic inspired Montesquieu's classification of the republican, the monarchical and despotic forms of government as opposed to Aristotle's categories of monocracy, aristocracy and democracy, differing according to the number of rulers.[113]

The mixture of democratic legislature, a monocratic executive and an aristocractic judiciary characterizes Montesquieu's ideal political constitution of a balanced or moderate monarchy as being a monarchy containing the democratic and aristocratic elements. Montesquieu's main interest lies with balanced monarchy. In Montesquieu's real or imaginary English monarchy as described in X1,6, legislative power is vested in Parliament, the executive power in the monarch while the judicial powers are not held by any particular and separate political body and are only occasionally exercised by the Upper House of Parliament. This differentiation of the three functions of political power does not separate government authority but keeps the unity of sovereign power. This follows from the fact that the limitation of monarchical power is as natural to the feudal political theories of Middle Ages as its indivisibility.[114]

3.4 Montesquieu, Political Liberty and Separation of Powers

In his analysis on liberty, Montesquieu is of the view that there is no word that admits of more various significations and has made more varied impressions on the human mind than that of liberty. For him, some have taken it as a means of deposing a person on whom they had conferred a tyrannical authority. Others for the power of choosing a superior whom they are obliged to obey,

others for the right of bearing arms and using violence, others, for the privilege of being governed by a native of their own country or by their own laws .[115] Thus, they have all applied the name of liberty to the government most suitable to their own customs and inclinations and as in republics, the people have not so constant and so present a view of the causes of their misery and as the magistrates seem to act only in conformity to the law, hence liberty is generally said to reside in republics and to be banished from monarchies. In democracies, the people seem to act almost as they please, this sort of government has been deemed the most free and the power of the people has been confounded with their liberty. Montesquieu asserts that in democracies, the people seem to act as they please, but political liberty does not consist in an unlimited freedom. In governments, that is, in societies directed by laws, liberty can consist only in the power of doing what we ought to will and in not being constrained to do what we ought not will. Liberty is a right of doing whatever the laws permit and if a citizen could do what they forbid, he would be no longer possessed of liberty because all his fellow citizens would have the same power.[116]

Montesquieu says that democratic and aristocratic states are not in their own nature free. Political liberty for him is found only in moderate governments and even in these governments, it is not always found. It is there only when there is no abuse of power. He says:

> But constant experience shows us that every man invested with power is apt to abuse it and to carry his authority as far as it will go. Is it not strange though true that virtue itself has need of limits? To prevent this abuse, it is necessary from the nature of things that power should a check to power. A government may be so constituted as no man shall be compelled to do things which the law does not oblige him nor forced to abstain from things which the law permits.[117]

In every government, Montesquieu says, there are three sorts of power: the legislative, the executive in respect to things dependent on the law of nations, and the executive in regard to matters that depend on the civil law. 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 he calls the judiciary power, and the other simply the executive power of the state. The political liberty of the subject is a tranquility of mind arising from the opinion each person has of his safety.[118] In order to have this liberty, it is requisite the government should be constituted as one man needs not to be afraid of another. 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 is 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 control, for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.[119] The question now is, what would be the consequence if this conjunction of powers takes place? Montesquieu answers that:

> There would be an end of everything were the same man or the same body whether of the nobles or of the people to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals. Most kingdoms in Europe enjoy a moderate government because the prince who is invested with the two first powers leaves the third to his subjects. In Turkey, were these three powers are united in the Sultan's person, the subjects groan under the most dreadful oppression. In the republics of Italy, where these three powers are united, there is less liberty than in our monarchies. Hence their government is obliged to have recourse to as violent methods for its support as even that of the Turks; witness the state inquisitors and the lion's mouth into which every informer may at all hours throw his written accusations.[120]

Thus at Venice says Montesquieu, the legislative power is in the council, the executive in the *Pregadi* and the judiciary in the *Quarantia*. But the mischief is that these different tribunals are composed of magistrates, all belonging to the body which constitutes almost one and the same power. The judiciary power ought not to be given to a standing senate, it should be exercised by persons taken from the body of the people at certain times of the year and consistently with a form of and manner prescribed by law in order to erect a tribunal that should last only so long as necessity requires. By this method, the judicial power so terrible to mankind, not being annexed to

any particular state or profession becomes as it were invisible.[121] People then do not have the judges continually present to their view; they fear the office but not the magistrate. In accusations of a deep and criminal nature, it is proper the person accused should have the privilege of choosing in some measure, his judges in concurrence with the law. But though the tribunals ought not to be fixed, the judgments ought and to such a degree as to be ever conformable to the letter of the law. Were they to be the private opinion of the judge, Montesquieu says people would then live in society without exactly knowing the nature of their obligations. The judges ought likewise to be of the same rank as the accused or in other words, his peers to the end that he may not imagine he is fallen into the hands of persons inclined to treat him with rigor.[122]

If the legislature leaves the executive power in possession of a right to imprison those subjects who can give security for their good behaviour, there is an end of liberty unless they are taken up in order to answer without delay to a capital crime in which case they are really free, being subject only to the power of the law. If the legislature thinks itself in danger by some secret conspiracy against the state or by a correspondence with a foreign enemy, it might authorize the executive power for a short and limited time to imprison suspected persons who in that case would lose their liberty only for a while to preserve it forever.[123]

As in country of liberty, every man who is supposed a free agent ought to be his own governor, the legislative power should reside in the whole body of the people. This is impossible in large states and small ones are subject to many inconveniences. Because of this, it is fit the people should transact by their representatives what they cannot transact by themselves. The inhabitants of a particular town are much better acquainted with its wants and interests than with these of other places and are better judges of the capacity of their neighbours than of that of the rest of their countrymen. The members therefore, of the legislature should not be chosen from the general body of the nation but it is proper that in every considerable place, a representative should be elected by the inhabitants. The great advantage of representative is their capacity of discussing public affairs.

For this, the people collectively are extremely unfit which is, one of the chief inconveniences of democracy.[124]

When the legislative body does not meet for a considerable time, this would likewise put an end to liberty. For of two things, one would naturally follow either that there would be no longer any legislative resolutions and then the state would fall into anarchy or that these resolutions would be taken by the executive power which would render it absolute. It would be needless for the legislative body to continue always assembled. This would be troublesome to the representatives, and moreover would cut out too much work for the executive power so as to take off its attention to its office and oblige it to execute.[125] It is fit therefore that the executive power should regulate the time of meeting as well as the duration of those assemblies according to the circumstances and exigencies of a state known to itself. Where the executive power does not have a right of restraining the encroachments of the legislative body, the latter would become despotic for as it might arrogate to itself what authority it pleased and would soon destroy all other powers.[126]

In general, the judicial power ought not to be united with any part of the legislative, yet this is liable to exceptions founded on the particular interest of the party accused. Were they to be judged by the people, they might be in danger from their judges and would moreover, be deprived of the privilege which the meanest subject is possessed of in a free state, of being tried by his peers. The nobility for this reason ought not to be cited before the ordinary courts of judicature, but before that part of the legislature which is composed of their own body. It is possible that the law which is clear sighted in one sense and blind in another might in some cases be severe. But as we have already observed, the national judges are no more than the mouth that pronounces the words of the law. That part therefore, of the legislative body which we have now observed to be necessary tribunal on another occasion is also a necessary tribunal in this, it belongs to its supreme authority to moderate the law in favour of the law itself by mitigating the sentence.[127] Montesquieu states that it might also happen that a subject entrusted with the administration of public affairs may

infringe the rights of the people and be guilty of crimes which the ordinary magistrates either could not or would not punish. But in general, the legislative power cannot try causes and much less can it try this particular case where it represents the party aggrieved which are the people. It can only therefore impeach but before what court shall it bring its impeachment? Must it go and demean itself before the ordinary tribunals which are its inferiors and being composed moreover of men who are chosen from the people as well as itself will naturally be swayed by the authority of so powerful an accuser?[128] Montesquieu answers:

> No: in order to preserve the dignity of the people and the security of the subject, the legislative part which represents the people must bring in its charge before the legislative part which represents the nobility, who have neither the same interests nor the same passions. Here is an advantage which this government has over most of the ancient republics, where this abuse prevailed, that the people were at the same time both judge and accuser. The executive power, pursuant of what has been already said, ought to have a share in the legislature by the power of rejecting; otherwise it would soon be stripped of its prerogative. But should the legislative power usurp a share of the executive, the latter would be equally undone.[129]

The legislative body checks one another by the mutual privilege of rejecting and is restrained by the executive power as the executive is by the legislative. As the executive power has no other part in the legislative than the privilege of rejecting, it can have no share in the public debates. It is not even necessary that it should propose because as it may always disapprove of the resolutions that shall be taken, it may likewise reject the decisions on those proposal which were made against its will.[130] In some ancient commonwealth where public debates were carried on by the people in a body, it was natural for the executive power to propose and debate in conjunction with the people otherwise their resolutions must have been attended with a strange confusion. If the executive power is to determine the raising of public money other than by giving its consent, liberty would be at an end because it would become legislative in the most important point of legislation. If the legislative was to settle the subsidies not from year to year but forever, it would run the risk of losing its liberty because the executive power would be no longer dependent and when once it was possessed of such a perpetual right, it would be a matter of indifference whether

it held it of itself or of another. The same may be said if it should come to a resolution of entrusting not an annual but a perpetual command of the fleets and armies to the executive power.[131]

To prevent the executive power from being able to oppress it is requisite that the armies with which it is entrusted should consist of the people and have the same spirit as the people. To obtain this end, there are only two ways, either that the persons employed in the army should have sufficient property to answer for their conduct to their fellow subjects and be enlisted only for a year or if there should be a standing army composed chiefly of the most despicable part of the nation, the legislative power should have a right to disband them as soon as it pleased; the soldiers should live in common with the rest of the people and no separate camp, barracks or fortress should be suffered.[132]

When once an army is established, it ought not to depend immediately on the legislative but on the executive power and this from the very nature of the thing, its business consists more in action than in deliberation. It is natural says Montesquieu for mankind to set a higher value upon courage than timidity, on activity than prudence, on strength than counsel. Hence the army will ever despise a senate and respect their own officers.[133] They will naturally slight the orders sent to them by a body of men whom they look upon as cowards and therefore unworthy to command them. So that as soon as the troops depend entirely on the legislative body, it becomes a military government and if the contrary has ever happened, it has been owing to some extra ordinary circumstances. It is because the army was always kept divided, it is because it was composed of several bodies that depended each on a particular province, and the capital towns were strong places defended by their natural situation and not garrisoned with regular troops. Montesquieu contends that liberty will perish when the legislative power is more corrupt than the executive.[134]

Endnotes

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CHAPTER FOUR

HISTORICAL EVOLUTION OF SEPARATION OF POWERS AND NIGERIA'S DEMOCRACY

4.1 Origin and Development of Separation of Powers

The concept of separation of powers originated first in Greece in the ancient period and became widespread in the Roman Republic as part of the initial constitution of the Roman Republic.[1] Aristotle (384-322BC) in his book entitled *Politics* is of the view that there are three elements in every constitution and when these elements are well – ordered, that the constitution is also well ordered and as they differ from one another, constitutions differ.[2] The words constitution and government have the same Meaning.[3] These elements include (1) the element which deliberates about public affairs (2) that concerned with the magistrates – the question being, what they should be, over what they should exercise authority, and what should be the mode of electing them; and (3) that which has judicial power.[4] The deliberative element has authority in matters of war and peace, in making and unmaking utterances; it passes laws, inflicts death, exile, confiscation, elects magistrates and audits their accounts.[5]

Aristotle further states that these powers mentioned above must be assigned either to all the citizens or to some of them (for example, to one or more magistracies, or different causes to different magistracies), or some of them to all, and others of them only to some. That all things should be decided by all is a characteristic of democracy.[6] Where again, particular persons have authority in particular matters – for example, when the whole people decide about peace and war and hold scrutinies , but the magistrates regulate everything else, and they are elected by vote, there, the government is an aristocracy. And if some questions are decided by magistrates elected by vote, and others by magistrates elected by lot, either absolutely or out of selected candidates, or elected partly by vote, partly lot, these practices are partly characteristic of an aristocratic government, and part of a pure constitutional government. These are the various forms of government and the government of each state is administered according to one or other of the principles which have been laid down.[7]

Coming to judicial power, Aristotle maintains that there are three points on which the varieties of law – courts depend. These are: the persons from whom they are appointed, the matters with which they are concerned, and the manner of their appointment.[8] What Aristotle meant here are (1) Are the judges taken from all, or from some only? (2) How many kinds of law – courts are there? (3) Are the judges chosen by vote or by lot?[9] These then are the four modes of appointing judges from the whole people if they are elected from a part only: they may be appointed from some by lot and judge in all cases; or they may be elected in some cases by vote and in some cases taken by lot, or some courts, even when judging the same cases, may be composed of some members appointed by vote and some by lot.[10] The modes of appointment can also be combined. This means that some may be chosen out of the whole people, others out of some, some out of both. For example, the same tribunal may be composed of some who were elected out of all, and of others who were elected out of some, either by vote or by lot or by both.[11]

These are the forms that law courts can be established. The first form is that in which the judges are taken from all the citizens, and in which all cases are tried, this is democratical; the second which is composed of only few which try all cases is oligarchical; the third, in which some courts are taken from all classes, and some from certain classes only is aristocratical and constitutional.[12] In the Roman Republic, the Roman Senate, Consuls and the Assemblies showed an example of a mixed government according to Polybius (*Histories*, Book 6,11-13).[13] A mixed regime is one that combines the elements of monarchy, aristocracy and democracy. These include the authority of a monocratic ruler, the superior knowledge of an aristocratic elite and the sense of solidarity, common bond and *esprit de corps* of a democratic community. In a mixed constitution, sovereign power is vested in the monarch, the aristocracy and the people as equal representatives of the three constitutional principles which differ but stand for undivided and uniform sovereign power. [14] At the time that Edward I reigned (1272-1307), the separation of powers emerged in England, with the appearance of Parliament, the Council of king and the courts.[15] John Calvin (1509-1564) favoured a system of government that divided political power between democracy

and aristocracy, (mixed government). Calvin appreciated advantages of democracy, stating that it is an invaluable gift if God allows a people to elect its own government and magistrate. In order to reduce the danger of misuse of political power, Calvin suggested setting up several political institutions which should complement and control each other in a system of checks and balances. In this way, Calvin aimed to protect the rights and well – being of ordinary people. In 1620, a group of English Separatist- Congregationalists and Anglicans (later known as the Pilgrim Fathers) founded Polymouth Colony in North America. Enjoying self rule, they established a bipartite democratic system of government. The "freemen" elected the General Court, which functioned as legislature and judiciary and which in turn elected a governor, who together with his seven "assistants" served in the functional role of providing executive power. Massachusetts Bay Colony (founded in 1628), Rhode Island (1636), Connecticut (1036), New Jersey and Pennsylvania had similar constitutions – they all separated political powers. Except for Plymouth Colony and Massachusetts Bay Colony, these English outposts added religious freedom to their democratic systems, an important step towards the development of human rights.[16]

The theory of separation of powers has developed over many centuries. The gradual development of this doctrine can be tracked down to the British Parliament's assertion of power and resistance to the royal decrees during the 14th century. The English learned gentleman, James Harrington was one of the first modern philosophers to analyze the theory of separation of powers. Harrington built his work entitled *"Commonwealth Oceana"* (1656) upon that of earlier philosophers like Aristotle, Plato and Machiavelli and a utopian political system that included a separation of powers. John Locke, an English political philosopher and theorist, made an important improvement on the concept of separation of powers by saying that power should be distributed between the legislative, executive and federative. Locke did not mention judiciary in his separation of powers as we have it in today's government. For this reason, Aristotle, Polybius, Cicero, St.Thomas Aquinas, and Machiavelli all praised the idea of a mixed regime. And, it is this idea of a mixed regime with a system of checks and balances that was to become the parent of the idea of

separation of powers. Both systems share the same premise that power tends to corrupt and absolute power corrupts absolutely.[17] Montesquieu, a French Enlightenment political philosopher who lived in England from 1729-1731 promoted the concept of tripartite system. He outlined a three – way division of powers in England amongst the Parliament, the king and the courts (that is the monarch, Parliament and the courts of law). However, this was misleading because United Kingdom had close connection of executive and legislature. Baron did specify in his book *"De l'spirit des lois"* that "the independence of the judiciary has to be real and not apparently merely".[18] Montesquieu apparently believed that the stability of the English government was due to this practice of separation of powers despite the fact that he did not use the word "separation".[19]

Like the principle of "division of labour" in Adam Smith's economics, the doctrine of power 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".[20]

The above system is usually described as a "horizontal" separation of powers. In a federal structure, there is yet another type called "vertical" separation of power whereby governmental powers are shared between the central government and the fringe government (that is the state and the local governments).[21] 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. This is closely related to the doctrine of "checks and balances''- the notion the that government powers should be controlled by overlapping authority within the government and by giving citizens the right to criticize state actions and remove officials from office.[22]

4.2. The Structure and Organisation of Government

A government is made up of three different organs, viz. Legislature, Executive and the Judiciary. It is these organs of government that are known as the structure of governments. In the organization of government, we are concerned with the separation of powers and checks and balances because without these two principles, no government could be said to be organized.

The Legislature

The functions of the legislature differ from one country to another, but its sole responsibility is that of making laws .But in modern states today, legislative duties vary from one country to another. For instance, in cabinet system of government, the legislature controls the executives but not so in the American Presidential system. Some legislatures also act like the electorate by electing some people into offices through electoral colleges. The Privy Council of the House of Lords in Britain has judicial function because it serves as the highest appellate court of the land.[23] Different countries call legislatures different names. For instance, in U.S.A., the legislature is known as the Congress comprising the House of Representatives and the Senates, in Britain, the legislature is called the Parliament comprising the House of Commons and the House of Lords. In Nigeria, it is referred to as the National Assembly comprising the House of Representatives and the Senate.[24] The two types of Legislature include unicameral and bicameral legislature.

As the name implies, unicameral legislature is the type of legislature that is made up of only one chamber and usually composed of the members who are directly elected by the electorates. This type of legislature has some advantages which include – speedy, fast and quick legislation, less expensive to run, its ability to meet emergency situation. However, its disadvantages still include- passage of hasty legislation, possible emergency of tyranny or despotism and the lack of experienced legislators in the parliament. Unicameral legislature exists in countries like Israel, Sierra Leone, Ghana, Spain, New Zealand etc .[25]

Bicameral legislature has the existence of two chambers that are called the Lower Chamber and the Upper Chamber respectively. Every bill must go through the two Houses before it will be passed finally as law. The existence of the Upper House is to checkmate the activities of the Lower House. The countries that operate bicameral legislature are Britain, U.S.A., Nigeria, Canada, Italy etc. The members of the lower chamber or the House of Representative as it is called in Nigeria and U.S.A. are directly elected in popular election on the basis of universal, equal and secret suffrage from different constituencies. In Britain, the Lower House is called the House of Commons. At the same time, the members of the Upper House is known as the Senate House in countries like Nigeria, U.S.A., Australia, Switzerland and are elected following the processes of electioneering to reflect equality. But in some countries, the Upper House (House of Lords) is hereditary as in Britain and nominated body, as in Canada and Italy. Usually, the members of the upper house are made up of old, aged, advanced and experienced politicians in public affairs than those in the Lower House. Bicameralism is a common feature of federalism.[26]

The Executive

This is an organ of government that has the function of executing the laws made by the legislature. The executive could be single, dual or collegial. Single or unicephallous executive is found in countries that operate presidential system of government. The chief executive or the president combines both the ceremonial and executive powers of the state. The advantages of this kind of executive are: quick decision making, appointment of close associates to ministerial and sensitive positions in government by the president to ensure loyalty, effective control and leadership on the other way round. The disadvantages are that, there is too much work load on the president and there is the danger of the president becoming a tyrant or dictator. The countries that operate this type of system include Nigeria under 1979 constitution and the United State of America (U.S.A).This can equally be called presidential executive.[27]

Dual or bicephalous executive could equally be called parliamentary executive. It is obtainable in states that operate a parliamentary system of government. Two major Heads share the power and functions of the state. One is called the ‘‘Ceremonial Head of State’’ while the other one is called the ‘‘Head of Government’’. The Ceremonial Head performs specific ceremonial roles or functions for the state. But the Head of Government performs the basic roles of policy making and implementation and also acts as the leader of the cabinet. The following advantages can be adduced to this type of executive: efficiency in planning and administration, the chief executive has less work to do, the emergence of a dictator is harder, stability and continuity in government and division of labour between Head of State and the Head of government. At the same time, this system is disadvantageous in the sense that there is fusion of power and conflict between the Head of State and the Head of Government, there is divided loyalty among the workers to the chief executive, and ineffectiveness of the government may not be easily attributed to any of the two Heads. Examples of countries that practice this type of system include Britain and Nigeria during the first republic.[28]

A collegial system of government is a system where there is no single person serving as the chief executive. The executive power is vested in a committee of several members called a plural executive. This executive in some cases may be subservient to the legislature as in case of Switzerland. In an unstable polity where numerous ethnic nationalities exist, it may be difficult for a party to have a clear-cut victory in the election of the Head of State. In this kind of political situation, it becomes problematic on who becomes the president of the state. To subvert this problem, the leaders of all the political parties constitute an electoral college to elect members of the executive council. Emergence of the chairman of the executive council is dependent on the numerical strength of party members in the Electoral College or the degree of lobbying by any of the political parties .Examples of countries where collegial system existed are: Uruguay (1961-1966),Republic of Benin (1969-1972) and the Federation of Switzerland.[29]

The Judiciary

The judiciary is that organ of government that is responsible for the interpretation of law and constitution of a country. The judiciary is made up of legal experts divided into members of the bench and bar. The bench comprises civil servants including judges, magistrates, alkalis including other government employed legal practitioners. Members of the bar are qualified lawyers who are not on government employment but could appear in court for clients. The structure of courts in any society ranges from inferior to superior courts. The inferior courts in this sense are not court of lower quality but courts of limited jurisdiction for such cases.[30] Superior courts in Nigeria are courts of unlimited jurisdiction in civil and criminal matters. They are also courts of first instance and appellate jurisdiction in all cases. These include the supreme courts, appeal courts, federal and state high courts. The inferior courts cannot try all cases and are therefore courts of limited jurisdiction and include sharia courts, alkali courts and customary courts of appeal.[31] B.K. Gokhale opines that:

> Judiciary is that branch of government interpreting law, settling disputes, and giving justice. In federal states, it acts as the guardian of the constitution and settles disputes between federal government and units. Modern states, unlike the ancient and medieval ones, lay great emphasis on the principle that justice should be meted out fearlessly and impartially by learned judges, and that judges should not be under the obligation and control of the executive or the legislature. Long back, judges were tools of executive; there was a time, when the executive and judicial powers were merged in the same hands. Judges were appointed by monarchs or their agents, and judges depended upon the sweet will and pleasure of the executive regarding their salaries, and their very continuation in service.[32]

The judiciary cannot perform its duties like settlement of disputes, interpretation of the constitution, punishing of law-breakers and protection of fundamental human rights if they are not independent.

4.3 Independence of the Judiciary of the Government

Independent of the judiciary is a relatively new concept for Third World Countries because according to Yash Vyas, during the colonial era, the judiciary was an integral branch of the executive rather than an institution for the administration of justice. The colonial administration was mainly interested in the maintenance of law and order. It had no respect for the independence

of the judiciary or for the fundamental rights of the ruled. The judiciary was that part of the structure which enforced law and order. Yash Vyas further contends that:

> It was therefore identifiable as an upholder of colonial rule. To an average citizen, the judiciary was viewed with suspicion. The attitude unfortunately did not change with independence, because in many Third World countries, the judiciary has continued to be manipulated in a variety of ways by the executive. It is in this context that the doctrine of independence of the judiciary has acquired new importance in the Third World countries. In theory, the function of the judiciary is to dispense justice in accordance with the law. The judiciary is responsible for the maintenance of a balance of interests between individual persons' interest, between individual person and the states, and between government organs inter se. Under the constitution, it is the judiciary which is entrusted with the task of keeping every organs of the state within the limits of the law and thereby making the rule of law meaningful and effective.[33]

Most constitutional states in the Third World guarantee certain fundamental rights to citizens. A constitutional duty is imposed on the state not to violate these rights and to ensure that the citizens are protected and not impeded in the exercise of their rights. The judiciary is imparted with the most important function of safeguarding and protecting constitutional and legal rights of the individuals. The judiciary stands between the citizens and the states as a bulwark against executive excesses and misuse or abuse of power or transgression of constitutional or legal limitation by the executive as well as the legislature.[34] The judiciary independence means that judges must be free to interpret the laws independently, impartially and objectively without subject to any undue outside pressure from the police, the government, the military, public opinion or any other interest body or person in order for justice to be performed.[35] Judicial independence implies that the judiciary should be independent from the legislative and executive branches of government. That is, courts should not be subject to improper influence from the other branches of government or from private or partisan interests.[36] Court must be useful to the society and must be efficient in all their conducts. They must justly punish crimes, protect civil liberties and fairly resolve disputes. Court has to be insulated from the politics of the other bodies which are the executive, legislature and political parties and at the same time not influenced by any social and

economic power.[37] Courts must hold the judicial authority of the government and the ability to enforce their decisions and orders. The court must also at the same time be restrained and must have self-imposed limits on the ability to act for executive or legislature…[38] The word impartiality implies that a judge should be free of personal biases and prejudices. He must not be committed to a political party or to one side in the litigation or to his race, class, caste, community, tribe or religion when he comes to judgment. Therefore, independence of the judiciary includes independence from political influence whether exerted by the political organs of the government or by the public or brought in by the judges themselves through their involvement in politics. By politics we mean politics in its narrow sense, organized or party politics.[39]

J.A.G. Griffith says that the principal function of the judiciary is to support institutions of government as established by law.[40] In supporting the institution and stability of the system of government, the judges do perform a political function. The judiciary is not only a legal but also a government institution and therefore political in nature. Apart from independence from the executive, the legislature and political pressures, the concept of independence of the judiciary has some other dimensions. At times, threats to individuals or private groups in society or powerful economic interests may try to influence judges to invalidate statutes which are not to their liking. This then requires that the judiciary must also be free from pressures from private power.[41] As important as the judiciary is to the sustenance of the rule of law and democracy; it is the most vulnerable of the three arms of government. It always depends on the other arms to perform its functions. For instance, it has no absolute control over who becomes a judicial officer, the removal of judicial officers and the powers of the purse. The key indices which are to ensure and facilitate independence of the judiciary are: appointment, remuneration, tenure of office, removal and protection of judges.[42] According to the International Commission of Jurists, and the Centre for the Independence of Judges and Lawyers, independence of judiciary means :

> …(1) that every judge is free to decide matters before him in accordance with his assessment of the facts and his understanding of the law without any improper influences, inducement or pressures, direct or indirect,

> from any quarter or for any reason, and (2) that the judiciary is independent of the executive and legislature, and has jurisdiction, directly or by way of review, over all issues of a judicial nature.[43]

This definition covers all factors which may whittle down judicial independence, including private pressures and financial or other beneficial inducements.[44] What is required on the part of judges is objectivity.[45] An independent judiciary does not mean that judges can resolve specific dispute entirely as they please.[46] There are both implicit and explicit limits on the way judges perform their roles. According to Robert Martin, implicit limits include accepted legal values and the explicit limits are substantive and procedural rules of law.[47]

The basic principles of independence of the judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders Held at Milan include the following:

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect from any quarter or for any reason
3. The judiciary shall have jurisdiction over all issues or a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorites of sentences imposed by the judiciary in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal

process shall not be created to displace the jurisdiction belonging to the ordinance of courts or judicial tribunals.

6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.[48] Independence of the judiciary helps to improve the effectiveness of the system of checks and balances.

4.4 Checks and Balances

We cannot talk of separation of powers without the twin principle of checks and balances. The aim of reaching a balance of power is the basis of any call for a separation of powers. Human nature being what it is, a person who is given power is apt to abuse it and to carry his authority until he is confronted with limits. Each branch of government must therefore be assigned its own functions and powers beyond which it should not go; thus there will be a balance in the governmental machinery, and one branch will act as a check on the other branches. This method of one branch halting the power of the other branches will act as an antidote to despotism.[49] E.B.Schulz says that the doctrine of checks and balances is usually supplementary to the separation of powers principle of organization. Its distinguishing feature is the idea of enabling each of several coordinate branches of government to wield a limited degree of control over the others either by participating to some extent in the exercise of powers allocated primarily to a particular branch or by making the effective functioning of each branch contingent upon the supporting action by others.[50]

To prevent one branch from becoming supreme, protect the “opulent minority” from the majority, and to induce the branches to cooperate, government systems that employ a separation of powers need a way to balance each of the branches. Typically, this was accomplished through a system of “checks and balances”, the origin of which, like separation of powers itself, is

specifically credited to Montesquieu. Checks and balances allow for a system–based regulation that allows one branch to limit another. The principle of separation of powers is applied to allow the branches represented by the separate powers to hold each other reciprocally responsible to the assertion of powers as apportioned by law.[51]

During the 18th century, no principle of politics was more widely shared than the idea that power must be used to balance power. The notion of balance of power against power originated from Newtonian physics. Balancing of power against power also became the basis for modern political economy as it was first and best expressed by Adam Smith in the *Wealth of Nations*, published in 1776.[52] Unless these departments of government be so far connected and blended as to give each a constitutional control over others, the degree of separation which the maximum requires, as essential to a free government, can never in practice be maintained.[53] Historically, the concept of checks and balances can be traced to ancient political philosophers such as Aristotle and Plato. For them, an ideal government would include elements of monarchy (rule by hereditary right), aristocracy (rule by a few for the good of all), and democracy (rule by the people). Many centuries later, some countries in Western Europe began to institute elements of checks and balances.[54]

Parliamentary challenges to English royal authority in the 1640s, for example, led King Charles 1 to accept a system that combined monarchical power with aristocracy and limited democracy. This power struggle between Long Parliament and Charles 1 led to temporary expansion of parliamentary authority in the late 17th century, which became permanent in the 18th century. It was in this period that the English scholar William Blackstone described the English system as achieving an ideal balance among democracy, aristocracy and monarchy.[55] The 18th century French political theorist Baron de Montesquieu also observed the functioning of checks and balances in English politics. Montesquieu theorized a scheme of checks and balances that advocated the assignment of separate powers to monarchal, aristocratic and democratic political institutions. Montesquieu argued that the best way to provide a check against the abuse of power

by monarchs was through intermediary bodies that the monarch could not abolish such as the church, guilds and professional associations. The dispersion of power to these institutions outside of government would make it more difficult for the government to abuse its authority. Montesquieu, along with many theorists before him, assumed that balance could succeed only in a society with a relatively small and homogeneous population.[56] American statesman James Madison reformulated the theory of checks and balances in the 18th century, decisively challenging the earlier views. Madison argued that the larger the society and more diverse the interests of its inhabitants, the more likely each faction was to block and thwart the interests of other factions seeking control. This would prevent the formation of a permanent majority that could oppress minority groups or interests. Madison' understanding was central to the writing of the Constitution of the United States, which incorporated a separation of powers and many checks and balances.[57] Checks and balances help to ensure that no branch of government goes beyond its power in order to preserve the liberty of the citizens and avoid abuse of power.

4.5 Liberty

Liberty is a concept that is familiar to almost everybody. Each person uses this concept in a daily discussion. We hear people say, "we are at liberty to do this or that." In this work, liberty and freedom will be used interchangeably or to mean the same thing. The word "liberty" is derived from the Latin term *liber*, which means free.[58] Liberty has different connotations to different people, and it is used very often loosely and carelessly. Great difficulty is experienced in furnishing exact definitions and meanings of concepts like liberty. It is difficult to distinguish between the two terms *liberty and freedom.* They are generally used as synonymous terms, though there are writers who make a distinction; but even such writers are unable to explain any clear and significant difference. Their hair – splitting arguments add to the vagueness instead of making any lucid and meaningful difference.[59] Liberty means the assurance that every man shall be protected in doing what he believes his duty, against the influence of authority and majorities, custom and opinion.[60] The state is competent to assign duties and draw the line between good and evil only in

its own immediate sphere. Beyond the limit of things necessary for its well being, it can only give indirect help to fight the battle of life, by promoting the influences which avail against temptation – religion, education, and the distribution of wealth.[61] In ancient times, the state absorbed authorities not its own, and intruded on the domain of personal freedom. In the middle, ages it possessed too little authority, and suffered others to intrude. Modern states fall habitually into both excesses. The most certain test by which we judge whether a country is really free is the amount of security enjoyed by minorities.[62]

Narrowly, or negatively, freedom is thought of as the absence of constraint. Freedom says Hobbes, is the silence of the law. Positively, freedom is a condition of liberation from social and cultural forces that are perceived as impeding full self – realization.[63] For A. Appadorai:

> The term "liberty" is used in politics to mean two things, national liberty and individual liberty. The former obviously means the independence of a State from other States. It is with the latter, individual liberty, that we are concerned in this chapter. In its absolute sense, liberty means "the faculty of willing and the power of doing what has been willed, without influence from any other source or from without." A moment reflection tells us that a liberty of this unlimited character is an impossibility for all at the same time. Neither the presence of the state nor its absence can ensure it. Politics rests on two fundamental facts of human nature; everyman likes to have his own way; at the same time he possesses an instinct for sociability. From this, it follows that the maximum freedom that an individual can enjoy is, as the Declaration of the Rights of Man (1789) puts it, the power to do everything that does not injure another.[64]

He further stresses that in practice; therefore, an analysis of the modern concept of liberty shows two main ideas:

(i) The individual wants to express his personality in thought, word, and act. He demands freedom, i.e. an absence or a lessening of restraint (or restrictions) on his freedom of thought, speech and action both from the government and from private individuals and associations.

(ii) Freedom implies, paradoxically, the imposition of some limitation with a view (a) to securing the equal freedom of all, e.g. the law of libel and criminal law generally, and (b)

to providing opportunities or conditions of life which will enable men to develop their personalities, e.g. the provision of compulsory education, factory laws etc.[65]

Caudwell quoted by Richard Norman contends that any definition of liberty is humbug, that does not mean liberty to do what one wants. A people are free whose members have liberty to do what they want-to get the goods they desire and avoid the ills they hate. What do men hate? They want to be happy, and not to be starved or despised or deprived of the decencies of life. They want to be secure, and friendly with their fellows, and not conscripted to slaughter and be slaughtered. They want to marry, and beget children and help, not oppress each other. Who is free who cannot do these things, even if he has a vote, and free speech? Who then is free in bourgeois society, for not a few men but million are forced by circumstances to be unemployed, and miserable, and despised, and unable to enjoy the decencies of life.[66] He goes ahead to say that:

> As Russia shows, even in the dictatorship of the proletariat, before the classless State has come into being, man is already freer. He can avoid unemployment, and competition with his fellows, and poverty. He can marry and beget children, and achieve the decencies of life. He is not asked to oppress his fellows.[67]

Hayek contends that though one can indeed use the term "liberty" or "freedom" as one wishes, the only sense with which he is concerned is the negative definition of freedom as absence of coercion by other human beings. Freedom so defined presupposes, as he says, that the individual has some assured private sphere, that there is some set of circumstances in his environment with which others cannot interfere: here we have the classical negative picture of liberty – liberty as absence of interference, the non intrusion by other human being into what J.S. Mill calls "a circle around every individual human being" a ''space entrenched around'' "a reserved territory".[68] J.S. Mill says that:

> The struggle between Liberty and authority is the most conspicuous feature in the portions of history with which we are earliest familiar.... But in old times this contest was between subjects, or some classes of subjects and the Government. By liberty, was meant protection against the tyranny of the political rulers. The rulers were conceived... as in a necessarily antagonistic position to the people whom they ruled. They consist of a governing one, or a governing tribe or caste, who derived

> their authority from inheritance or conquests, who, at all events, did not hold it at the pleasure of the governed, and whose supremacy men did not venture, perhaps did not desire, to contest whatever precautions might be taken against its oppressive exercise.[69]

Mill says that the aim, therefore of patriots was to set limits to the power which the ruler should exercise over the community; and this limitation was what they meant by liberty. It was attempted in two ways. First, by obtaining recognition of certain immunities, called political liberties or rights which it was to be regarded as a breach of duty in the ruler to infringe, and which if he did infringe, specific resistance, or general rebellion was held to be justifiable. A second, and generally a later expedient, was the establishment of constitutional checks, by which the consent of the community or of a body of some sort, supposed to represent its interest was made a necessary condition to some of the more important acts of the governing power.[70] For him, the sole end for which mankind is warranted, individually or collectively, in interfering with the liberty of action of any of their members is self protection. That is to say, the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinion of others to do so, would be wise or even rights.[71]

These are good reasons for remonstrating with him, or for reasoning with him, or persuading him, or entreating him, but not for compelling him or visiting him with any evil in case he do otherwise. To justify that the conduct from which it is desired to deter him must be calculated to produce evil to someone else. The only part of the conduct of any one, for which he is amenable to society, is that which concern others. In the part which merely concerns himself, this independence is of right, absolute.[72] Mill asserts that over himself, over his own body and mind, the individual is sovereign. This doctrine according to him is only meant to apply to human beings in the maturity of their faculties. Under this condition, it implies that children or any young person below the age which the law may fix as that of manhood or womanhood are not involved.

Those who are still in a state to require being taken care of by others must be protected against their own actions as well as against external injury.[73] A person may cause evil to others not only by his actions but by his inaction and in either case, he is justly accountable to them for the fury. The latter case, it is true, requires a much more cautious exercise of compulsion than the former.[74]

Essentially, what the study of political thought and action seeks to achieve in any society is an appropriate balance between wide range of freedom, order and the satisfaction of human needs.[75] John Locke is of the view that the liberty of man, in society, is to be under no other legislative power but that established by consent in the commonwealth nor under the dominion of any will, or restraint of any law, but what the legislative shall enact, according to the trust put in it. He avers:

> Freedom then is not what Sir Robert Filmer tells us, a liberty for everyone to do what he lists, to live as he pleases , and not to be tied by any law: but freedom of men under government is to have a standing rule to live by, common to everyone of that society, and made by the legislative power erected in it; a liberty to follow my own will in all things, where the rule prescribes not, and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man: as freedom of nature is to be under no other restraints….[76]

This freedom from absolute arbitrary power is so necessary to and closely joined with a man's preservation, that he cannot part with it but by power of his own life, cannot by compact or his own consent, enslave himself to anyone nor put himself under the absolute arbitrary power of another, to take away his life when he pleases. Nobody can give more power than he has himself and he that cannot take away his own life, cannot give another power over it.[77]

4.6 Democracy in Nigeria

The problem of government right from antiquity has been a problem of mind-boggling complexity. Nigerian government is not an exception, we have practiced military rule and it failed us. The results of such rule are merciless exploitation, extortion, dehumanization, injustice, suppression and humiliation. It is these concomitant effects of military rule that made many countries to adopt democracy as the best system of government of which Nigeria is one of these

countries. Democracy is believed to be a form of government that is capable of guaranteeing separation of powers, freedom, justice, rule of law, equity and fundamental human rights. That is why Francis Fukuyama argues that:

> …democracy may constitute the "end point of mankind's ideological evolution" and the "final form of human government," and as such constituted the "end of history". That is while earlier forms of government were characterized by grave defects and irrationalities that led to their eventual collapse,.. Democracy was arguably free from such fundamental internal contradictions. This was not to say that today's stable democracies...were not without injustice or serious social problems. But these problems were ones of incomplete implementation of the twin principles of liberty and equality on which modern democracy is founded rather than of flaws in the principles themselves.[78]

With reference to the above quotation, Nigerians discovered the need to turn to democracy and that is why when Abdusalam Abubakar became the Nigerian president from 8th June, 1998 to 29th May, 1999, he immediately after grabbing political power, announced that he would return the country to civilian rule and this he began by taking steps that would make him to achieve this objective. What he did was that he set up the Independent National Electoral Commission (INEC), in August 1998 to organize and see to the conduct of local, state and federal elections. This was followed by releasing political prisoners, including the former head of state Olusegun Obasanjo and raising of civil service salaries in an attempt to reduce corruption and improve public services. Presidential election was held under the auspices of INEC in 1999 and this led to the victory of Peoples Democratic Party (PDP) with Olusegun Obasanjo running as a civilian candidate. On 29th May, 1999, as promised, Abdusalam Abubakar handed over the mantle of leadership to Obasanjo and on the same day, the new constitution became law and this led to Nigeria's Fourth Republic. It is true that Nigerians cherished democracy, but democracy if directly practiced, will not be suitable for a country that is as populous as Nigeria. It is because of this that made Nigeria to go for representative democracy because it will not be easy for everybody to converge on Abuja each time that decision is to be taken and where in Abuja can accommodate the whole people of

Nigeria? So in a representative democracy, people elect those who will represent them each time a political decision is to be taken and in running the affairs of government.

In Nigeria, we have the National Assembly which is made up of the Senate and a House of Representatives and that is why the National Assembly of the Federal Republic of Nigeria is a bicameral legislature. A bicameral legislature is a type of legislature that has two chambers. There are the upper and lower chambers. All the members of the chambers are popularly elected by the electorates. Frank Anozie says that:

> The two chambers go by different names: in Nigeria since 1979: it is called national Assembly comprising the House of Representatives the lower chamber and house of senate the upper chamber. To become a member in the upper chamber in Nigeria, you must attain certain age 35 years and above.[79]

The Senate is the upper house of the National Assembly which consists of 109 senators. The 36 states are each divided into 3 senatorial districts and each of these (senatorial districts) elects one senator while the Federal Capital Territory elects only one senator. The president of the senate is the presiding officer of the senate, whose chief function is to guide and regulate the proceedings in the senate. The House of Representatives is the lower house of Nigeria's bicameral National Assembly. The current House of Representatives formed following election held in April, 2015 has a total of 360 members who were elected for a four year term in a single seat representing constituencies of nearly equal population as far as possible. The speaker of the Nigerian House of Representatives is the presiding officer of the House. Before any bill can become a law in Nigeria, it must be agreed to by both the House of Representatives and the Senate. It must equally receive the assent of the president but if the president delays or refuses assent (an official agreement or approval of something) to the bill, the Assembly may pass the law by two-thirds of both chambers and over-rule the veto and the president's consent will no more be required. The Assembly has wide functions which some of them include: the establishment of committees of its members, scrutinizing bills and the conduct of government officers. The Assembly sits for a period of four year term. The senate has the functions of impeachment of

judges and other officials of the executive including the Federal Auditor-General and the members of the electoral and revenue commissions. This power is however subject to prior request by president; the senate also confirms the president's nomination of senior diplomats, members of the federal cabinet, federal judicial appointments and federal commission. The summary of what we have been saying above is that:

> Nigeria, right from its inception, loves democracy. The desirability of democracy and the appeal of its values have always been etched in the minds of Nigerians. This natural love for democratic experience by Nigerians was echoed by the founding fathers of modern Nigeria. Nnamdi Azikiwe for instance, on one of his public lectures in 1994, titled: Democracy with Military Vigilance "observed and correctly, too, that our multilingual people have trodden the paths of democracy from time immemorial, irrespective of our social origin. He also commented that though our contact with the British Administrators reinforced our faith in the way of life, our indigenous institutions have been essentially democratic. Chief Obafemi Awolowo on his part as the first leader of the opposition lauded democratic governance when he said that the best form of government is democracy and that any form of government other than democracy is evil, because such a system was bound to disregard the rights of its citizenry, their welfare and their happiness.[80]

Powers of the Federal Republic of Nigeria are divided between the legislative, the executive and the judiciary. Our discussions on them shall be one after the other. The details of the powers of the Federal Republic of Nigeria are contained in the *1999 Constitution of the Federal Republic of Nigeria.* Under the General Provisions in Chapter 1, Part II, Section A, Subsection 1-9, we shall see the legislative power which include:

1. The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives.
2. The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the execlusive legislative list set out in Part I of the Second Schedule to the Constitution
3. The power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the exclusive legislative list shall, save

as otherwise provided in the constitution, be to the exclusion of the Houses of Assembly of states.

4. In addition and without prejudice to the powers conferred by subjection (2) of this section, the National Assembly shall have power to make laws with respect to the following matters, that is to say:
   (a). Any matter in the Concurrent Legislative list set out in the first column of part II of the second schedule to the constitution to the extent prescribed in the second column opposite there to; and
   (b). Any other matter with respect to which it is empowered to make laws in accordance with the provisions of the constitution.
5. If any law enacted by the House of Assembly of a state is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall to the extent of the inconsistency be void.
6. The legislative powers of a state of the Federation shall be vested in the House of Assembly of the state.
7. The House of Assembly of a state shall have power to make laws for the peace, order and good government of the state or any part thereof with respect to the following matters, that is to say:
   a) Any matter not included in the Exclusive Legislative List set out in the first column of part II of the second schedule to the constitution to the extent prescribed in the second column opposite thereto; and
   b) Any other matter with respect to which it is empowered to make laws in accordance with the provision of the constitution.
8. Save as otherwise provided by the constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law, and accordingly, the National Assembly or a

House of Assembly shall not enact any law, that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law.

9. Not withstanding the foregoing provisions of this section, the National Assembly or a House of Assembly shall not, in relation to any criminal offence whatsoever, have the power to make any law which shall have retrospective effect.[81]

According to Frank Anozie, the functions and powers of the legislature are limited particularly in the areas of law making. Limitation here refers to a kind of check and control of legislature by other arms of government such as executive and judiciary and other circumstance that prevent it from functioning fully and effectively.[82] The Nigerian Constitution Chapter V, Part I Section 58, Subsection 1-5 provides for the mode of exercising the federal legislative power. Here, the constitution contends that the power of the National Assembly to make laws shall be exercised by bills passed by both the Senate and the House of Representatives and except as otherwise provided by subsection 5 of the Nigerian Constitution and assented to by the president. A bill may originate in either the Senate or the House of Representatives and shall not become law unless it has been passed and, except as otherwise provided by this section and section 59 of the constitution, assented to in accordance with the provisions of this section. Where a bill has been passed by the House in which it originated, it shall be sent to the other House, and it shall be presented to the president for assent when it has been passed by that other house and agreement has been reached between the two Houses on any amendment made on it. Where a bill is presented to the president for assent, he shall within thirty days thereof signify that he assents or that he withholds assent and where the president withholds his assent and the bill is again passed by each House by two- thirds majority, the bill shall become law and the assent of the president shall not be required.

Chapter II, Subsection 13-14 under the Fundamental Objectives and Directive Principles of State Policy says that it shall be the duty and responsibility of all organs of government, and of all authorities and persons exercising legislative, executive or judicial powers, to conform to observe

and apply the provisions of the Chapter of the constitution. 14-(1) says that the Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice (2) it is hereby, accordingly, declared that:

a) Sovereignty belongs to the people of Nigeria from whom government through the Constitution derives all its powers and authority.
b) The security and welfare of the people shall be the primary purpose of government and
c) The participation by the people in their government shall be ensured in accordance with the provisions of the constitution. Section15, Subsection 5 says that the state shall abolish all corrupt practices and abuse of power.[83]

In Section 1-5, the Nigerian Constitution provides for the executive powers of the Federation. Subject to the provisions of the constitution; the executive powers of the Federation-

(a) Shall be vested in the President and may, subject as aforesaid and to the provisions of any law made by the National Assembly, be exercised by him, either directly or through the Vice – President and Ministers of the Government of the Federation or officers in the Public Service of the Federation; and

(b) Shall extend to the execution and maintenance of the constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has for the time being, power to make laws.

Subject to the provisions of the constitution, the executive powers of a state –

(a) Shall be vested in the Governor of the State and may subject as aforesaid and to the provisions of any law made by a House of Assembly, be exercised by him either directly or through the Deputy Governor and Commissioners of the Government of that state or officers in the public service of the state; and

(b) Shall extend to the execution and maintenance of this constitution, all laws made by the House of Assembly of the State and to all matters with respect to which the House of Assembly has for the time being, power to make laws.

- The executive powers vested in a State under subsection (2) of this section shall be so exercised as not to-
  (a) Impede or prejudice the exercise of the executive powers of the Federation;
  (b) Endanger any asset or investment of the Government of the Federation in that state; or
  (c) Endanger the continuance of a federal government in Nigeria.

Notwithstanding the foregoing provisions of this section –

(a) The President shall not declare a State of war between the Federation and another country except with the sanction of a resolution of both Houses of the National Assembly sitting in a joint session; and

(b) Except with at the prior approval of the Senate, no member of the armed forces of the Federation shall be deployed on combat duty outside Nigeria.

Notwithstanding the provisions of Subsection (4) of this Section, the President; in consultation with the National Defence Council, may deploy members of the armed forces of the Federation on a limited combat duty outside Nigeria if he is satisfied that the national security is under imminent threat or danger; provided that the President shall, within seven days of actual combat engagement, seek the consent of the Senate and the senate shall there after give or refuse the said consent within fourteen days.[84] The following are the limitations of the executive, that is the ways in which the executive is controlled and influenced:

- The executive depends and equally need the harmonious, cooperative existence and understanding of the legislature in order to effectively perform their functions. All executive bills, policies, and programmes need to be approved by the legislature before execution; contrary to this harmonious, cooperative and understanding relationship between the two, the policies and programmes of the executive will suffer setbacks.
- The executive prepares and presents the appropriation bills to the legislature for approval. This bill is on how the executive will generate and spend the government revenues. The

scrutiny and approval or otherwise is a traditional financial control of the executive by the legislature. This enables the legislature to exert both control and influence on government policies, programmes and actions.

- The legislature is empowered to remove ineffective and erring executives from office or cause it to resign and this could be done through a constitutional process which is known as impeachment. The aim of doing this is to checkmate the executive against abuse of power and to draw them closer to the desires of the electorates and their majority representatives.
- The legislature equally controls and influences the executive through the approval or disapproval of presidential nominees to executive appointments. The legislature must ratify every presidential negotiation and also approve and ratify his declaration of war or state of emergency before they become effective.
- The legislature carries out oversight functions on government ministries, agencies, departments and commissions. This oversight functions are often characterized by in-depth investigations into the activities of the ministry or department involved, the personal conduct and life style of the members of the executive. This is a serious check on the abuses of executive powers. Because this oversight function is often investigatory in nature, it can exhume gross misconduct, vices and abuses. This can force the legislature to appeal to the chief executive to terminate the appointment of a member of his cabinet or even lead to the impeachment of the chief executive[85].

Let us now take a look at the judicial powers. The judicial powers refer to the courts. Section 6; Subsection 1 – 6 of the Nigerian Constitutions says:

(1) The judicial powers of the federation shall be vested in the courts to which this section relates, being courts established for the Federation.

(2) The judicial powers of a state shall be vested in the courts to which this section relates, being courts established, subject as provided by this constitution, for a state.

(3) The courts to which this section relates, established by the constitution for the Federation and for the states, specified in subsection (5) (a) to (i) of this section shall be the only superior courts of record in Nigeria; and save as otherwise prescribed by the National Assembly or by the House of Assembly of a state, each courts shall have all the powers of a superior court of record.

(4) Nothing in the foregoing provisions of this section shall be construed as precluding –

(a). The National Assembly or any House of Assembly from establishing courts, other than those to which this section relates, with subordinate jurisdiction to that of a High Court;

(b). The National Assembly or any House of Assembly which does not require it from abolishing any court which it has power to establish or which it has brought into being.

(5) This section relates to –

(a). The Supreme Court of Nigeria.

(b). The Court of Appeal

(c). The Federal High Court

(d). The High Court of the Federal Capital Territory, Abuja.

(e). A High Court of a State

(f). The Sharia Court of Appeal of the Federal Capital Territory Abuja

(g). A Sharia Court of Appeal of a State

(h). The Customary Court of Appeal of the Federal Capital Territory, Abuja

(i). A Customary Court of Appeal of a State

(j). Such other courts as may be authorized by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws; and

(k). Such other courts as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws.

(6). The judicial powers vested in accordance with the foregoing provisions of this section –

(a). Shall extend, notwithstanding anything to the contrary in the constitution, to all inherent powers and sanctions of a court of law

(b). Shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating there to, for the determination of any question as to the civil rights and obligations of that person

(c). Shall not, except as otherwise provided by the Nigerian constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decisions is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter 11 of the Nigerian Constitution.

(d). Shall not as from the date when this section comes into force, extend to any action or proceedings relating to any existing law made on or after 15th January, 1966 for determining any issue or question as to the competence of any authority or person to make any such law.[86]

4.7 Nigeria's Democracy vis-a-vis Montesquieu's Theory of Separation of Powers

Nigeria is now practicing a democratic system of government because of the reverence she has for it. In democracy day that was held on 29th of May, 2016, the President (Muhammadu Buhari) in his introductory statement says, "My compatriots, it is one year today since our administration came into office. It has been a year of triumph, consolidation, pains and achievements. By age, instinct and expense, my preference is to look forward, to prepare for the challenges that lie ahead and rededicate the administration to the task of fixing Nigeria. But I believe that we can also learn from the obstacles we have overcome and the progress we made thus far, to help strengthen the plans that we have in place to put Nigeria back on the path of progress. We affirm our belief in democracy as the form of government that best assures the active participation and actual benefit of the people".[87] If democracy best assures the active participation and actual benefit of the people, why is it that the people of Nigeria are being led to death and

impoverishment? Why is it that there are violations of human rights and failure of leadership in the Nigerian Democracy? Chinua Achebe observes this when he states:

> I believe that Nigeria is a nation favoured by providence. I believe there are individuals as wells as nations who, on account of peculiar gift and circumstance, are commandered by history to facilitate mankind's advancement. Nigeria is such a nation. The vast human and material wealth with which she is endowed bestows on her a role in Africa and the world which no one else can assume or fulfill. The fear that should mightily haunt our leaders (but does not) is that they may already have betrayed irretrievably Nigeria's high destiny. The countless billions that generous Providence poured into our national coffers… would have been enough to launch this nation into the middle-rank of developed nations and transformed the lives of our poor and needy. Stolen and salted away by people in power and their accomplices. Squandered in uncontrolled importation of all kinds of useless consumer merchandise from every corner of the globe. Embezzled through inflated contracts to an increasing army of party loyalist who have neither the desire nor the competence to execute their contracts.[88]

This is what we experience in Nigeria: these are the values that are inherent in our democracy: does it ever worry us that history which neither personal wealth nor power can pre-empt will pass terrible judgment on us, pronounce anathema on our names when we have accomplished our betrayal and passed on? We have lost the twentieth century: are we bent on seeing that our children also lose the twenty- first? God forbid! [89] Democracy demands that there should be rule of law, fundamental human rights, justice, separation of powers etc; these are the values that make democracy a meaningful and viable form of government but in Nigeria today personal or family interest is for most law makers and politicians the *raison d'être* in whatever they do, the common good therefore suffers. Without respect for separation of powers, even if a philosopher king were to rule Nigeria, he cannot bring lasting peace, development and progress to the country.[90] The result has been citizens being subject to arbitrary government decisions. In the absence of effective legal recourse, citizens rely on their personal contacts and networks with elites or influential government officials. To move away from the extra-judicial means of pressing for political demands will require a different orientation towards respecting [the separation of power principle] regardless of who is in power.[91]

The Nigerian 99 Constitution, Chapter 1 Section 1, Subsection 1 says that the constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria but some people are above the constitution and this they exemplify by refusing to obey court order. During presidential media chat, the President, Muhammadu Buhari while responding to a question by *Premium Times*' on the State Security Service has continued disregard for court orders on the release of Mr. Dasuki and Mr. Nnamdi Kanu. He says that the magnitude of their alleged crimes was too grievous that government cannot afford to release them on bail. Mr. Dasuki was facing corruption charges over alleged diversion of $2.1 billion meant for the procurement of arms while Mr. Kanu was charged for treasonable felony. Describing the comment as a "national embarrassment", human rights lawyer, Ebun Adegboruwa says that Mr. Buhari, a former head of a military junta, who ruled the country in the 1980s with iron fist, proved by his open defiance of the judiciary that he remained a dictator at heart. Lanre Suraju, Chairman of Civil Society Network Against Corruption (CSNAC) asserts according to *Premium Times* that:

> The case of Nnamdi Kanu is also unfortunate. It is an extra-judicial action. Basically, if he is being charged for treason, there is also certain conditions that need to be met before bail can be granted. If the lawyers of the government have failed to establish the magnitude of his offence, and the court in its own wisdom has granted that bail, the SSS has no basis and no reason under the rule of law to perpetually keep him in detention.[92]

It is because of this that Kanni Ajibola, a lawyer and Sulaiman Adeniyi, a Nigerian human right activist on Tuesday 19th June, 2018, filed a suit demanding the impeachement of President Buhari because of flagrant violation of the 1999 Constitution. They accused the President of treating the orders of the court with a great disdain and abuses the constitution of the Federal Republic of Nigeria at will. For them, the President in contravention of the due process and sections 80 and 81 of the 1999 constitution spent about $496 million on the purchase of Tucano Jets without the approval of the National Assembly of the Federal Republic of Nigeria as required by the law. The President gave an instruction that money should be withdrawn from the public fund of the Federation without the approval of the National Assembly or the authorization of act

and same used for the purchase of Tucano jets.[93] An Imo State High Court presided over by Justice Benjamin C. Iheka narrated how the State House of Assembly defied an order of court and pronounced the impeachment of the Deputy Governor, Prince Eze Madumere. Giving a graphic account of what happened after the last sitting, Madumere's counsel, Prince Ken C. C. Njemanze, SAN, recalled that the Attorney General and counsel for the Speaker Imo State House of Assembly were present in court when the order, restraining the defendants was made.[94]

Also, Justice Stephen Dalyop Pam gave an order in line with a contempt charge that the Chairman of the Independent National Electoral Commission (INEC) Professor Mahmud Yakubu should appear before an Abuja Federal High Court and explain why he should violate valid court orders.[95] Some legal luminaries in Nigeria, in order to make more money, often prolong unnecessarily cases that would have been decided immediately and verdict given. This constitutes abuse and is not in the interest of the common good. A clear example of the neglect of the common good is the failed "third term bid" by Olusegun Mathew Obasanjo, a former president of Nigeria. As the president, he wanted to contest the presidential election which would have allowed him to remain in office longer that the law permits him. To achieve his selfish aim, the constitution was proposed for amendment, he was supported by sycophants and praise singers and those against his view were dealt in various ways; from removal from office to unlawful detention.[96]

Various shades of vices ranging from indiscipline, tribalism, licentiousness, ethno-religious violence, armed robbery, thuggery, cultism, ritual killing, hired assassination, bribery and corruption, embezzlement of public funds, sycophancy, selfism, avarice, sabotage, oppression, fraud, apathy to work and so on have become regular features in our national life.[97] The major cause of this problem is the accidental leadership that we have been having in this country. That is why Livinus Ugwuodo states that since Nigeria's political independence in 1960, the country has not had opportunity of being governed by a willing and ready leader but those that can at best be described as "accidental leaders". These are leaders whom the mantle of leadership fell on them by default not minding their capacity, experience and in most cases; they were neither prepared nor

expectant of such huge responsibility. This has been one of the reasons for the country's failures resulting from visionless policies. Thus the 2015 election offers Nigerians a good opportunity to vote wisely for a leader who out of personal conviction and preparedness is offering his or herself to serve rather than someone who will get there before beginning to plan. This underscores the fact that most of our developmental challenges are rooted in lack of sound, visionary and result-oriented leadership.[98]

For Egbefo Omolumen Dawood, the authoritarian rule by an institution alized oligarchy constitutes the main structural obstacle to deepening democratic rule in Nigeria. The oligarchs are composed of self-serving politicians, business persons, political fixers, godfathers", former military officers, and elite bureaucrats who share a common interest in sustaining oligarchic power. Even though the oligarchy claims to represent democratically based regional, professional, and ethnic constituencies, its record falls far short of its claims, constitutional provisions, state centralization, and accumulated political experience have nurtured far greater national integration within the oligarchy than among the fragmented groups that they rule.[99] Informal networks of power based upon friendships, pragmatic alliances, financial deals, monopolizing information and above all, the patrimonial distribution of patronage sustains and reproduces the ruling oligarchy. To maintain power, the oligarchs trade office; coop rivals, distribute concessions and contract; and bleed the public treasury to fund their private fortunes, clients, political parties, and political thugs. Unable to show how their salaries could explain their lifestyles, fortunes, and patronage, they have institutionalized a political order indifferent to legal, ethical, or even communal accountability.[100] It was an American Senator who once boasted that "50% of what we politicians say is baloney". If that holds for the world's most advanced democracy, we are then probably right to say that in Nigeria" 90% of what politicians say is baloney".[101] Also in President Buhari's address, he contends:

> But the real challenge for this government has been reconstructing the spine of the Nigerian state. The last twelve months have been spent collaborating with all arms of government to revive our institution so

> that they are more efficient and fit for purpose. That means an independent judiciary, above suspicion and able to defend citizen's rights and dispense justice equitably. That means a legislature that actually legislated effectively and above; that means political parties and politicians committed to serving the Nigerian people rather than themselves. These are the pillars of the state on which democracy can take root and thrive.[102]

What this means is that there should be separation of powers but the same man who is advocating for separation of powers is equally promoting subordination of powers and we know according to the law of non-contradiction that it cannot both be and not be at the same time. To observe separation of powers and not to observe separation of powers is a contradiction. The president forgot how he disobeyed the court order many times; that is why what leaders say is quite different from what they do. Momoh asserts according to Tam David-West that our democracy is a travesty of democracy, our separation of powers is a mockery. A colossal joke, the legislature, the judiciary are for all practical purposes all sucked into the vortex by (an) imperial, imperious executive… our elections are caricatures… monstrous electoral fraud and malpractices.[103] How can there be true separation of powers when the judges are been directed by the executive. The executive dictates for the legislature and judiciary what they should do and what they should not do. Egbefo Omolumen Dawood observes that the competition between branches of government and between levels of government also remains weak. The executive has overriding power compared to the other branches of government, and it controls the financial autonomy of the other branches.The executive often determines the leadership of the national Assembly, as do the state governors in regards to the state legislatures. Neither the civil service nor the judiciary is typically powerful or impartial enough to act as an effective constraint on the power of the executive, although the federal judiciary has shown itself to be an increasingly important check.[104]

Generally, checks and balances are very important because it prevents democracy from becoming a dictatorship or oligarchy as its operation ensures that no one arm of government gains absolute power or abuse the powers given to it, ensures that each organ of government is flexible

and accommodating, guarantees effectiveness and efficiency in the performance of government functions, enhances the stability of government, helps to identify error or abuses where they occurred, minimizes corruption, oppression and abuse of powers generally.[105] Suffice to say that the situation is worse at the state level where the state governors have neutralized the Houses of Assembly through impunity and made it impossible for checks and balances. Governors dip their hands into state treasuries just as they like. The local government has been virtually obliterated as a tier of government. Governors either unconstitutionally appoint caretaker committees or conduct fraudulent elections through the State Independent Electoral Commission (SIEC) which invariably award victories to ruling parties.[106] The most worrisome threat to our nascent democracy is the frequent discretion of our courts and assaults on officers of the judiciary. The attack on a judge, Justice Ayodeji Daramola in court in Ekiti in September 2014, the locking of the courts in Rivers State in 2014, the recent gun assaults on a court in Port Harcourt, frequent disobedience of court orders by the Muhammadu Buhari government and others are indicators that we still have a long way to go in our practice of democracy.[107]

Democracy presupposes an independent judiciary. But is the judiciary really independent? The judges are appointed by the executive and paid by the executive. How independent can they be? Judges are supposed to be incorruptible men of impeccable moral probity. But we know what happens in practice. Judges are also corrupt and make travesty of justice.[108] There cannot be true separation of powers since the executive has the final say in appointing top public office holders. Because of this, the appointees will be dancing to the tune of the master so that they will not be unseated, it is the same thing that applies to that of the judiciary, it could be that before one is appointed as a judge, an agreement must have been reached that he will be paying certain amount of money at the end of the month or that he should not defy the instructions of his boss (the executive). National Judicial Council may equally recommend somebody who is mentally and intellectually incapacitated as a Judge. In this case, the executive seems to be enjoying while the law-makers “are brought to Abuja to spread poverty” (Late Senator Okadigbo was quoted as

saying this when the press interviewed him on the controversial furniture allowance). Similar situation triggered Karl Marx to call for action that will change such structures. But in Nigeria, such action is corruption, that is, they are also doing the same' syndrome. Assuming the legitimate entitlements due to law-makers and the judiciary are not given to them when due (with the excuse of no fund), while the executive is enjoying, making political donations, throwing parties and hosting the world, it will ginger corrupt practices as retaliatory tolls for any angle.[109]

The judicial system is corrupt; people are given favour without deserving it. The legislative arm is also corrupt; legislators turned the national and state assembly gallaries as centres for money making ventures. The executives are even worse than all; Governors loot public funds for selfish and personal benefits.[110] Budgetary constraints, however, remain particularly worrying when it comes to judicial and court reform. The president has not expected a single budget passed by the National Assembly since 1999, instead impounding and releasing funds as he sees fit. The budgetary tyranny of the executive is even more pronounced at the state and local government levels, where governors and local government chairs are the first recipients of federation funds, which most have treated as largely private accounts. State assemblies, consequently, have been almost completely beholden to the governors[111].

Corruption has soiled the working relationship of the three arms of government. It has established suspicion, disunity, disaffection among the members of the legislature, between the legislature and executive. Because of the bribery scam, there is the tendency to suspect every advancement of courtesy. In such a situation, how can they pass a genuine bill into law? Even the executive sponsored bills may not see the light of the day unless they are properly'salted', otherwise it will be thrown out and this may warrant the abuse of the constitution by the executive who may be bent on achieving its goals.[112] Corruption is one of the major problems that are facing Nigerian democracy. Nigeria got her political independence (not economic independence) on 1st October, 1960, the level of corruption then in the country was low when compared to what we are seeing now. Economic analysts say Nigeria recorded highest economic prosperity in history with

the return of democracy from 1999 to date, but due to corruption, such huge economic boost has not contributed in any way to the standard of living of the masses and rather, the politicians who constitute few percentage of the nation's total population take the case of the democracy.[113]

On 1st October, 2018, it will be 58 years that Nigeria gained independence, now what we have is not 58 years of political and economic independence but 58 years of celebrating high rate of corruption. It will not be fallacious to say that corruption has been glamorized by the office holders in Nigeria. Political office holders embezzle public funds with impunity. Meanwhile, the pen criminals and political killers, the Nigerian corrupt politicians are honoured by various governments and decorated by traditional king makers with unmerited big chieftaincy titles like "The lion that guides the town". Of course they are lions. Yes, real lion indeed! Thanks to the Egyptian authorities for the trial of Hosni Mubarak, their former dictator, because even in his state of coma, he is made to face a justified trial. In Nigeria, this would never be possible because emotions, sentiments, religion or ethnicity would have been brought in with the help of corruption to scuttle the trial.[114] Nigeria has been ranked as one of the most corrupt countries in the world because of corruption .Oxford Advanced Leaner's Dictionary defines corruption as dishonest or illegal behavior, especially of people in authority.[115] Our leaders promise things that they cannot fulfill. For instance in Ebonyi state, the Governor, Engineer Chief David Nweze Umahi during his campaign promised to pay workers hundred percent minimum wage. The outgone Governor, Chief Martin N. Elechi paid fifty percent but this man told workers that there was no money when he won election. We should recall that this same man who promised to pay this money was the Deputy Governor when Chief Martin Elechi was the Governor. He said that not paying the hundred percent by the former Governor was a calculated attempt to hurt workers but today, what is happening? He is not even paying the fifty percent that the former Governor paid but also deducting money from their actual salaries before the implementation of the fifty percent by the former Governor. This is a dishonest behaviour; the excuse he gives is that there is economic down turn, economic quagmire and recession, call it anything you like but some states are paying this

money and another minimum wage will soon take place. This Governor says that there is no money to pay workers the percentage of money that he agreed to pay but he bought cars that worth millions of naira and distributed to top political office holders in the state of which former Governor Martin Elechi was supposed to be among the beneficiaries but he (Martin Elechi) refused to accept the car. That is why Adeyinka Theresa Ajayi and Emmanuel Oladipo Ojo state that:

> Democracy and Nigeria are like Siamese twins; though conjoined, they are uncomfortable and under intense pressure that could result in all forms of hurt even death. Although, democracy may not be strange to an overwhelming percentage of Nigerians. What may be strange to them is the brand of democracy that invests, first and foremost, in human and material resources for the purpose of political stability, economic viability, scientific advancement, technological breakthrough educational development and life enhancing social services. Given the general optimism that Nigeria was going to be the bastion of democracy in Africa following her independence from Britain in 1960, one should normally expect that by now democracy should be deeply rooted and institutionalized in the country. Ironically and unfortunately, Nigeria as far as the practice delivery of dividends of liberal democracy is concerned, is yet a cripple than can barely stand let alone walk or run.[116]

Retrospectively, sorrowfully remember the epidemic crooked structures the establishment of EFCC were meant to dismantle and how Nigerian corrupt politicians and some contractors have craftily averted justice to dishonestly live in mansions with enough millions in foreign accounts and enough food to feed their reptiles, dogs and cats while we ordinary Nigerians in the midst of plenty die in abject poverty…. we the Nigerian masses have been unjustly left without electricity, without roads, without water, without hospitals, without schools, without any structure and invariably without future in the 21st century; where is the conscience of Nigerian politicians? Despondently, they do not care about us.[117] The consequence of this is that the poor masses are easily brainwashed and their right of choice terribly manipulated making an objective choice seldom to consideration. Besides, various forms of inducements and gratification which provide temporary relief from the scourge of poverty are given central attention in making democratic choices. However, many Nigerians see the election period as an opportunity to demand of the

office seeker a slice of their wealth. Thus their participation in the election process was only influenced by how much they could attract the contestants rather than by deliberate decision based on preventing issue and national interest.[118]

The worst part of it all is that Nigerian politicians have separated morality from politics. They see politics as a means to get rich quick and that is why everybody is trying by all means whether free or fair to become a political office holder. If it means killing people, there is no problem provided that it can pave way for the person to grab and retain political power. That is why many Nigerian politicians are Machiavellians, because they adopt all the teachings of Niccolo Machiavelli as was encapsulated in his book entitled "*The Princ*e''. Asukwo Offiong advises that:

> Those who may want to follow or continue with Machiavelli's, Nietzsche's and Thrasymachus' philosophies should note that good government naturally rests on the beaconstone of morality. And morality is the natural law. Man is part of nature, and any crime against the state will cause a disorder in the nervous system of the state. This will cause an immediate chemical reaction and malfunctioning in man that may lead to serious sickness, diseases and even untimely death. This is the law of cause and effect which is popularly known as the law of nemesis. There is an in- built mechanism in nature, which if a man upsets; punishment comes immediately or remotely or in any other form. You don't need to be a religious man to incur this.[119]

When people are in authority but they do not have human sympathy then, there is a problem. How can we believe that politics is a dirty game? What makes it dirty and where are the dirts from? The problem that we have is wrong interpretation of politics. Izu M. Onyeocha sees politics as the science or art of how society is organized or run. It is thus a normative science which treats of government i.e. it treats of the organization of the affairs of state and the organization and distribution of social goods.[120] If politics is concerned with how society is organized, the question is, are Nigerian politicians organizing or disorganizing our society. If we take power to be the central concern of politics, we should understand that power is not bad but the wrong use of power is what is bad. Machiavelli observes that the gulf between how one should live and how one does live is so wide that a man who neglects what is actually done for what should be

done moves towards self destruction rather than self-preservation. This is because taking everything into account, he will find that some of the things that appear to be virtues will, if he practices them, ruin him and some of the things that appear to be vices will bring him security and prosperity.[121]

That is why most of our leaders lie, cheat, kill and deceive people either to maintain a political position or to get it. Some believe that it is only by malicious acts that one can grab political power but there is error in such reasoning. Does it mean that one's knowledge and uprightness cannot help him to grab and retain power? Of course it can but the problem now is that power is for sale. Those who can rule very well do not have money to buy power but those who go there to embezzle people's fund have money to bribe their way out; that is why Aisha Muhammad Imam is of the view that appointment to offices today are no longer on merit but on whom you know. Those from well to – do families have the advantage of getting appointed to offices than those from poor socio-economic background. Leaders are imposed on the masses by those in power. Bad elements are those who get into power while the good ones with patriotism and good intention to move the nation to the next level are not allowed to get power.[122] Even during campaign, those aspirants who do not have money to distribute are regarded as unserious but those who share the money are serious. Then after winning election, the whole allocation will be coming into their capacious and roomy pockets. Machiavelli says again:

> So, as a prince is forced to know how to act like a beast, he must learn from the fox and the lion; because the lion is defenseless against traps and a fox is defenceless against wolves. Therefore, one must be a fox in order to recognize traps and a lion to frighten off involves. Those who simply act like lions are stupid. So it follows that a prudent ruler cannot and must not honor his word when it places him at a disadvantage and when the reason for which he made his promise no longer exist. If all men were good, this precept would not be good; but because men are wretched creatures who would not keep their word to you, you need not keep your word to them... But one must know how to color one's actions and to be a great liar and deceiver.[123]

It is because of this that our rulers will say one thing and be doing another. A leader should lead by example but if a ruler is a liar and a deceiver, what will the subjects be? What is in vogue in Nigeria is money politics. Any party that produces presidents, other people from other parties will defect to that party in power in order to obtain favour. You hardly see a strong, reliable, decent, disciplined and consistent politician in Nigeria. Tips of the iceberg are seen after the last elections, the exercise that brought in the all constituted leaders of the present democratic dispensation. Now Abubakar Rimi who belonged to Action Congress (AC) is recently said to have opted out and joined the People's Democratic Party (PDP), a party he earlier vehemently opposed up to the point of supreme sacrifices of loosing wife and children on criminal attacks by the opponents. Senator N.N Anah who stood for the APGA as its brain and pillar has also realigned himself with PDP. The presidential candidate of Action Alliance (AA) Sir Solomon Onyekwelu has now abrogated his commitments and dumped his party for PDP.[124]

The worst kind of scenario was witnessed in Anambara state at the taking of ₦10million bribe by the governorship aspirant under NAP from his counterpart of All Progressive Grand Alliance (APGA). The purpose was for the former to compromise his position. He took money and thus extinguished a voice and those of other electorates who had invested their interest in him. As if this was not enough, when APGA candidate finally won in a court tussle against PDP governorship nominee, the latter struck a greater deal with the NAP candidate to subvert the court decision favouring APGA. He coalesced with PDP counterpart to demand the Supreme Court to set aside its judgment i.e. to reverse itself against the APGA candidate on the fault of having offered bribe to him. This was not from any moral duty since he could not be an ambassador of moral conscience but to usher in PDP candidate as the governor and therefore get his pay.[125] This is very bad; we are laying foundation for bad future. Much as leadership could be controverted, but when truly understood, it is inextricably bound up with service… positive service. There is no denial that a leader can easily be carried away by his/her own personal sentiments. However, the sentiments of leadership should go beyond party affiliations, campaign rhetoric and individual

wishes of self–aggrandizement.[126] Unfortunately, single of purpose is lacking among Nigerian politicians. Most actors in the Nigerian political scene seek to extend their powers for personal aggrandizement. Furthermore, the so called political parties operating in the Nigeria nascent democracy are amorphous bodies with ambiguous objectives. Thus there has been absence of coherence among the organs of government controlled by one political party. The concept of separation of powers has thus been perverted in Nigeria and will remain so perverted until the emergence of true democrat who will conceive power on a bread basis. For now we are running a democratic government without democrats.[127]

Another factor militating against the smooth practice of democracy in Nigeria is division which is caused by ethnic democracy. We are one country but we are pluralistic, that is one country in a pluralistic society. The 1999 Constitution of the Federal Republic of Nigeria says that we the people of Federal Republic of Nigeria have resolved to live as one indivisible and indissoluble sovereign Nation. We cannot talk of ethnic democracy without making reference to the colonial masters. The division of Nigeria into Northern and Southern protectorates is the progenitor of ethnic democracy in Nigeria. H. Ayatse and Isaac Iorhen Akuva observe that:

> …ethnic sentiment was deliberately introduced and propagated in the polity by the British colonial government to realize colonial and imperialist economic and political objectives. It was also found that since the end of colonialism in 1960, Nigeria has carried forward the spirit of ethnicity into the post-colonial Nigeria, this vice has been discovered to have been responsible for most of the political, administrative, economic, social and cultural maladies in Nigeria.[128]

It was the colonial masters who gradually gather these ethnic entities in provinces, protectorates, regions and finally brought these different ethnics together into one geopolitical entity to be governed by one person using a common treasury. The origin of ethnicity began with the evolution of the Nigeria federalism. It was Sir Bourdillion who initiated the idea of federalism for Nigeria in 1939. He divided the country into provinces and regional councils along the three major ethnics in the country.[129] The problem of ethnic democracy is becoming very difficult to deal with and that is why there is problem any time we want to have a change of government

(election). The Hausa people will do everything possible to produce a president, the Yoruba people will do the same thing while the Igbo people will let the world know that they have not produced a President and that means they are being marginalized. The reason for this is that we do not believe that we are one Nigeria and we believe again that if somebody from your tribe is in power, you will be advantaged more than others but this is very bad. In democracy, every part of the country should be represented like others and equal advantage should be given to all. Why we have various ethnic based groups in Nigeria like Movement for the Actualization of Sovereign State of Biafra (MASSOB), Indigenous People of Biafra (IPOB), Boko Haram, Niger Delta Avengers (NDA) etc. is because of ethnic democracy. That is why Egbefo Omolumen Dawood states according to Olu Adeyemi that:

> It is on this note that it has been argued that it is not entirely surprising that the nation has witnessed a series of successive ethnic rivalries which challenges the national integration efforts of the federal state. Rather, it is argued that as long as the ethno—regional group such as Arewa Peoples Congress (APC), O o'dua Peoples Congress (OPC),Ohaneze Ndigbo, Ijaw Youth Movement, Movement for the Actualization of the Sovereign State of Biafra (MASSOB), Movement for the Survival of the Ogoni People (MOSOP), Movement for the Emancipation of the Niger Delta (MEND), and Egbesu, continue to find popular support and blossom in the country.[130]

Where ethnic democracy exists, economy is crippled and development is slowed as we have it in Nigeria today. We hear of pipeline explosion, kidnapping of expatriate workers etc. because of marginalization brought about by ethnic democracy. This problem of ethnic democracy is now in existence in our institutions. Indigenous students who are in tertiary institutions in some states pay lesser than those who are non indigenes. Sometimes, the inscription that is used to cover this malicious act is "educationally disadvantaged state" or "states that are educationally backward." Students that pay higher than others will never forget it and when they graduate and get a job, they will practice what they learnt in school by giving unfair advantage to their own people whether merited or not. It is because of this that lack of managerial meritocracy

is becoming an obstruction to the progress of this country and the economy is gradually crippled. Chinua Achebe proves this right when he says that:

> A Nigerian child seeking admission into a federal school, a student wishing to enter a college or university, a graduate seeking employment in the public service, a business man tendering for a contract, a citizen applying for a passport, filling a report with the police or seeking access to any of the hundred thousand avenues controlled by the state, will sooner or later fill out a form which requires him to confess his tribe (or less crudely and more hypocritically, his state of origin). Intelligent and useful discussion of … [ethnic democracy] is very often thwarted by vagueness.[131]

The summary of what we are saying above is that Nigerian democracy landed on a good platform with the existence of democratic institutions, plural society, vibrant civil society organizations and critical mass media among others. These ingredients have the structure and capacity to make democracy thrive in Nigeria. But it is germane to note that, Nigeria's democracy has remained grossly unstable since the return to this popular form of governance in 1999. The political terrain has been home with lots of challenges precipitating against the genuine realization of the system. In fact the impediments to the nation's unending desire for true democracy seem to assume a more perilous proportion by the day.[132]

From our explanations on Montesquieu's theory of separation of powers, we can understand that it is influential and incorporated in the Nigerian constitution. Theoretically, there is separation of powers in Nigeria but practically it is false. Montesquieu argues that the legislative power alone should have the power to tax since it can then deprive the executive of funding if the latter attempts to impose its will arbitrarily. Likewise, the executive power should have the right to veto acts of the legislature and the legislature should be composed of two houses, each of which can prevent acts of the other from becoming law. The judiciary should be independent of both the legislature and the executive and should restrict itself to applying the laws to particular cases in a fixed and consistent manner so that the judicial power so terrible to mankind becomes as it were, invisible and people fear the office but not the magistrate.[133] What this implies is that there should be no subordination and abuse of power but in Nigeria, this is a different case; the executive

approves and spends money the way they like without following the stipulations of the constitution. The executive also dictates for the judiciary what they should do and what they should not do. The judiciary also perverts justice. For example, on January 2, 2004, the Enugu state Chief Judge, Justice Stanley Nnaji (now dismissed), whose area of jurisdiction did not cover Anambra state, delivered a verdict that ousted Governor Ngige of Anambra state. The federal government acted on that judgement by withdrawing the police security from the Governor. The action of the federal government is against the oath of office which the president swore to avoid the abuse of power and to uphold the tenacity of the constitution, equity and justice.[134]

Courts have a pattern of rendering judgements to suit majority group or the more popular side. Recently, the Supreme Court judges (four out five) appear to have allowed the executive branch to pander them into erring in law. The controversial judgement of giving offshore oil to the federal government was not only a biased judgement but an unprecedented judgement against natural justice. It portrayed the incompetence of the presiding judges…[135] Thus, judgement exposed the judges as taking sides and being vulnerable. The composition of selected judges was… in favour of the plaintiff and against the interest of the defendants-the littoral states.[136] Also, tension enveloped the country when the police and Economic and Financial Crimes Commission agents besieged the Abuja homes of Bukola Saraki –the Senate President and Ike Ekweremadu-his deputy respectively because of abuse of power. Similarly, Benue state is on edge after the police allegedly aided a faction of the House of Assembly in a move to remove Governor Samuel Ortom. Out of desperation to retain power, the incumbent government throws the rule of law overboard. The security agents acted dictatorially. Police locked down Benue state legislature. Coincidentally, Ortom has just defected from the APC to the PDP.[137] In May, police took over the Kano State House of Assembly at the height of the crisis of impeachment of the speaker, Abdullahi Ata. Ata was eventually impeached on 30th July, 2018, a week after Rabiu Kwankwaso, a Kano Senator, defected from the APC to the PDP. Through out the fourth Republic, Nigeria has witnessed crude politicking and abuse of state power.[138]

Buhari had tasted the abuse of power in 2003, when he was battling to prove that the 2003 presidential pool was rigged in favour of Olusegun Obasanjo of the PDP. The police invaded the All Nigerian Peoples Party solidarity rally in Kano, firing tear gas to disrupt it. His running mate, Chuba Okadigbo who attended the rally died the following day. It is incomprehensible that a man who went through this experience has not taken steps to stamp out the current abuse.[139]

Sadly, Goodluck Jonathan government acted similarly in Ekiti State, abusing police power in the 2014 governorship election. The then Rivers State governor, Rotimi Amaechi and his Edo State counterpart, Adams Oshiomhole (now APC National Chairman), had the plane carrying them from Benin detained by the military at the Akure airport. They were eventually banned from travelling by road to the final rally for the APC governorship candidate-Kayode Fayemi for that June's governorship ballot. Amaechi, the arrowhead of the G-7 (the group of PDP governors who defected to the APC in 2013), also had a running battle with the then Commissioner of Police in Rivers State, Joseph Mbu. Mbu once barred Amaechi's motorcade from entering the Government House. Shortly after that, police barred Amaechi and his supporters from welcoming the members of G-7 at Port Harcourt Airport during their solidarity visit to the then governor…Because of the spoils of office, political office holders use everything at their disposal, including state security agencies, to cling on to power.[140] The above explanations show that there is abuse of power in Nigerian democracy and because of this, we can state that the basic principles of Montesquieu's theory of separation of powers that can make democracy viable and meaningful in Nigeria are:

- **There Should be no Fusion of Powers**: This means that the powers of government should not be concentrated in one hand, one person or the same bodies of persons. No single individual or branch of government should wield all the powers alone or interfere in the duties of another branch. The powers of government should be distributed among the different branches and this is done in order to prevent tyranny. Government can work systematically and efficiently only when each of its organs exercises its own powers and functions. Similarly, the liberty of the people can be protected only when there is no concentration or combination of the three

governmental powers in the hands of one or two organs.[141] It is only when these powers of government are diffused that no branch of government or bodies of persons will grasp at absolute power. So, the theory of separation of powers demands that the governmental powers should be divided based on their functions.

- **Every Branch of Government Should Have its Functions Properly Specified:** To avoid the abuse of power, it is expedient that the functions of every branch of government should be properly spelt out. When this is done, no branch will interfere in the duties of other branches. This will help to ensure that there is a balance in the government. Political liberty is possible only when the government is restrained and limited. The functions of government should be differentiated and that they should be performed by distinct organs consisting of different bodies of persons so that each department should be limited to its own sphere of action without encroaching upon the others and it should be independent within that sphere.[142]

Montesquieu's thesis is that concentration of legislative, executive and judicial functions, either in one single person or a body of persons, results in abuses of authority and such an organization is tyrannical. He urges that the three departments of government should be so organized that each should be entrusted to different personnel and each department should perform distinct functions within the sphere of powers assigned to it.[143]

- **The Principle of Checks and Balances:** The principle of checks and balances says Anozie, Frank Amobi stipulates that the three organs of government and the powers exercised by them be arranged in a way that each supervises and checks the other against possible abuse of power. In this way, none will be strong enough to become tyrannical or arbitrary.[144] It is only when one branch of government acts as a watch dog over other branches that this principle can be maintained.

The theory of checks and balances holds that no organ of government should be given unchecked power in its sphere. The power of one organ should be restrained and checked with

the power of the other two organs. In this way, a balance should be secured which should prevent any arbitrary use of power by any organ of the government. The legislative power should be in the hands of the legislature but the executive and judiciary should have some checking powers over it with a view to prevent any misuse or arbitrary use of legislative powers by the legislature.[145] Likewise, the executive powers should be vested with the executive but legislature and judiciary should be given some checking powers over it. The same should be the case of the judiciary and its power should be in some respects checked by the legislature and executive. In other words, each organ should have a checking power over the other two organs and there should prevail, a balance among the three organs of government.[146]

- **The Principle of Rule of Law:** This implies that everybody should be ruled by the laws of their country and nobody should be a sacred cow. Anybody who does not obey the law is not free and that is why Montesquieu says that liberty is the right of doing whatever the laws permit and if a citizen could do what they forbid, he would be no longer be possessed of liberty because his fellow citizen would have the same power. To prevent abuse of power, government should be constituted in a way that no man shall be compelled to do things to which the law does not oblige him nor forced to abstain from things which the law permits.

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CHAPTER FIVE

EVALUATION AND CONCLUSION

5.1 Evaluation

Democracy when practised very well and its principle of separation of powers maintained remains the best of all the myriad of governments that man has opted for. Why other systems of government were abandoned for democracy is simply because of the rousing promises that accompany the practice of democracy but today the reverse is the case such that those good values that attract people to democracy like separation of powers, rule of law, liberty, justice, egalitarianism, multi-party system, human rights etc. are debased and relegated to the background. Any system of government that does not care about the interest of the people is not a government at all because the government is in existence because of the people, without the people there can be no government, every government is constituted by the people and the people are the constituents of every government. Now what is the standard or the criterion for measuring good and bad government? John Stuart Mill answers that:

> The first element of good government, therefore, being the virtue and intelligence of the human beings composing the community, the most important point of excellence which any form of government can posses is to promote the virtue and intelligence of the people themselves. The first question in respect to any political institution is, how far they tend to foster in the member of the community the various desirable qualities, moral and intellectual …. We may consider then, as one criterion of the goodness of a government, the degree in which it tends to increase the sum of good qualities in the governed, collectively and individually…[1]

This summarises what a true government should be but the question is, is that what we have today? People here and there are bemoaning in pains because of bad government, the government no longer increases the sum of good qualities in the governed, collectively and individually. We ought to aspire to what will promote the dignity of the human person, meaningful existence and a united community of person. We should be aware of the fact that the test of maturity for nations as for individuals, is not the increase of power, but the increase of self – understanding, self – control, self direction and self transcendence. For in a mature society, man himself not his machines or his

organizations, is the chief work of art.[2] Man should be the centre of everything in life, the meaningful existence of man should be considered first before any other thing and there is no way the life of man can be improved without a good government that is rooted in the principle of separation of powers. The principle of separation of powers is just like the parts of the body, the body is made up of many parts like the head, hands, legs, etc. When any of these parts stops functioning very well, it will affect the whole body and that is exactly what happens to any democratic dispensation that has a problem in any of the three organs. Automatically, it will affect other organs. So many problems abound today that made democracy to be in an anticlockwise direction and some of these problem are:

i. The inequality in the distribution of revenue among the different tiers of government and among the states vis- a-vis their contribution to the federal account.
ii. Uneven distribution of top political, military and service positions to reflect the pluralism in the country.
iii. Apparent disregard for merit and excellence in placements.
iv. State involvement with religion and perceived bias in favour of a particular side of the issues.
v. Inequality of opportunity for self – actualization as people seem to be rewarded or marginalized on the basis of state of origin or ethnic group.[3]

These problems are contributing to the retrogression in the practice of democracy today. It is known that equality is not natural because even God who created human beings did not create us equal. No two persons are the same in height, shape, reasoning, wealth, intelligence etc but these inequalities should be arranged in such a way that they will be advantageous to everybody. Trying to treat everybody in a similar way is against nature but we can talk of equality in terms of employment, education etc. This means that every person that has a certain qualification should apply for a certain job that is meant for that qualification, in education, everybody is equal to be educated. It is only in areas like this that one can talk of equality. In the distribution of top political, military and service positions, there is no equality because some states are more populous

than others, some are more educated than others, some have more interests in force (service positions) than others. These things if they are not handled with care will lead to polarization and dissension.

Disregard for merit and excellence in placements also contributes to the anomaly in the practice of democracy today because it is just like putting a round peg in a square hole. This leads to lack of managerial meritocracy because it makes people who are incompetent to be at the helm of affairs. Meritocracy should be griped tenaciously if democracy is to flourish like a tree planted by the waterside. Another one is ethnic democracy, that is democracy that is based on ethnicity. In this type of democracy as it is practised in Nigeria today, every ethnic group clamours to produce a presidential candidate at every election period to avoid being marginalized. This is seriously posing a danger to democracy today. Talking of politics in Nigeria, a lot of political activities go on and involve a lot of people. Most of those involved wind up as sectional chieftains, or even as self-seeking opportunists. What one sees is mostly cheap, largely uncoordinated, free for all, jungle politics of hassle and intrigue. Neither in intent nor in its unfolding does it hold any promise or perspective on any meaningful national scale. As a result, there seems to be little serious thought given to policies and their implementations for the progress and growth of the country. There is little evidence of any national goal, and this lack can be born out in the successive military regimes that have afflicted the Nigerian political climate. Nigerian politics is one of acrimony, dissension, division, sectionalism, and political sleight of hand. The staking and getting of money seems to be a primary motivation for most of those who engage in politics in Nigeria.[4]

Another problem militating against the smooth practice of democracy is allowing somebody who is deficient in knowledge and somebody who does not have a very good administrative acumen to be a leader. To Plato, it seemed natural that competence should be the qualification for authority. The ruler of the state should be the one who has the peculiar abilities to fulfill that function.[5] Plato believes that those who should rule are those who are fully educated.

For one to be a true navigator according to Plato, he must study the season of the year, the sky, the stars, the winds and all the other subjects appropriate to this profession if he is to be really fit to control a ship.[6] This means that for one to be a leader, he must have received proper and adequate training in leadership but today we believe that some are created or born as leaders whether they merited it or not and this is why democracy today is facing a myriad of problem. Andrew F. Uduiwomen observes this when he says:

> It is so shameful and ironical that in a country endowed with bright, creative people and intellectuals who can hold their own in any part of the globe, it is fraudsters and mediocre who run the affairs of the country. The situation is so bad that even men with good pedigree, men with morals and good character have buried their heads in the sand like the ostrich because they cannot play the dirty game with gangsters… in Nigeria today, a gap that may not be easily bridged has transformed into a permanent feature in the body polity. Consequently, a serious dearth of role models or political icons, which current and potential politicians could look up to, has come to stay…[fifty seven] years after attaining political independence through the relentless efforts and sacrifice of men and women, who others wish they could be like.[7]

Ignorance, illiteracy and democracy cannot work hand in hand. For the principles of democracy to be viable and productive, knowledge has great role to play. It is knowledge that enables Socrates to exhibit a sound moral judgment when the thirty tyrants tried to put him to the test. When the thirty tyrants had many people arbitrarily executed, he asked everybody whether a man was a good shepherd who diminished the number of the sheep instead of increasing it and did not cease doing so. Critias leader of the thirty, warned him to take heed not to diminish the number of the sheep by his own (Socrates') person.[8] This quotation shows that a leader who is knowledgeable cannot allow himself to be pushed to the wall even if he is in a precarious situation. Most of our leaders are not consistent in fulfilling their campaign promises because when they assume office some of their ill advisers will be robot controlling them. We hardly see a leader with good administrative acumen and firm in taking a decision without allowing people to detect for him what he should do. Take a look at some of the appointments in the government positions, where illiterates are valued more than the educated. That is why, where you will see the

less educated is in leadership because today, leadership is cash and carry and those who do not have money are dropped as unserious people until when those that have money are given such post, the masses will begin to suffer it. That is why politics remains one of the easiest means of capital accumulation. And as a neo-capitalist state with poorly developed private sector, politics and political power are the only means of accumulating the much need capital to form the capitalist class. Politics therefore, is not service driven but is driven by financial and economic motives. For majority of Nigerian politicians, politics is a business. As a result of this perception, the idea of losing is out of consideration since it implies a business loss. This has even militated against the emergence of a viable opposition party in Nigeria immediately after elections, those who loose either enter into an alliance with the ruling party or cross-carpet to it. This also accounts for the resort to all forms of violence in a bid to clench power or retain it.[9]

Power if seen as a means to serve the people and not to enrich oneself will make people to see it not as a do or die affair but as a means of providing the means of livelihood for the citizens. That is why in a country where more than eighty percent (80%) of people are languishing in poverty, you see the leaders spending billions of naira on luxurious cars. According to Plato:

> … our purpose in founding our state was not to promote the particular happiness of a single class, but, so far as possible, of the whole community. Our idea was that we were most likely to find justice in such a community, and similarly injustice in a really badly run community, and in height of our findings be able to decide the question we are trying to answer. We are therefore at the moment trying to construct what we think is a happy community by securing the happiness not of a select minority, but of the whole.[10]

Every good government should aim at promoting the happiness of the greatest number since to achieve the happiness of the whole is not possible because there is nothing that one could do for everybody to appreciate. Democracy demands that fair treatment should be given to all and democracy cannot thrive where its citizenry are in perpetual fear of the forces of the state. Summarily, a democratic government is characterized by these principles, namely: equality, periodic elections, mass education, economically empowered citizenry, vibrant judiciary, human

rights, rule of law, minimal coercion, absence of exploitation and oppression. These principles are of paramount importance because they serve as the mirrow that shows the trend, pattern and direction of democracy. Any democratic government that lacks any, some or all these enumerated principles is false. These ideals are what we refer to as democracy. To the extent a state embraces these ideals, to that extent, it is democratic.[11]

It is based on this premise that we can affirm that true democracy is not in practice in Nigeria. We have embraced democracy in order to implement International Monetary Fund's (IMF) agenda-devaluation of naira, deregulation, retrenchment of workers, privatization (which is the foundation of capitalism) and total bastardization of our economy. Is this justice? Come back home. We are now in a democratic dispensation, which implies freedom, equity and justice. But look at the level of insecurity, bi-yearly increase in fuel pump price, and high rate of poverty that has led to constant restiveness of the unemployed youths. Is this justice that democracy offers? [12] Absolutely it is not. This implies that in the situation where economic policies of the government, the immoral and obnoxious law of the government…are impediments, the people will not be able to exercise their freedom. The hungry man has nothing to do with freedom because he perpetually remains on man-made chains or injustice. We can now appreciate why Prof. Chinua Achebe rejected the Federal government's honour on the ground that the government is insensitive to the cry of the people.[13]

Our leaders should wake up from slumber and start living up to the expectations of the people. Listen to Nigerian leader and you will frequently hear the phrase this great country of ours. Nigeria is not a great country. It is one of the most disorderly nations in the world. It is one of the most corrupt, insensitive, inefficient places under the sun. It is one of the most expensive countries and one of those that give least value for money. It is dirty, callous, noisy, ostentatious, dishonest and vulgar. In short, it is among the most unpleasant places on earth.[14] Nigeria is a country that wants to be like one of the most advanced and developed countries in the world but they are not doing what those people/ countries did that made them to be at the level that they are

today. If you want to be like somebody, you must behave the way the person behaves, think the way the person thinks and do the things that the person does. You cannot become like somebody by talking. What talk does when it is not backed with action is that it leads to poverty and that is what we are seeing today in Nigeria. This is hardly fair. Nigerians are what they are only because their leaders are not what they should be.[15]

Conclusion

A careful review of this work shows that democracy is not a bad system of government but the problem with democracy is man. Man is what makes democracy look as if it is full of grave defects and irrationalities, it is man that should be changed and not democracy because if all the principles of democracy are adhered to, there will be no man's inhumanity to his fellow man. First of all, the leaders in a democratic system of government should make public interests to take precedence over their own interests by striving to be doing the will of the people all the time. They should understand that power is transient, ephemeral and temporary. What should be the paramount concern of the power wilders should be how to make people happy. People cannot remember you because of the political position that you occupy or that you have occupied but because of what you have done for them.

Therefore, to make democracy a better system of government, we advice that government should not be seen as a means of making quick money but as a means of serving people. Those who lead others should see themselves as servants and as such should be ready to serve rather than been served. Leaders should be God fearing people who will be more dedicated to giving fair treatment to people. This means justice for all; where nobody should be favoured than others. There should equally be rule of law, everybody should be under the law and nobody should be above the law, whether you are a President, Senator or Governor. The fundamental human rights should not be trampled underfoot. These include right to life, right to dignity of human person, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to freedom of expression and the press, right to peaceful

assembly and association, right to freedom of movement, right to freedom from discrimination and right to acquire and own immovable property. These are what make democracy a productive and viable system of government. If these rights are promoted and held to a very high esteem, democracy will thrive and the citizens will be thrilled.

Another thing we advice that should also be done is to inculcate "Moral Education" in primary and secondary school curriculum. This is because every political leader no matter the level that the person operates must pass through primary and secondary schools and some leaders to be who are at these levels of education have a very bad family background. It is the moral education that will make those who are morally depraved and debauched to be resuscitated and revitalized. For democracy and its principle of separation of powers to thrive, the following should be done:

- **There Should be Positive Attitudinal Change**: It is said that it is one's attitude that will determine his altitude. Positive attitude both on the part of the leaders and their subjects will lead to transparency, accountability and decency.
- **Enthroning Patriotic Citizens in Governance**: Citizens who love their country and are willing to defend it should take the mantle of leadership of their country. This will help to put to an end inferiority complex and as well stop our leaders from travelling abroad (another country) to deposit embezzled fund. Also, going to another country to invest instead of one's own country will stop.
- **Morality should be Inculcated into Politics**: The idea of separating morality from politics is unfair and can lead to human suffering. If morality is inculcated into politics, power brokers, aspirants or contestants will not see politics as a do or die affair but as a game and we know that two things are involved in a game, either you win or you loss. This will also make election to be transparent, credible and devoid of any form of irregularities.
- **Promoting Managerial Meritocracy in Democracy**: Things can only be done right when right people are at the right places not putting round peg in a square hole. Things should be

done based on merit not based on whom you know. Development and Vision 2020 can only be attained when meritocratic leaders pilot the affairs of the state. Meritocratic leaders are the political leaders that have the political will to fight political corruption and move the country forward.

- **Having a Clearly Written and Well Implemented Constitution:** A clearly written and well implemented constitution will make democracy a viable and productive system of government because principles like separation of powers and rule of law will be entrenched. It will also help to make democratic institutions stronger. Some of these democratic institutions include Independent National Electoral Commission (INEC), Economic and Financial Crimes Commission (EFCC), the National Assembly and the Judiciary. If these institutions are allowed to operate freely without restriction, then, democracy will be a valid and egalitarian based system of government.

Finally, ethno-religious problems, nepotism, selfishness and tribalism are some of the things that hinder the success of democracy in Nigeria. If democracy with separation of powers as one of its elements is to function very well in Nigeria, Nigerians must avoid the above mentioned vices which militate against separation of powers and truncate democracy.

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