

NATIONAL OPEN UNIVERSITY OF NIGERIA

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FACULTY OF MANAGEMENT SCIENCES

DEPARTMENT OF ADMINISTRATION

COURSE GUIDE

COURSE CODE: PAD 305

Course Title:

ELEMENTS OF GOVERNMENT

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CONTENTS PAGE

Introduction
Learning Outcome
Main Content.....
Title of the sub-sections)
Self-assessment Exercise
Summary
References/Further Readings.....
Possible answer to self-assessment exercise (s) within the content.....

Introduction

Welcome to PAD 305: Elements of Government

This course is a three-credit unit course for undergraduate students in School of Management Sciences. The materials have been developed to meet global standards. This course guide gives you an overview of the course. It also provides you with relevant information on the organization and requirements of the course.

Course Aims

The aims are to help you understand the major institutions, structures and processes that are involved in the organization of government of modern states. The broad aims will be achieved by:

- i. Introducing you to the origin, nature and scope of government
- ii. Providing you with the knowledge of the basic institutions that are needed in the formation and organization of government.
- iii. Enable you to understand that until the major institutions of government are properly structured and their process streamlined, government cannot deliver or perform its functions effectively.

Course objectives

To achieve the aims set out above, PAD 305 has broad objectives. In addition, each unit also has specific objectives. The unit objectives are at the beginning of each unit. I advise that you read them before you start working through the unit. You may refer to them in the course of the unit to personally monitor your progress. On successful completion of the course, you should be able to:

- a. Define the nature, scope, forms and functions of government, and be able to make contrast or distinction between one form of government and another.
- b. Know the different institutions of government, their functions and relationships as well as their mutual dependence in the performance of most of these functions.
- c. Understand that the process of government is guided by certain rules and principles, and that violation or breach of them will make government perform sub-optimally or its functionaries lose their legitimacy.
- d. Know that each country operate different forms of government, and that every country decided to adopt a particular system of government because it is suitable for its peculiar circumstances, and also because it has evolved, historically, in response to the specific needs of such society.
- e. Explain, using Nigeria as a case study, how the different linkage devises such as political parties and pressure groups developed historically, taking you through their travails and triumphs, till date.

Working through This Course

To complete the course you are required to read the study units and other related materials. You will also need to undertake practical exercises for which you need a pen, a note-book, and other materials that will be listed in this guide. The exercises are to aid you, and to facilitate your understanding of the concepts and issues being presented. At the end of each unit, you will be required to submit written assignments for assessment purposes. At the end of the course, you will write a final examination.

Course Materials

The major materials you will need for this course are:

Course guide

Study units

Assignment file

Relevant textbooks including the ones listed under each unit.

You may also need to listen to programme and news on the radio and television, local and foreign.

As a beginner, you need to read newspapers, magazines, journals and if possible log on to the internet.

Study Units

There are 15 units (of four modules) in this course. They are listed below:-

Module 1 MEANING, NATURE AND SCOPE OF GOVERNMENT

Module 2 TYPES OF POLITICAL SYSTEMS

Module 3 ORGANS OF GOVERNMENT AND THEIR FUNCTIONS

Module 4 OPERATIONS AND REGULATION OF GOVERNMENT BUSINESS

Assessment file

An assessment file and a marking scheme will be made available to you. In the assessment file, you will find details of the works you must submit to your tutor for marking. There are five aspects of the assessment of this courses the tutor marked and the written examination. The marks you obtain in these two areas will make up your final marks. The assignment must be submitted to your tutor for formal assessment in accordance with the deadline stated in the presentation Schedules and the Assignment file. The work you submit to your tutor for assessment will account for 30% of your total score.

Tutor Marked Assignment (TMAS)

You will have to submit a specified number of the (TMAs). Every unit in this course has a tutor marked assignment. You will be assessed on four of them but the best three performances from the (TMAs) will be used for computing your 30%. When you have completed each assignment, send it together with a Tutor marked Assignment form, to your Tutor. Make sure each assignment reaches your tutor on or before the deadline for submissions. If for any reason, you cannot complete your work on time, contact your tutor for a discussion on the possibility of an extension. Extensions will not be granted after the due date unless under exceptional circumstances.

Final Examination and Grading

The final examination will be a test of three hours. All areas of the course will be examined. Find time to read the unit all over before your examination. The final examination will attract 70% of the total course grade. The examination will consist of questions, which reflect the kind of self- assessment exercise, and tutor marked assignment you have previously encountered. You should use the time between completing the last unit, and taking the examination to revise the entire course.

Course Marking Scheme

The following table lays out how the actual course mark allocation is broken down.

Assessment Marks Assignments (Best Three) Assignment out of Four Marked = 30%

Final Examination = 70%

Total = 100%

Presentation Schedule

The dates for submission of all assignment will be communicated to you. You will also be told the date of completing the study units and dates for examinations.

Course Overview and Presentation Schedule Unit Title of work Weeks Activity

Course Guide

Module 1 **MEANING, NATURE AND SCOPE OF GOVERNMENT**

Module 2 **TYPES OF POLITICAL SYSTEMS**

Module 3 **ORGANS OF GOVERNMENT AND THEIR FUNCTIONS**

Module 4 **OPERATIONS AND REGULATION OF GOVERNMENT BUSINESS**

How to get the Most from This Course

In distance learning, the study units replace the university lecture. This is one of the great advantages of distance learning; you can read and work through specially designed study materials at your own pace, and at a time and place that suits you best. Think of it as reading the lecture instead of listening to the lecturer. In the same way a lecturer might give you some reading to do, the study units tell you where to read, and which are your text materials or set books. You are provided exercises to do at appropriate points, just as a lecturer might give you an in-class exercise. Each of the study units follows a common format.

The first item is an introduction to the subject matter of the unit, and how a particular unit is integrated with the other units and the course as a whole. Next to this is a set of learning objectives. These objectives let you know what you should be able to do by the time you have completed the unit. These learning objectives are meant to guide your study. The moment a unit is finished, you will significantly improve your chances of passing the course. The main body of the unit guides you through the required reading from other sources. This will usually be either from your set books or from a Reading section. The following is a practical strategy for working through the course. If you run

into any trouble, telephone your tutor. Remember that your tutor's job is to help you. When you need assistance, do not hesitate to call and ask your tutor to provide it.

1. Read this Course Guide thoroughly, it is your first assignment.
2. Organize a Study Schedule. Design a „Course Over“ to guide you through the Course, Note the time you are expected to spend on each unit and how the Assignments relate to the units. Whatever method you choose, you should decide on and write in your own dates and schedule of work for each unit.
3. Once you have created your own study schedule, do everything to stay faithful to it. The major reason why students fail is that they get behind with their course work. If you get into difficulties with your schedule, please, let your tutor know before it is too late to help.
4. Turn to Unit I, and read the introduction and the objectives for the unit.
5. Assemble the study materials. You will need your set books and the unit you are studying at any point in time. As you work through the unit, you will know what sources to consult for further information.
6. Keep in touch with your study center. Up-to-date course information will be continuously available there.
7. Well before the relevant due dates (about 4 weeks before due dates), keep in mind that you will learn a lot by doing the assignment carefully. They have been designed to help you meet the objectives of the course and, therefore, will help you pass the examination. Submit all assignments not later than the due date.

8. Review the objectives for each study unit to confirm that you have achieved them, if you feel unsure about any of the objectives, review the study materials or consult your tutor.
9. When you are confident that you have achieved a unit's objectives, you can start on the next unit. Proceed unit by unit through the course and try to pace your study so that you keep yourself on schedule.
10. When you have submitted an assignment to your tutor's comments, both on the tutor-marked assignment form and also the written comments on the ordinary assignments.
11. After completing the last unit, review the course and prepare yourself for the final examination. Check that you have achieved the unit objectives (listed at the beginning of each unit) and the course objectives (listed in the Course Guide

Tutors and Tutorial

Information relating to the tutorials will be provided at the appropriate time. Your tutor will mark and comment on your assignments, keep a close watch on your progress and on any difficulties you might encounter and provide assistance to you during the course. You must take your tutor- marked assignments to the study center well before the due date (at least two working days are required). They will be marked by your tutor and returned to you as soon as possible.

Do not hesitate to contact your tutor if you need help. Contact your tutor if you do not understand any part of the study units or the assigned readings You have difficulty with the exercises You have a question or problem with an assignment or with your tutor's comments on an assignment or with the grading of an assignment. You should try your best to attend the tutorials. This is the only chance to have face to- face

contact with your tutor and ask questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefit from course tutorials, prepare a question list before attending them. You will learn a lot from participating in discussion actively.

Summary

The course guide gives you an overview of what to expect in the course of this study. The course teaches you the basic rules, principles and process involved in the Organization of Government. It also acquaints you with the major concepts used in the operations and regulation of the business of government. We wish you success with the course and hope that you will find it both interesting and useful.

MODULE 1

MEANING, NATURE AND SCOPE OF GOVERNMENT

UNIT 1: MEANING, NATURE AND SCOPE OF GOVERNMENT

Structure

- 1.1 Introduction
- 1.2 Learning Outcomes
- 1.3 Main Content
 - 1.3.1 Concept of Government
 - 1.3.2 Functions of Government
 - 1.3.3 Government and State: Similarities and Dissimilarities
- 1.4 Summary
- 1.5 References/Further Readings/Web Resources
- 1.6 Possible Answers to Self-Assessment Exercise(s) within the content



1.1 Introduction

You need to know that the agency through which the purpose and cardinal objectives of a State (properly so-called) are achieved is called government, whose organization could be seen either through the territorial structure or by functionality. Government could be defined as the orderly control and direction of the affairs of a group of people in an organized society. Government is a creation of a state and could be geographically structured at three-tier as the case in Nigeria, thus: Federal, States and Local Government Councils. Each of these tiers is recognized by the nation's constitution and has different constituted authority running the affairs at the level, as enshrined in the constitution. However, another prism through which a government could be viewed is the organs or institutions through which the day-to-day activities of the state are carried out. These are The Executive, the Legislature and Judiciary, which are the bodies responsible for the enactment, enforcement, formulation and implementation of laws and as policies for the betterment of the people. You are going to learn more about this in this unit as we progress.



1.2 Learning Outcomes

By the end of this unit, you should be able to:

- Explain the concept of government
- Discuss the basic functions of government
- Identify the difference between government and the State



1.3 Main Content

1.3.1 Concept of Government

The word “government” is conceived in abstraction by some people and in most cases, exempt themselves from being part of the concept. Such people often refer to public properties e.g. funds, hospitals, offices, vehicles, etc. as belonging to “government” which is a phenomenon you cannot see with your eyes. This perception explains why some people feel unconcerned when public fund is mismanaged or embezzled by some corrupt public officials or public properties or infrastructure become object of attack during protest against a public policy. This category of people are probably unaware that the people (including themselves) eventually withstand the worst for such vandalization which they do through taxation. Yet some people believe that only official such as public/civil servants, military and paramilitary personnel or foreign envoys are government. The truth here is that these are merely functionaries or agents of government as government itself is the agent of the state. Therefore, the concept of government has to be seen beyond these purview or narrow definitions because it has to do with the way in which people conduct themselves as they carry out their personal and community affairs. According to Wikipedia: A government is the organization, machinery or agency,

through which a political unit exercises its authority, controls and administers public policy, and directs and controls the actions of its members or subjects.

en.wikipedia.org/wiki/Government Frank Beasley (ed. 1999:147) defines government within the context of the social sciences, as “the particular group of people, the administrative bureaucracy, who control a (nation-)state at a given time, and the manner in which their governing organizations are structured.” However, Flint, Colin & Taylor, Peter (2007:137), opine thus: Governments are the means through which state power is employed. States are served by a continuous succession of different governments. Each successive government is composed of a specialized and privileged body of individuals, who monopolize political decision-making, and are separated by status and organization from the population as a whole. Their function is to enforce existing laws, legislate new ones and arbitrate conflicts via their monopoly on violence. Harold Barclay (1990:31) submits that in some societies, this group is often a self-perpetuating or hereditary class. In other societies, such as democracies, the political roles remain, but there is frequent turnover of the people actually filling the positions. In a nutshell, you should understand that for people or group of people to live together there is the need for rules guiding individual conducts in the larger society to ensure peace and stability. The central authority called “government” decides what is best for the individuals and groups and how to utilize its resources to provide the best living standard for members. Can you imagine living in a society without transportation, water supply, road network and without other social infrastructural facilities? How it would be like if nobody was charged with the responsibility to make sure laws are made and respected or to provide

plan where buildings should go and keep our environment clean and safe? We need government to take care of many of these things.

Self-Assessment Exercise 1

Explain the concept of government from various perspectives

1.3.2 Functions of Government

To appreciate the duties or roles of government in a society or a Nation-State, we should first discuss the state of nature as explained by Thomas Hobbes as the hypothetical condition of humanity before the evolution of modern states with the aid of the Social Contract theory. He submits that “the state of nature is the condition before the rule of positive law comes into being, thus being a synonym of anarchy.” In his book, *Leviathan* (1651, Ch.13), Hobbes describes man as selfish, pursuing his own interest at the expense of others in a condition he hypothetically explains as “kill whom you can and take away what you can and from this spring all possibilities of internecine warfare.” He concludes, “the state of nature is the ill, unhappy and intolerable condition of life. The life of man is solitary, nasty, poor, brutish and short.” It is against the background of the above scenario that there is the need for a central authority called “government” to be saddled with the primary responsibility of maintaining law and order in order to ensure peace and tranquility in the society. However, the extent and nature of duties undertaken by government in the modern societies are functions of the level of socio-economic development and the type of political system adopted by individual society. For instance, in democratic nations, the roles, powers and responsibilities of the government are set out in the constitution of such countries - e.g. Nigeria, United States of America, France, Canada, India, etc. For instance, the Preamble to the Constitution of the Federal Republic

of Nigeria, 1999 (as amended), gives an insight to the nature and extent of duties and obligations of the country. It says: **WE THE PEOPLE** of the Federal Republic of Nigeria: **HAVING** firmly and solemnly resolved **TO LIVE** in unity and harmony as one indivisible and indissoluble Sovereign Nation under God dedicated to the promotion of inter-African solidarity, world peace, international co-operation and understanding: **AND TO PROVIDE** for a Constitution for the purpose of promoting the good government and welfare of all persons in our country on the principles of Freedom, Equity and Justice, and for the purpose of consolidating the Unity of our people

In the same vein, the purpose and primary responsibilities of the government of the United States of America are enshrined in the Preamble to the Constitution of the country. It says: We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America. The above phrases from the Preamble describe purposes or functions of government but generally, what could be regarded as the primary duties of a government in a society are:

1. Maintenance of law and order
2. Protection of life and properties to guarantee individual's rights and liberties
3. To defend the nation's corporate existence from either external invasion or internal insurrection by providing security through Land borders, Airspace and territorial waters Administration of justice and conflict resolution between the government and the citizens on the one hand, and amongst the citizens on the other.

In Chapter II of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), other responsibilities - Political Objectives, Economic Objectives, Social Objectives and Educational Objectives - of the Federal government of Nigeria are clearly set out and well-articulated under “Fundamental Objectives and Directive Principles of State Policy”. Section 13 states: 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 this Chapter of this Constitution. Section 14(2) (b) states that the security and welfare of the people shall be the primary purpose of government while under the Political Objective, the provisions of Sec. 15(2) states thus:..... Accordingly, national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited What could be regarded as the economic duties (Economic Objectives) of the Federal government of Nigeria are enshrined in Sec. 16(1-4), which states as follow: the State shall: Harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy; Control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity; Without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy, manage and operate the major sectors of the economy; Without prejudice to the right of any person to participate in areas of the economy within the major sectors of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.

Self-Assessment Exercise 2

Examine some primary duties of the government of the Federal Republic of Nigeria.

1.3.3 Government and State: Similarities and Dissimilarities

What is a State? A state is a geographical entity made up of people who have or believe they have the followings in common: culture, language, history, tradition, and religion in a fixed territory (boundary). The term State is interchangeably used to mean a Country or a Nation. A State is an independent and sovereign entity with a system of law and an organized government, which has certain administrative tasks to be carried out for its proper functioning. The government carries out these administrative tasks. This entity has the right to exercise power over the territory and the people. State is the territory in which the government can practice its authority. A state is like an organization and the government is like the management team. A State has the following characteristics: Sovereignty; Population; Territory and Government, which distinguish it from any other union or association. Government, on the other hand, is a political or ruling administration that serves as the agent or machinery through which the purpose or goals for which the State or Country is established are achieved. However, while State exists in perpetuity except it collapses, governments the world over change by elections or by other means. Another difference is that while government functionaries are visible, State exists in a „spiritual realm“, you only hear references made to the State but you cannot see the entity called the State physically even though the day to day activities of the government are done in her name. Below is the summary of important distinctions between the State and government. The State has four elements like population; territory; government and sovereignty. Government is a narrow concept and it is an element of the State. The State is regarded as an organic concept, which the government is a part

thereof. The State is more or less permanent and continues from time immemorial. But the government is temporary. It changes frequently. A government may come and go, but the State continues forever. It is a known fact that citizens are a member of the State but not all of them are members of the government. The government consists of only a few selected citizens. The organ of the government consists of only a few selected citizens. The State possesses sovereignty. Its authority is absolute and unlimited. Any other institution cannot take its power away. Government possesses no sovereignty, no original authority, but only derivative powers delegated by the State through its constitution. Powers of government are delegated and limited. The State is an abstract concept whereas government is a concrete one. Nobody sees the State and the State never acts. The government is a physical manifestation and it acts for the State. All States are identical in character and nature. Whether big or small, the characteristics of the State do not undergo changes. But governments are of different types and they may vary from State to State. Government may be based on democracy, monarchy, theocracy, or oligarchy. Various political scientists have given different classifications of government. Lastly, the citizens have a right to go against government and not against the State. The State only acts through the government and the government may make mistakes and may be sanctioned for it but not the State. The State can do no wrong or make mistake, therefore, the citizens only have rights to go against the government and not the State.



1.4 Summary

The State and government are like semen's twins because without a State, there cannot be a government and a government cannot operate except on the authority of the State. The

State has set objectives, which can only be accomplished through the machinery of the government that holds power in trust for the people based on the authority of the State.

The evolution theories of State make the need for a government imperative in human society for without government humanity may not live in peace and harmony, which are the important elements for development and growth. The relationship between the State and government is that of a principal and an agent.



1.5 References/Further Readings/Web Resources

Bealey, Frank, ed (1999). "government". The Blackwell dictionary of political science: a user's guide to its terms. Wiley-Blackwell. <http://books.google.com/books>.

Barclay, Harold (1990). People Without Government: An Anthropology of Anarchy. Left Bank Books. ISBN 1871082161 Constitution of the Federal Republic of Nigeria, 1999 (as amended), Lagos, Government Press

Flint, Colin & Taylor, Peter (2007). Political Geography: World Economy, Nation- State, and Locality (5th ed.). Pearson/Prentice Hall. <http://books.google.com/books>.



1.6 Possible Answers to Self-Assessment Exercise(s) within the content

Self-Assessment Exercise 1

Explain the concept of government from various perspectives

Answer

The word “government” is conceived in abstraction by some people and in most cases, exempt themselves from being part of the concept. Such people often refer to public properties e.g. funds, hospitals, offices, vehicles, etc. as belonging to “government” which is a phenomenon you cannot see with your eyes. This perception explains why some people feel unconcerned when public fund is mismanaged or embezzled by some corrupt public officials or public properties or infrastructure become object of attack

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such as democracies, the political roles remain, but there is frequent turnover of the people actually filling the positions. In a nutshell, you should understand that for people or group of people to live together there is the need for rules guiding individual conducts in the larger society to ensure peace and stability. The central authority called “government” decides what is best for the individuals and groups and how to utilize its resources to provide the best living standard for members. Can you imagine living in a society without transportation, water supply, road network and without other social infrastructural facilities? How it would be like if nobody was charged with the responsibility to make sure laws are made and respected or to provide plan where buildings should go and keep environment clean and safe? We need government to take care of many of these things.

Self-Assessment Exercise 2

Examine some primary duties of the government of the Federal Republic of Nigeria

Answer

To appreciate the duties or roles of government in a society or a Nation-State, we should first discuss the state of nature as explained by Thomas Hobbes as the hypothetical condition of humanity before the evolution of modern states with the aid of the Social Contract theory. He submits that “the state of nature is the condition before the rule of positive law comes into being, thus being a synonym of anarchy.” In his book, Leviathan (1651, Ch.13), Hobbes describes man as selfish, pursuing his own interest at the expense of others in a condition he hypothetically explains as “kill whom you can and take away what you can and from this spring all possibilities of internecine warfare.” He concludes, “the state of nature is the ill, unhappy and intolerable condition of life. The life of man is

solitary, nasty, poor, brutish and short.” It is against the background of the above scenario that there is the need for a central authority called “government” to be saddled with the primary responsibility of maintaining law and order in order to ensure peace and tranquility in the society. However, the extent and nature of duties undertaken by government in the modern societies are functions of the level of socio-economic development and the type of political system adopted by individual society. For instance, in democratic nations, the roles, powers and responsibilities of the government are set out in the constitution of such countries - e.g. Nigeria, United States of America, France, Canada, India, etc. For instance, the Preamble to the Constitution of the Federal Republic of Nigeria, 1999 (as amended), gives an insight to the nature and extent of duties and obligations of the country. It says: **WE THE PEOPLE** of the Federal Republic of Nigeria: **HAVING** firmly and solemnly resolved **TO LIVE** in unity and harmony as one indivisible and indissoluble Sovereign Nation under God dedicated to the promotion of inter-African solidarity, world peace, international co-operation and understanding: **AND TO PROVIDE** for a Constitution for the purpose of promoting the good government and welfare of all persons in our country on the principles of Freedom, Equity and Justice, and for the purpose of consolidating the Unity of our people

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above phrases from the Preamble describe purposes or functions of government but generally, what could be regarded as the primary duties of a government in a society are: Maintenance of law and order Protection of life and properties to guarantee individual's rights and liberties To defend the nation's corporate existence from either external invasion or internal insurrection by providing security through Land borders, Airspace and territorial waters Administration of justice and conflict resolution between the government and the citizens on the one hand, and amongst the citizens on the other In Chapter II of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), other responsibilities - Political Objectives, Economic Objectives, Social Objectives and Educational Objectives - of the Federal government of Nigeria are clearly set out and well-articulated under "Fundamental Objectives and Directive Principles of State Policy". Section 13 states: 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 this Chapter of this Constitution. Section 14(2) (b) states that the security and welfare of the people shall be the primary purpose of government while under the Political Objective, the provisions of Sec. 15(2) states thus:..... Accordingly, national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited What could be regarded as the economic duties (Economic Objectives) of the Federal government of Nigeria are enshrined in Sec. 16(1-4), which states as follow: the State shall: Harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy; Control the national economy in such manner as to secure the maximum welfare, freedom and

happiness of every citizen on the basis of social justice and equality of status and opportunity; Without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy, manage and operate the major sectors of the economy; Without prejudice to the right of any person to participate in areas of the economy within the major sectors of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.

UNIT 2: ORGANS OF GOVERNMENT

Structure

- 1.1 Introduction
- 1.2 Learning outcome
- 1.3 Main Content
 - 1.3.1 Executive
 - 1.3.2 Types of Executive - Single or Plural
 - 1.3.3 Functions of Executive
- 1.4 Legislature
 - 1.4.1 Composition of Legislature
 - 1.4.2 Functions of Legislature
 - 1.4.3 Types of Legislature - Bicameral or Unicameral
- 1.5 Judiciary
 - 1.5.1 Composition - Structure and Officials
 - 1.5.2 Functions of Judiciary
 - 1.5.3 Judicial Independence
 - 1.5.4 Inter-relationship: Checks and Balances in action
- 1.6 Summary
- 1.7 References/Further Reading
- 1.8 Possible answers to self-assessment exercise (s) within the content



1.1 Introduction

Peoples' expectation in any civilized society is effective and efficient governance, the role that only the government performs as one of the four essential elements of the State. As stated earlier, there is no State without a government, which not only provides security to the people but also looks after their basic needs and ensures their socio-economic development. Generally, modern governments operate on three pillars called organs and it is through this that the government operates. The three organs are: The Legislature; The Executive and, The Judiciary but, in the recent time, The Press has come up to be regarded as the „fourth estate of the realm“ because of the important roles play by the mass communication media in the society. This unit shall look into the organs with emphasis on their composition, functions and the inter-relationship amongst them.



1.2 Learning outcome

After studying this unit, you should be able to:

- a. Explain the composition of the Executive, Legislature and the Judiciary
- b. Discuss the functions and distinction between the bodies
- c. Critically analyse how each of the organ acts as checks and balances on the other.



1.3 Main Content

1.3.1 Executive

Meaning and composition

The executive is the arm of the government composed of the followings: The President/Head of State or Head of government; Ministers; Civil Servants; Police and the Armed Forces. In Nigeria where there are three tiers of government, the Chief Executive at the level of state and local government, are the Governor (assisted by Commissioners) and the Council Chairman (assisted by Supervisory Councilors) respectively. In a democracy, the head of the Executive are elected by popular votes and they, in turn, appoint the Ministers, the Commissioners or the Supervisory Councilors, as the case may be, with the approval of the Legislature.

1.3.2 Types of Executive - Single or Plural

The two popular types of Executive are Presidential and Parliamentary as practiced by the United States and Britain as exponents. In between these two models, there is the model of French executive that can be called a quasi-parliamentary or quasi presidential. In the French model of executive, the President is the real executive but the Prime Minister and the cabinet are under his control and, at the same time, they are accountable

to the Parliament. So, the French model imbibes some features of both parliamentary and presidential forms of governments. Presidential system is a model in which the executive powers are vested in our person called Mr. President. Section 5(1)(a)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is explicit on this, it says: Subject to the provisions of this Constitution, the executive powers of the Federation 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 shall extend the execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time being, powers to make laws.

1.3.3 Functions of Executive

The executive formulates and then implements public policies and executes laws enacted by the Legislature. As stated earlier, this organ of government refers to all agencies and officials of government that get involved in the day-to-day running of the business of government. It directs, supervises and coordinates the policies, maintains law and order, promotes social services as well as initiates legislation, among other things.

Self-assessment exercise 1

Examine the composition, types and functions of the Executive

1.4 Legislature

Composition of Legislature

This is an arm of government composed of honorable men and women who are elected from various constituencies (either federal or state) to represent the people in the parliament. In Nigeria, the legislature at the central is called National Assembly, which is made up of two chambers: the Senate and the House of Representatives. In the United States of America, the body is called the Congress while in Britain, it is known as Parliament, comprising the House of Commons and the House of Lords.

1.4.1 Functions of Legislature

The Legislature's main function is law-making for the peace, order and good governance of the people. Section 4(2) of the Constitution of the Federal Republic of Nigeria, 1999 (amended) states: 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 Exclusive Legislative list..... However, it must be stated here that legislation is not the only function performed by modern Legislature as they also perform other responsibilities as charged by the constitution, within the purview of the doctrine of checks and balances. For instance, they perform oversight functions on the Executive. Other important functions of the Legislature are: Approval of budget presented by the Executive; Control over finance to ensure compliance by the Executive; Ventilation of grievances of the people they represent, and approval of nominee for appointments into public offices and foreign services.

1.4.2 Types of Legislature - Bicameral or Unicameral

Legislatures are either unicameral or bicameral. The issue of bicameralism has however, gained more importance. A unicameral legislature has only one chamber based upon popular representation and is responsible for the entire function of law making. This kind

of legislature is good for smaller countries with relatively homogenous ethnic nationality. On the other hand, a bicameral legislature consists of two chambers, namely, the Upper and the Lower Houses. The lower chamber is generally more popular in character and has a greater say in law making because representation is based on population while that of the upper chamber is based on equal representation. Members of both Upper and Lower Houses are directly elected as in Nigeria and some other countries such as the Senate in the United States. In Britain, members of the Upper House, the House of Lords, are nominated while members of the House of Commons are elected. In a bicameral legislature, there is many party politics and the process of law making is much more complex as it requires the concurrence of both the Houses to pass bills into laws. In a federation, each component unit has representatives in the upper chambers, which enables their viewpoints also to be represented in the parliament, and which enables them to safeguard their rights. A bicameral legislature easily manages to maintain a balance between the center and the federating units, which is very essential for the successful functioning of the federal system.

Self-assessment exercise 2

Discuss Bicameral and Unicameral Legislature.

1.5 Judiciary

Judiciary is the law-interpreting organ of government, which, in Nigeria, is composed of the following bodies, in descending order of hierarchy:-

Chief Justice and Justices of the Supreme Court

President and Justices of the Court of Appeal

Grand Khadi and Khadis of the Sharia Court of Appeal

Justices of Federal High Courts

Judges of State High Courts

The Magistrates, and

Presidents of Customary Courts

Judiciary is an independent arm of government and its responsibility is to, among others, resolve conflicts either between citizens and citizens or between central authority and the component states or between the states and local government authority. That the laws of the state have been a matter of fairly common agreement among thinkers that the judicial power should be regarded in its nature and even more in the persons who administer it as separate from other aspects of political authority (Laski, 1967:464).

1.5.1 Functions of Judiciary

Important functions of the Judiciary are, a priori, contained in its definition - justice administration and dispensation - being a minimum requirement of any government in maintaining law and order, peace and tranquility in the society. However, depending on political system, the followings could be itemized as the functions of the Judiciary:

- a. **Adjudication Judiciary entertains and decides cases** - criminal, civil or constitutional - based on the strength of arguments put forward by the concerned parties. Judiciary is the last hope of ordinary person, as a defender of citizens' fundamental human rights.
- b. **Interpretation of Constitution** In a federation like Nigeria, United States, Canada, etc, Judiciary acts as the custodian of the Constitution and as arbitrator between the central and governments of the component units. Its decision (Supreme Court) is final

on any constitutional matters arising between central authority and state governments. Stressing the indispensability of an independent and impartial court in a federal state to keep the governments within reasonable limits as laid down by the constitution. J. S. Mill says: It is evidently necessary not only that the constitutional limits of the authority of each should be precisely and clearly defined, but that the power to decide between them in any case of dispute should not reside in either of the Governments or in any functionary subject to it, but in an umpire independent of both..... (see Johari, 2007:401)

- c. **Legislation** Although, legislation is the primary function of the Legislature, courts of law also make laws in a different way through decided cases and judicial pronouncements. Where the law is silent or ambiguous or appears to be inconsistent with the letters and spirits of the constitution, the decision of the law courts prevails as what the law should be. No law, when enacted, can possibly envisage all cases that may arise under it. Thus, judges frequently have to decide cases in which no direct law is applicable, on various principles such as equity, natural justice, necessity or good conscience. Through this, what is known as precedents that are followed to decide future cases, are formed.
- d. **Advisory** Judiciary also has advisory roles to play to the government as Mr. President may refer some matters of public importance to the Supreme Court for clarification and advice. Although, such advice is not binding, it has great persuasive influence on policies.
- e. **Judicial Review** Judiciary acts as checks on both Executive and Legislative arms of government in that actions/inactions of government or laws that are not consistent

with the constitution could be declared illegal, null and void and of no effect by a Court of competent jurisdiction. This is known as the power of judicial review, which has now form an integral part of the constitutional system in Nigeria, United States, Canada, Australia and India.

1.5.2 Judicial Independence

The question here is what it means by „judicial independence“ and what are the conditions required for judicial independence to exist? There has not been a consensus on this. The concept, to some, requires little more than life tenure for judges (Stephen Burbank, et al, 2002), while for others, judicial independence requires budgetary control (Pilar Domingo, 2000) or an appointment process that involves more than legislators doing the choosing (Erika Moreno, et al, 2003). Still other scholars tout the virtues of judicial independence without defining clearly, what they mean by “independence” (Eugenia F. Toma, 1991) and others (such as legal realists and most political scientists) suggest that judges are at least partially independent because they exercise discretion with every decision. Judicial independence could mean a judiciary that is separated from other arms of government and immune from partisanship or undue influences from external bodies in the discharge of its constitutional responsibilities so impartially and expeditiously without fear or favour, affection or ill will. To achieve this, the following conditions ought to prevail in the polity.

- a. **Security of job** A secured, long and fixed tenure are very important for judges to make their appointment secured and free from unnecessary manipulation or intimidation by the Executive. In Nigeria, a judge retires on the attainment of 65 years

of age and their appointment is made on permanent basis after meeting certain requirements.

- b. **Mode of Appointment** In some countries judges are elected but this might make them liable to political pressures whimsicalities but in Nigeria and some other countries in the world, judicial officers are appointed by the President/Governors on the recommendation of major stakeholders in the judiciary - National Judicial Council, and subject to ratification by the Legislature (see Sec. 231(1) of the Constitution of the Federal Republic of Nigeria, 1999, as amended). In addition, Article III of the United States Constitution establishes the Federal Courts as part of the Federal government responsibility. It provides that Federal judges, including judges of the Supreme Court of the United States, are appointed by the President "by and with the advice and consent of the Senate." In order to maintain judicial independence the Constitution states further that, once appointed, Federal judges, both of the Supreme and inferior Courts shall: hold their Offices during good Behavior, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office. Federal judges vacate office only upon death, resignation, or impeachment and removal from office by Congress.
- c. **Better Salaries/Emoluments** To ensure independence, judges should be paid better salaries and allowances. This is not only to attract brilliant lawyers to the bench but also to distract them away from corruption and unethical tendencies. In addition to this, salaries of judiciary are to be charged on the first line i.e. consolidated fund, which no other arm of government could manipulate for a purpose.

1.5.3 Inter-relationship: Checks and Balances in action

In a presidential system of government, the doctrine of separation of powers is well pronounced unlike the parliamentary model of democracy where there is „fusion of powers“. However, it must be stated that much as the theory of „separation of powers“ is salient in the presidential system; the organs of government are not mutually exclusive to one another. The practice of using power to check power, which is known as „checks and balances, is not necessarily, a violation of the theory of separation of powers; it merely seeks to promote some interrelationships among the organs in order to check abuse of power by any of the organs of government. For example, the laws made by the Legislature are interpreted by the Judiciary and could be declared void if found not to be consistent with the provisions of the constitution of the land. The Executive also initiates laws and presents budgets for the approval of the Legislature; otherwise such budgets could not be spent by the Executive. In the same vein, laws made by the Legislature cannot become operative until it given assent by Mr. President. The president can however withhold his assent which amount to an exercise of veto power. The Legislature can similarly decide to overturn the veto of Mr. President by the use of two-thirds majority. The Executive makes the appointment of senior judicial officers but it has to be ratified by the Legislature to take effect.



1.6 Summary

The three arms of government appear to be different compartments in line with the doctrine of the separation of powers but there is interrelationship between them in order to check excesses, abuse of powers or dictatorship, which is inimical to the survival of democracy.

Government is divided into three main organs viz: Executive, Legislative and the Judiciary, which work concurrently and separately to achieve the purpose of the government as the agent of the State. Under a democratic dispensation, members of the Executive and Legislature are elected for a term (usually four in Nigeria) fixed by the constitution but members of the Judiciary are appointed through a procedure laid down by the constitution for a fixed tenure until attaining the retirement age (usually sixty-five in Nigeria).



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1.8 Possible answers to self-assessment exercise (s) within the content

Self-assessment exercise 1

Examine the composition, types and functions of the Executive

Answer

The executive is the arm of the government composed of the followings: The President/Head of State or Head of government; Ministers; Civil Servants; Police and the Armed Forces. In Nigeria where there are three tiers of government, the Chief Executive at the level of state and local government, are the Governor (assisted by Commissioners) and the Council Chairman (assisted by Supervisory Councilors) respectively. In a democracy, the head of the Executive are elected by popular votes and they, in turn, appoint the Ministers, the Commissioners or the Supervisory Councilors, as the case may be, with the approval of the Legislature.

Types of Executive - Single or Plural

The two popular types of Executive are Presidential and Parliamentary as practiced by the United States and Britain as exponents. In between these two models, there is the model of French executive that can be called a quasi-parliamentary or quasi presidential. In the French model of executive, the President is the real executive but the Prime Minister and the cabinet are under his control and, at the same time, they are accountable to the Parliament. So, the French model imbibes some features of both parliamentary and presidential forms of governments. Presidential system is a model in which the executive powers are vested in our person called Mr. President. Section 5(1)(a)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is explicit on this, it says: Subject to the provisions of this Constitution, the executive powers of the Federation 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 shall extend the execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time being, powers to make laws.

Functions of Executive

The executive formulates and then implements public policies and executes laws enacted by the Legislature. As stated earlier, this organ of government refers to all agencies and officials of government that get involved in the day-to-day running of the business of government. It directs, supervises and coordinates the policies, maintains law and order, promotes social services as well as initiates legislation, among other things.

Self-assessment exercise 2

Discuss Bicameral and Unicameral Legislature

Answer

Legislatures are either unicameral or bicameral. The issue of bicameralism has however, gained more importance. A unicameral legislature has only one chamber based upon popular representation and is responsible for the entire function of law making. This kind of legislature is good for smaller countries with relatively homogenous ethnic nationality. On the other hand, a bicameral legislature consists of two chambers, namely, the Upper and the Lower Houses. The lower chamber is generally more popular in character and has a greater say in law making because representation is based on population while that of the upper chamber is based on equal representation. Members of both Upper and Lower Houses are directly elected as in Nigeria and some other countries such as the Senate in

the United States. In Britain, members of the Upper House, the House of Lords, are nominated while members of the House of Commons are elected. In a bicameral legislature, there is many party politics and the process of law making is much more complex as it requires the concurrence of both the Houses to pass bills into laws. In a federation, each component unit has representatives in the upper chambers, which enables their viewpoints also to be represented in the parliament, and which enables them to safeguard their rights. A bicameral legislature easily manages to maintain a balance between the center and the federating units, which is very essential for the successful functioning of the federal system.

UNIT 3: CLASSIFICATIONS OF GOVERNMENT

Structure

- 1.1 Introduction
- 1.2 Learning Outcome
- 1.3 Main Content
 - 1.3.1 Means of Classifying Governments
 - 1.3.2 Factors that Determine Types of Government
 - 1.3.3 Institutional Differentiation of Government
- 1.4 Summary
- 1.5 References/Further Reading
- 1.6 Possible answers to self-assessment exercise (s) within the content



1.1 Introduction

When a term is used to describe a State or her agent (government) in comparison with others, it simply refers to certain features and characteristics they either have in common or differences. It is a terminology used by the political scientist concerning certain selected items from tradition, customs, institutions and the system of laws guiding the administrative system of a society or organization. A government reflects one of the institutional forms depending on the type of specific functions the government and the governed play in the system.



1.2 Learning Outcome

At the end of this unit, you should be able to:

- Explain various classifications of government
- Discuss different types of government
- Differentiate between different governments



1.3 Main Content

1.3.1 Means of Classifying Governments

In ancient time, **Aristotle classified** government based on two principles viz: number of persons in whose hands the authority of state is vested and of purpose of the state on which he postulates that the government is of two types – normal and the perverted forms of government. He further explains the former as one when the ultimate aim of the government is the welfare of the people while the perverted form is one where the government machineries are used in promoting personal or group interest of the functionaries or a select few in the society. The real purpose of Aristotle’s classification is to justify the excellence of a particular form of rule – mixed government - called „polity“. As regards the number of persons holding power, he says that the ruling power may reside in the hands of one, a few, or many persons while the nature of the exercise of their authority may be either good or bad. He makes use of the grounds of quality and quantity of the ruling persons that eventually enables him to justify „polity“ as the best form of an attainable or a practicable government (Johari, 2007:408).

Thomas Hobbes Hobbes was aware of other names of government such as Tyranny, Oligarchy and Anarchy but he refused to consider them as other forms of government. According to him, those who were discontented under Monarchy called it Tyranny; those who were displeased with Aristocracy called it Oligarchy; and those who nursed some grudges against Democracy called it Anarchy (see Leviathan).

John Locke John Locke substantially follows Hobbes in his classification, with some differences of detail, he says, „according as the power of making laws is placed, such is the form of the commonwealth“. If the majority, in whom the whole power of the community is placed at the dawn of civil society, retains the legislative power in their own hands and executes those laws by officers of their own appointing, the form of the

government is a perfect democracy. If they put the power of making laws into the hands of a few select men and their heirs or successors, then it is an oligarchy but if into the hands of one man, then, it is a monarchy either hereditary or elective.

Montesquieu (1699-1785) Montesquieu, a French political philosopher, held that States are of three types, the republican, the monarchic and the despotic. If all or part of the people has the sovereign power, the State is a republic, a democratic or an aristocratic one. A monarchy is the rule of a single person according to law; a despotism, the rule of a single person arbitrarily. Montesquieu indicates the various principles animating the various forms of government, the sustaining and driving powers behind them. In a democracy, the citizens' principle of a republic takes the shape of love of country and desire for equality. That the members of a ruling class will be moderate towards the people, maintain equality among themselves and enforce the laws against persons of rank - this is the virtue of an aristocracy. The mainspring of monarchy is honour: the confidence or conceit of the individual and of the governing classes concerning their own special importance, a confidence that spurs men to accomplish things quite as much as virtue itself. Despotism requires neither virtue nor honour, but fear that suppresses both courage and ambition among subjects. States or governments could be classified according to the type of political system in the country, with respect to who exercises the effective or nominal political powers. Aristotle refers to the quality and quantity of the ruling persons, which makes him to conclude that „polity“ is the best form of government attainable by a state (Johari, J. C., 207:408). A state or government could be in the hands of one person, usually a Monarch; or in the hands of a few people - an oligarchy; many people, usually in a democracy, could control the state.

Self-Assessment Exercise 1

Critically examine various views of classification of government.

1.3.2 Factors that Determine Types of Government

During the twentieth century, political scientists have created numerous typologies for classifying political systems and forms of government and there is no consensus on one best or the ideal method because the one chosen depends on the aspect of politics that interests the people most (Leeds, C. A., 1981). Some of the factors are as follow:

Modernity: Countries of the world differ from one another in terms of per capita income, level of education, technological development, industrialization, urbanization and availability of social infrastructural facilities. However, such factors tend to be highly inter-correlated because a country lacking in one respect is most likely to be less developed in other respects. Location of authority: Under a federal system for instance, the powers for making important decisions are shared between the central, the component units and local authorities and in most cases, such are explained by the constitution. In a unitary system, the right to make decisions on all political matters rests with the national government while the component units exist at the mercy of the central authority.

Integration: This refers to the extent to which the state's apparatus are linked with the activities of individuals and groups in society. In some cases, the exercise of state powers is total while in some other climes, it is liberal or egalitarian. At one end of the spectrum is anarchism or belief in limited or no government, which is a utopian but on the other edge is laissez-fair rule in which the government limits itself to limited obligatory functions that are considered necessary for the survival of the state. The next stage

involves the „mixed economy“ where the government undertakes extensive political and economic functions under the influence of state socialism. At the far end of the spectrum is totalitarianism.

Self-Assessment Exercise (SAE) 2

Examine factors determining typologies of government
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1.3.3 Institutional Differentiation of Government

Ordinarily, it appears easy to identify a form of government through institutions. For example, many people would infer that the United States of America is a federal republic while the defunct Soviet Union was a totalitarian state. However, defining a form of government is especially problematic when trying to identify those elements that are essential to that form. There is a world of difference between the ability to identify a form of government and identifying the necessary characteristics of that form of government. For example, in trying to identify the essential characteristics of a democracy, one might say "elections", "party system", "judicial independence", etc. However, it may be noted that the authorities in both the former Soviet Union of the United States of America lay claims to some of these elements because citizens voted for candidates to public offices in their respective states. The problem with such a comparison is that most people are not likely to accept it because it does not comport with their sense of reality. Since most people are not going to accept an evaluation that makes the former Soviet Union as democratic as the United States, the usefulness of the concept is undermined. Therefore, in political science, it has long been a goal to create a typology or nomenclature of politics, as typologies of political systems are not obvious, especially in the comparative politics and international relations (Lewellen, T. C., 2003). One approach is to elaborate

on the nature of the characteristics found within each regime. In the example of the United States and the Soviet Union, both did conduct elections, and yet one important difference between these two regimes is that the USSR had a single-party system, with all other parties being outlawed. In contrast, the United States effectively has a bipartisan system with political parties being regulated, but not forbidden. In addition, most Westminster democracies such as the United Kingdom or countries in the Commonwealth of Nations usually have at least three major parties. A system generally seen as a representative democracy (for instance Canada, India and the United States) may also include measures providing for a degree of direct democracy in the form of referenda and for deliberative democracy in the form of the extensive processes required for constitutional amendment. Another complication is that a huge number of political systems originate as socioeconomic movements and are then carried into governments by specific parties naming themselves after those movements. Experience with those movements in power, and the strong ties they may have to particular forms of government, can cause them to be considered as forms of government in themselves



1.4 Summary

From the foregoing, it has been established, from the study of the present and past governments in a society, that we should be in a position to explain, through inductive process, principles regarding the organization of government, its structure and workings in different states or societies, especially after careful study of differences and similarities between them. Some scholars prefer the term „classification of the forms of government“ on the ground that the „form of States“ is same as the form of government. However, we consider that States differ not only in their forms of government but in their stated goals

(e.g. totalitarian vs. democratic States) and in their very nature (e.g. unitary vs. federal States), yet the term „the classification of States“ seems preferable (Appadorai, 1975).

A political system is a system of politics and government that could be compared to the legal system, economic system, cultural system, and other social systems but it is different from them in some respects. Political system could be defined on a spectrum from left, e.g. communism and to the right, e.g. capitalism. However, this is a very simplified view of a much more complex system of categories involving the views about who should have authority, how religious questions should be handled and what the government's control should be on its people and economy.



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1.6 Possible answers to self-assessment exercise (s) within the content

Self-assessment exercise 1

Critically examine various views of classification of government.

Answer

In ancient time, **Aristotle classified** government based on two principles viz: number of persons in whose hands the authority of state is vested and of purpose of the state on

which he postulates that the government is of two types – normal and the perverted forms of government. He further explains the former as one when the ultimate aim of the government is the welfare of the people while the perverted form is one where the government machineries are used in promoting personal or group interest of the functionaries or a select few in the society. The real purpose of Aristotle's classification is to justify the excellence of a particular form of rule – mixed government - called „polity“. As regards the number of persons holding power, he says that the ruling power may reside in the hands of one, a few, or many persons while the nature of the exercise of their authority may be either good or bad. He makes use of the grounds of quality and quantity of the ruling persons that eventually enables him to justify „polity“ as the best form of an attainable or a practicable government (Johari, 2007:408).

Thomas Hobbes Hobbes was aware of other names of government such as Tyranny, Oligarchy and Anarchy but he refused to consider them as other forms of government. According to him, those who were discontented under Monarchy called it Tyranny; those who were displeased with Aristocracy called it Oligarchy; and those who nursed some grudges against Democracy called it Anarchy (see Leviathan).

John Locke John Locke substantially follows Hobbes in his classification, with some differences of detail, he says, „according as the power of making laws is placed, such is the form of the commonwealth“. If the majority, in whom the whole power of the community is placed at the dawn of civil society, retains the legislative power in their own hands and executes those laws by officers of their own appointing, the form of the government is a perfect democracy. If they put the power of making laws into the hands

of a few select men and their heirs or successors, then it is an oligarchy but if into the hands of one man, then, it is a monarchy either hereditary or elective.

Montesquieu (1699-1785) Montesquieu, a French political philosopher, held that States are of three types, the republican, the monarchic and the despotic. If all or part of the people has the sovereign power, the State is a republic, a democratic or an aristocratic one. A monarchy is the rule of a single person according to law; a despotism, the rule of a single person arbitrarily. Montesquieu indicates the various principles animating the various forms of government, the sustaining and driving powers behind them. In a democracy, the citizens' principle of a republic takes the shape of love of country and desire for equality. That the members of a ruling class will be moderate towards the people, maintain equality among themselves and enforce the laws against persons of rank - this is the virtue of an aristocracy. The mainspring of monarchy is honour: the confidence or conceit of the individual and of the governing classes concerning their own special importance, a confidence that spurs men to accomplish things quite as much as virtue itself. Despotism requires neither virtue nor honour, but fear that suppresses both courage and ambition among subjects. States or governments could be classified according to the type of political system in the country, with respect to who exercises the effective or nominal political powers. Aristotle refers to the quality and quantity of the ruling persons, which makes him to conclude that „polity“ is the best form of government attainable by a state (Johari, J. C., 207:408). A state or government could be in the hands of one person, usually a Monarch; or in the hands of a few people - an oligarchy; many people, usually in a democracy, could control the state.

Self-assessment exercise2

Examine factors determining typologies of government

Answer

During the twentieth century, political scientists have created numerous typologies for classifying political systems and forms of government and there is no consensus on one best or the ideal method because the one chosen depends on the aspect of politics that interests the people most (Leeds, C. A., 1981). Some of the factors are as follow:

Modernity: Countries of the world differ from one another in terms of per capita income, level of education, technological development, industrialization, urbanization and availability of social infrastructural facilities. However, such factors tend to be highly inter-correlated because a country lacking in one respect is most likely to be less developed in other respects. Location of authority: Under a federal system for instance, the powers for making important decisions are shared between the central, the component units and local authorities and in most cases, such are explained by the constitution. In a unitary system, the right to make decisions on all political matters rests with the national government while the component units exist at the mercy of the central authority.

Integration: This refers to the extent to which the state's apparatus are linked with the activities of individuals and groups in society. In some cases, the exercise of state powers is total while in some other climes, it is liberal or egalitarian. At one end of the spectrum is anarchism or belief in limited or no government, which is a utopian but on the other edge is laissez-fair rule in which the government limits itself to limited obligatory functions that are considered necessary for the survival of the state. The next stage involves the „mixed economy“ where the government undertakes extensive political and

economic functions under the influence of state socialism. At the far end of the spectrum is totalitarianism.

UNIT 4: FORMS/TYPES OF GOVERNMENT

Structure

- 1.1 Introduction
- 1.2 Learning Outcome
- 1.3 Main Content
 - 1.3.1 Monarchy
 - 1.3.2 Some Merits and Demerits of Absolute Monarchy
 - 1.3.3 Aristocracy
 - 1.3.4 Theocracy
- 1.4 Oligarchy
 - 1.4.1 Gerontocracy
 - 1.4.2 Plutocracy
 - 1.4.3 Dictatorship
- 1.5 Democracy
- 1.6 Summary
- 1.7 References/Further Reading
- 1.8 Possible answer to self-assessment exercise (s) within the content



1.1 Introduction

In any country, the rights and liberties enjoy by citizens are affected by the type or form of government adopted by the State. For example, it is obvious that citizens' freedom are better guaranteed under a (democratic) government chosen by the people than a dictatorial regime whose power runs through the barrels of the gun. It should be noted that this topic could be classified into two categories i.e. main and subsidiary. Main forms of government are those that can easily be identified such as monarchy, democracy or dictatorship, while subsidiaries are those that exist under the cover of the main forms. For example, parliamentary government is associated with monarchical system, which could be democratic, federal or unitary in nature while presidential or parliamentary system of government could be subsidiaries of a democratic system. Therefore, examining types of government is an important issue in the discussion of political theory and we are going to consider some of them in this unit.



1.2 Learning Outcome

By the end of this unit, you should be able to:

- a. Discuss different types of government
- b. Explain the merits and demerits of each type
- c. Compare and contrast different types of government



1.3 Main Content

1.3.1 Monarchy

This is the oldest type of government in which a King or Queen exercise the ruling powers of the State. In an absolute monarchy, the King or Queen has unlimited powers to rule the country and his/her authority is not subject to any legal limitations and cannot be challenged because he/she is sovereign and it is believed that he/she does no wrong especially when it is by hereditary succession. Perhaps to emphasise the powerful nature the position of a monarch, King James I of England in his book „The Trew Law of Free Monarchies (1603) has this to say:

Even if the King is wicked, it means God has sent him as a punishment for people’s sins, and it is unlawful to shake off the burden that God has laid upon them. Patience, earnest prayer and amendment of their lives are the only lawful means to move God to relieve them of that heavy curse! (Appadorai, A., 1975:230) However, in an elective or constitutional monarchy, the King or Queen reigns but does not rule. The monarch has his/her powers regulated by the constitution; he/she is a titular Head of State and simply performs ceremonial functions while a Prime Minister who is appointed amongst the elected Parliament, exercises effective powers of the State as the Head government. In

administration, the King or ceremonial President is obliged to accept the advice of the Prime Minister or Ministers with cabinet rank as occasion arises and can only enjoy obedience as recognized by the constitution or conventions. This is the practice in Britain, India and most Commonwealth Nations. This system was practiced in Nigeria's First Republic (1960 - 1966) when Dr. Nnamdi Azikiwe was the ceremonial President (Head of State) who performed dignified functions while Sir Abubakar Tafawa Balewa was the Head of government. It must be stressed that some scholars have differentiated constitutional monarchy by classifying it under democracy because the manifestations of democratic features in the system.

1.3.2 Some Merits and Demerits of Absolute Monarchy

Merits

It is undisputable that Monarchy is the oldest form of government and has passed through centuries to the modern times hence, it has been seen as the most stable system of government since the succession is by hereditary and once he attains the position the monarch cannot be removed from office by either impeachment or a vote of no confidence. The system provides for less rancor and animosity in the decision making process since the final say belongs to the monarch who is not obliged to seem or accept the advice from anybody. In African settings, a monarch is seen as the pivot of unity and centre of dispute resolution, which guarantees peace and tranquility. The policy formulation and implementation is easier and quicker under a monarchy than in any other systems of government. The society is saved of the trouble of time wasting on debates, claims, counter-claims and lengthy discussions on public issues. With the longevity of the position of a monarch, there is consistency and continuity on both domestic and foreign policies that makes for sustainable development.

Demerits

One of the greatest demerits of a monarchical system of government is that it is undemocratic in nature and in practice. The process of ascension to office is not through popular elections or any democratic norms other than by „divine right“ as the only qualification, which cannot be challenged by anybody. Under this system, there are no citizens but subjects of the monarch who has no right to any freedom except as granted by the monarch. Since the system does not accommodate the doctrine of checks and balances, the tendency is that the monarch becomes, more often than not, a despot and tyrant to the people. This explains why King Charles I of England was beheaded in a revolution led by Oliver Cromwell in 1625. Absolute monarchy is associated with inefficiency, corruption, nepotism, and high-handedness culminating into turning the subjects to sycophants in order to enter the good books of the monarch for patronage.

Self-Assessment Exercise (SAE) 1

Examine the merits and drawbacks of monarchy as a form of government
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1.3.3 Aristocracy

This could be defined as a system of government in which a few wealthy, gifted or the nobles rule, which Rousseau literally describes as „government by the best citizens“ (Appadorai, A., 1975:134). The fulcrum of aristocracy depends on the respectability accorded it by other members of the society, which is usually enhanced more by deeds than words. Aristocracy stands for the exercise of power by a few persons distinguished by their superiority, ability and merit. Joharis (2007), defines it as „a form of government in which only a relatively small proportion of the citizens have a voice in the choosing of

public officials and in determining public policies". The followings are some of the distinctions of aristocracy: Circumstances of birth (aristocratic family) Culture and education (aristocracy of intellectuals) Military prowess or talent Property or wealth (aristocracy of landowners) Charismatic potentialities Religious position In other words, aristocracy is a government by the nobles or chief persons, a privileged class or patrician in a state. Those who are seen as superior to the rest of the community in rank, fortune, or intellect are regarded as aristocrats or elite class.

Merits and Demerits of Aristocracy

Merits of Aristocracy

One of the advantages of aristocracy as a form of government is that it is conservative, which is an element necessary for political stability and good health of the economy in the body politic. Aristocracy does not believe in sudden change and it is averse to irrational political experimentation but rather advance slowly but steadily. Aristocrats are moderates for the sake of their security as they are always conscious of the fact that the citizens are greater in number, therefore, excessive use of power may lead to insurgence and instability in the polity. It is argued that nature that creates inequality and uneven distribution of resources among people and nations stands in favour of aristocracy, which makes a few privileged and talented people to rule in a society. Finally, aristocracy gives premium to merit and quality because political power is given to people who deserve it because they are chosen few by virtue of their blood, wisdom, wealth, physical strength and skill.

Demerits of Aristocracy

The greatest drawback of aristocracies is that it tends to degenerate quickly into oligarchy and dictatorship. It is anti-democracy because it does not allow for mass participation by the people in the decision making process of their affairs. The ruling class often treats the lower class in the society with disdain, as it undermines their wisdom and ability and the fact that the system is naturally rigid makes it unsuitable because no human society is static.

Self-Assessment Exercise (SAE) 2

Critically assess Aristocracy as a form of government

1.3.4 Theocracy

This is a system of government in which a religious or Spiritual Leader is the Head of State or Head of government or both combined. According to Merriam-Webster online dictionary, „it is a system in which a state is understood as governed by immediate divine guidance especially a state ruled by clergy, or by officials who are regarded as divinely guided.“ From the perspective of the theocratic government, "God Himself is recognized as the head" of the state, hence the term theocracy, "rule of God", a term used by Josephus of the kingdoms of Israel and Judah (see Catholic Encyclopedia). A theocracy has the administrative hierarchy of the government, which is identical with the administrative hierarchy of the religion, or it may have two 'arms,' but with the state administrative hierarchy subordinate to the religious hierarchy. This system of government should be distinguished from other secular forms of government that have a state religion, or are merely influenced by theological or moral concepts, and monarchies held "By the Grace of God". An example of a Theocratic government is that of the

Vatican City in Rome where the Pope is both the Head of State and Head of government. The system has similar characteristic with monarchy except that the source of authority of a Theocrat is not by hereditary succession like that of the King or Queen. Another example of Theocracy was that of Iran under the Sheik Ayathullah Khomainsi

1.4 Oligarchy

This is a form of government in which power structure effectively rests with a small number of people (Frank Elwell, 2006). These people could be distinguished by royalty; wealth; family ties; corporate or military control. Oligarchy is from Greek words, (oligos), "a few" (Darcy K. Leach, 2005) and the verb (archo), "to rule, to govern, to command" (Nicos P. Mouzelis, 1968). A few prominent families who pass their influence from one generation to the next often control such states. Throughout history, most oligarchies have been tyrannical, relying on public servitude to exist, although others have been relatively benign. Aristotle pioneered the use of the term as a synonym for rule by the rich, for which the exact term is plutocracy, but oligarchy is not always a rule by wealth, as oligarchs can simply be a privileged group, and do not have to be connected by bloodlines as in a monarchy. Some city-states from ancient Greece were oligarchies.

Iron Law of Oligarchy

The iron law of oligarchy is a political theory, first developed by the German sociologist Robert Michels in his book, *Political Parties* (1911). It states that all forms of organization, regardless of how democratic or autocratic they may be at the start, will eventually develop into oligarchies. Following are the reasons for this process:

The indispensability of leadership; The tendency of all groups, including the organization leadership, to defend their interests; and The passivity of the led individuals, more often

than not taking the form of actual gratitude towards the leaders He concluded that the formal organization of bureaucracies inevitably leads to oligarchy, under which organizations originally idealistic and democratic eventually become dominated by a small, self-serving clique who pervert the positions of power and responsibility. This can occur in large organizations because it becomes physically impossible for everyone to get together every time a decision has to be made. Imagining the trouble and rowdiness it would create, bringing all the Ordinary Shareholders of a reputable Commercial Bank e.g. UBA, or a bottling company (CocaCola) etc. together for the day-to-day running of the company. Therefore, a small group is given the responsibility of making such decisions. Michels believes that the people in this group would become engrossed with their elitist positions and becoming more fascinated in making decisions that protect their power rather than represent the will of the group they are supposed to serve. In effect, he says that bureaucracy and democracy do not mix. Despite any protestations and promises that they would not become like all the rest, those placed in positions of responsibility and power often come to believe that they too are indispensable, and more knowledgeable than those they serve. Eventually, they become further isolated from the regular members. Robert Michels found a contradiction in the socialist parties of Europe, that despite their democratic ideology and provisions for mass participation, seemed to be dominated by their leaders, just like traditional conservative parties. His conclusion was that the problem lay in the very nature of organizations. The more liberal and democratic modern era allowed the formation of organizations with innovative and revolutionary goals, but as such organizations become more complex, they became less and less

democratic and revolutionary. He formulates the "Iron Law of Oligarchy": "Who says organization, says oligarchy."

1.4.1 Gerontocracy

This is a form of government in which a polity is ruled by leaders who are regarded as senior citizens because they are significantly older than most of the adult population. Often the political structure is such that political power within the ruling class accumulates with age, so that the oldest hold the most power. Those holding the most power may not be in formal leadership positions, but often dominate those who are. An example of this was the pre-colonial Ibadan confederacy where the position of the leader was (and still is) never open for contest. Such a system of government is also common in communist states where the length of one's service to the party is held to be the main criteria for leadership. Paul Spencer (1965) describes Samburu society in Kenya as a gerontocracy. According to Spencer, the power of elders is linked to the belief in their curse, underpinning their monopoly over arranging marriages and taking on further wives. This is at the expense of unmarried younger men, whose development up to the age of thirty is in a state of social suspension, prolonging their adolescent status. The paradox of Samburu gerontocracy is that popular attention focuses on the glamour and deviant activities of these footloose bachelors, which extend to a form of gang warfare, widespread suspicions of adultery with the wives of older men, and theft of their stock. However, the greatest advantage of the system is that it provides for stability, which is seen as its strength and could be better for countries or societies that teach principles that do not vary over time. However, in institutions of the modern societies that have to cope with rapid changes then, the system may not be fashionable in providing effective administration because of antiquated ideas and decreased faculties resulting from aging.

1.4.2 Plutocracy

Plutocracy is a system of government in which the wealthy in the society have a great influence on the political process. For example, the United States is a plutocracy in which there is a fusion of money and government. The wealthy minority exerts influence over the political arena via many methods. Most western democracies permit partisan organizations to raise funds for politicians, and political parties frequently accept significant donations from various individuals either directly or through corporations or advocacy groups. These donations may be part of a patronage system, in which major contributors and fund-raisers are rewarded with high-ranking government appointments. While campaign donations need not directly affect the legislative decisions of elected representatives, politicians have a personal interest in serving the needs of their campaign contributors: if they fail to do so, those contributors will likely give their money to candidates who do support their interests in the future. Unless there is a stringent constitutional constraint, it is the practice for politicians to advocate policies favorable to their contributors, or grant appointed government positions to them. In some instances, extremely wealthy individuals have financed their own political campaigns. Many corporations and business interest groups pay lobbyists to maintain constant contact with elected officials, and press them for favorable legislation. Owners of mass media outlets, and the advertisement buyers, which financially support them, can shape public perception of political issues by controlling the information available to the population and the manner in which it is presented.

1.4.3 Dictatorship

Dictatorship as a system of government could be defined as a rule by a powerful individual, called dictator. A government controlled by one person, or a small group of people. In this form of government, the power rests entirely on the person or group of people, and can be obtained by force or by inheritance. The dictator(s) may also take away much of its peoples' freedom. This system of government became popular shortly after the First World War (WWI) when its manifestation became noticeable in Turkey under the leadership of Kamal Atatürk and in Russia under Joseph Stalin and in Italy under the leadership of Benito Mussolini from 1925 to 1943. Others are Adolf Hitler of Germany from 1933 to 1945 and Gen. Francisco of Spain. A dictator is usually not elected or appointed by the people but emerges in a particular circumstance and once he gets to office, he sits tight until either death do him part or he is forced to abdicate the power. Dictatorship has a very vast power and he gives an ideological turn to the character of his autocratic position. A dictator is a maximum ruler who brooks no opposition to his authority. Late Gen. Sani Abacha of Nigeria, Field Marshall Dada Idi Amin of Uganda and Col. Mohammad Gaddafi of Libya are good examples of modern dictators in Africa. Dictatorship is anti-democracy as the powers of the government are not controlled or regulated by the constitution, therefore, the government is not accountable responsible or responsive to the people.

1.5 Democracy

This is the most popular form of government, which has become a benchmark for measuring the level of socio-political civilization of any society or a nation in the international community. What makes democracy popular and peculiar is that „it is a form of state, a form of government, a form of society, and, above all, an ethical idea or a

way of life“(Johari, J. C., 2001:429). Democracy prevails where the rule of law is observed and the power is truly vested in the power or what is known as political sovereignty belongs to the people in the state. A state becomes democratic irrespective of the administrative system if fundamental rights of citizens and the residence of sovereignty are entrenched in the constitution. The word democracy is a derivative of two Greek words - „demos“, meaning people, and „kratia“, meaning rule, which implies the „rule by the people“. Democracy is a difficult concept to define because of the relativity of its meaning to different societies. But an attempt at the exercise of defining the concept may drag us to the conclusion that it is a system of government in which a majority of the people participates in the decision making process. A system that recognizes everybody as a stakeholder in a joint stock company or venture. However, the most popular definition of democracy is the one given by Abraham Lincoln who sees it as „government of the people, by the people and for the people“.

Elements of Democracy

For any society to be regarded as democratic, the following elements must not only feature in the settings but must be cultivated by the people:

- a. **Periodic elections:** There should be elections to be conducted regularly, say, every three or four years in which every adult of voting age should participate to elect their leaders and the result of such election should reflect the wishes of the people.
- b. **Independent Judiciary:** The courts in the land must not only be free from the control of the Executive or any other arm of government but the judicial officers must be above board in the dispensation of justice.

- c. **Free Press:** The press and mass media should be free to disseminate information to the public without fear of being arrested or molested by the authority. The media practitioners should be free to have access to information to inform the members of the public about government policies and also give the government a feedback on the feelings and aspirations of the people.
- d. **Open Competition:** Democracy thrives well when there are alternative in terms of political ideologies, manifestos and programmes, rather than a situation whereby the people are left with no option than to file behind a single party. People should be free to join political parties of their choice and to be able to determine their level of participation in political activities and government. This is a necessary condition because democracy is about freedom of choice, which is only available in a multi-party system.

Merits of Democracy

There is almost a consensus by scholars that this is the best form of government in that it allows for mass participation of the people and it is a system that recognizes the people as owners of political sovereignty. It allows the people to choose the leaders who could be changed periodically, through the ballot, which is the only peaceful means of leadership change rather than the ones that encourage violent change when the peaceful change has been made impossible. Democracy provides the people a sense of belonging and satisfaction because they know that the power to elect and remove the leaders belongs to them. People will therefore not think of extra-legal means of attaining the power to control the government. Even if the leadership and the governance is bad, they would rather exercise patience until election period to effect a change. Democracy is also rated

high because it is a system that provides education about the running of the government to the people. This is done through the inter-relationship between different organs of government, political parties, non-governmental agencies and the activities of the free press, which the system condones unlike dictatorship. Above all, democracy is said to have no alternative because it recognizes and respects the fundamental human rights of the citizens, and as well as the decision of courts on any issue.

Demerits of Democracy

Since there is no rose without thorns, so goes a saying, therefore, as beautiful as democracy appears to be, it also has its own drawbacks some of which are enumerated below: One of the demerits of democracy is that it breeds mediocrity because in democratic contests, it is not always the „best“ among the candidates that wins either the primary or general elections to represent the people. More often than not, many of the elected representatives end up as benchwarmers, sycophants either because of their educational or other deficiencies that make them submissive to moral and intellectual superiority of others.

Another drawback of democracy is the attendant high cost of governance. It requires a huge amount of national income to maintain the National and state Assemblies and the Executives with the retinue of personal assistants attach to each of the offices. Enormous wealth is needed for elections and electioneering campaigns periodically, which could have been avoided under a non-democratic government.

Democracy is also criticized because it encourages continuity and slow progress of development if leadership changes hands too often through elections. The tendency is

that the new leadership may abandon the policies and programmes on ground, to start afresh in order to impress the electorates that it is delivering on promise.

Also, it takes a lot of time and resources to take a decision in a democracy because issues are to be well articulated and widely debated before taking a decision to be generally acceptable to the people. This will invariably affect the rate of growth and development in the country.



1.6 Summary

It is important to understand the typology of government in order to appreciate the workings of a particular government in any society. In addition to this, analysts should also consider some environmental factors under which any particular government operates or emerges, so as to have a balanced ideal of the political challenges of the society.

Democracy appears to enjoy popular appeal the world over as the „best“ form of government because of the emphasis it places on liberty and freedom that the people enjoy under it. The fact that the government and the governed are conscious of the „Social Contract“ that is binding on both sides, makes the system to be more preferable to any other forms of government. The demerits of democracy should not become a template of hatred for the system because every system of government has its strong and weak points but no alternative has been found for democracy.



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1.8 Possible answer to self-assessment exercise (s) within the content

Self-Assessment Exercise (SAE) 1

Examine the merits and drawbacks of monarchy as a form of government

Answer

Merits

It is undisputable that Monarchy is the oldest form of government and has passed through centuries to the modern times hence, it has been seen as the most stable system of government since the succession is by hereditary and once he attains the position the monarch cannot be removed from office by either impeachment or a vote of no confidence. The system provides for less rancor and animosity in the decision making process since the final say belongs to the monarch who his not obliged to seem or accept the advice from anybody. In African settings, a monarch is seen as the pivot of unity and centre of dispute resolution, which guarantees peace and tranquility. The policy formulation and implementation is easier and quicker under a monarchy than in any other systems of government. The society is saved of the trouble of time wasting on debates,

claims, counter-claims and lengthy discussions on public issues. With the longevity of the position of a monarch, there is consistency and continuity on both domestic and foreign policies that makes for sustainable development.

Demerits

One of the greatest demerits of a monarchical system of government is that it is undemocratic in nature and in practice. The process of ascension to office is not through popular elections or any democratic norms other than by „divine right“ as the only qualification, which cannot be challenged by anybody. Under this system, there are no citizens but subjects of the monarch who has no right to any freedom except as granted by the monarch. Since the system does not accommodate the doctrine of checks and balances, the tendency is that the monarch becomes, more often than not, a despot and tyrant to the people. This explains why King Charles I of England was beheaded in a revolution led by Oliver Cromwell in 1625. Absolute monarchy is associated with inefficiency, corruption, nepotism, and high-handedness culminating into turning the subjects to sycophants in order to enter the good books of the monarch for patronage.

Self-Assessment Exercise (SAE) 2

Critically assess Aristocracy as a form of government

Answer

This could be defined as a system of government in which a few wealthy, gifted or the nobles rule, which Rousseau literally describes as „government by the best citizens“ (Appadorai, A., 1975:134). The fulcrum of aristocracy depends on the respectability accorded it by other members of the society, which is usually enhanced more by deeds than words. Aristocracy stands for the exercise of power by a few persons distinguished

by their superiority, ability and merit. Joharis (2007), defines it as „a form of government in which only a relatively small proportion of the citizens have a voice in the choosing of public officials and in determining public policies“. The followings are some of the distinctions of aristocracy: Circumstances of birth (aristocratic family) Culture and education (aristocracy of intellectuals) Military prowess or talent Property or wealth (aristocracy of landowners) Charismatic potentialities Religious position In other words, aristocracy is a government by the nobles or chief persons, a privileged class or patrician in a state. Those who are seen as superior to the rest of the community in rank, fortune, or intellect are regarded as aristocrats or elite class.

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One of the advantages of aristocracy as a form of government is that it is conservative, which is an element necessary for political stability and good health of the economy in the body politic. Aristocracy does not believe in sudden change and it is averse to irrational political experimentation but rather advance slowly but steadily. Aristocrats are moderates for the sake of their security as they are always conscious of the fact that the citizens are greater in number, therefore, excessive use of power may lead to insurgence and instability in the polity. It is argued that nature that creates inequality and uneven distribution of resources among people and nations stands in favour of aristocracy, which makes a few privileged and talented people to rule in a society. Finally, aristocracy gives premium to merit and quality because political power is given to people who deserve it because they are chosen few by virtue of their blood, wisdom, wealth, physical strength and skill.

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The greatest drawback of aristocracies is that it tends to degenerate quickly into oligarchy and dictatorship. It is anti-democracy because it does not allow for mass participation by the people in the decision making process of their affairs. The ruling class often treats the lower class in the society with disdain, as it undermines their wisdom and ability and the fact that the system is naturally rigid makes it unsuitable because no human society is static.

Module 2

TYPES OF POLITICAL SYSTEMS

UNIT 1: TYPES OF POLITICAL SYSTEMS

Structure

- 1.1 Introduction
- 1.2 Learning Outcome
- 1.3 Main Contents
 - 1.3.1 Monarchy
 - 1.3.2 Aristocracy
 - 1.3.3 Theocracy
- 1.4 Totalitarianism/Dictatorship
- 1.5 Summary
- 1.6 References/Further Reading
- 1.7 Possible answer to self-assessment exercise (s) within the content



1.1 Introduction

In the history of political organization, citizens have lived under different types\ forms of government. They range from monarchy through aristocracy to democracy, among others. However, what is of utmost importance and a central subject of political enquiry is that the form of government a state or country operates considerably affects freedom of the individual citizen. This Unit discusses forms of governments, their merits and demerits and how each of them has developed over the centuries until the modern times when democracy has now become the most popular and acceptable form of government.



1.2 Learning Outcome

By the end of this unit, you should be able to:

- a. Analyse the characteristics of various forms of governments.
- b. Discuss how political organizations have evolved from one to another form of government.

- c. Explain which of the system of government is for the safety of the rights of the citizens.



1.3 Main Contents

1.3.1 Monarchy

The first and earliest form of government is monarchy. Simply, it is a form of government that is headed by individual who is not subject to legal limitations, or who does everything according to his own will. Monarchy is a type of government headed by a Queen a King or an Emperor. Examples are the United Kingdom and the Kingdom of Saudi Arabia. A constitutional monarchy is one that is subject to legal limitations like that of the United Kingdom, in contradistinction to the absolute monarchy of Saudi Arabia. However, it should be noted that hereditary monarchy is the normal type but elective forms do exist also. Therefore, the essence of monarchy is the personification of the majesty and sovereignty of the state in an individual. Monarchy can bring about a stable political system; it is also a natural institution, where obedience to the king is seen as obedience to God. Britain probably offers the most contemporary example of a country operating a monarchy. Indeed, British monarchy had evolved from the days of absolute monarchy of the Tudors to that of the constitutional monarchy of Queen Elizabeth. This transition was a consequence of the Puritan revolt that erupted between the King and the parliament. It was later resolved bloodily after what came to be known as the Glorious Revolution in 1688. The characteristics of monarchy include the following: monarchy is an age-long form of government; the government of the country is in the hands of a king, emperor or queen; it is a type of government that is based on hereditary pattern. In some forms of monarchy, e.g. absolute monarchy, the ruler has no

constitutional limitation. In some monarchies, e.g. constitutional monarchy, the ruler is under checks by the constitution.

A monarchical form of government has some advantages: Monarchy can bring about a stable political system; it is a natural institution where obedience to the king is seen as obedience to God and thus promotes total loyalty to the state. A stable political system and can best be secured only where supreme authority is vested in a single ruler. Monarchy could be adopted to make for emergency situation when the state requires undivided loyalty of the people to the government of the day. In a monarchical system decision-making is faster since the monarch need not consult anybody before necessary and urgent decisions are taken. Monarchy helps to harmonize different interests and prevent social strife. In some circumstances, the king may serve as the protector of the people at large, from the tyranny of the few. Where a hereditary kingship has been in existence for a considerable time like in Britain it may be unwise and unnecessary to abolish it. Democratic principle can be grafted into as it was done in Britain with admirable success. The disadvantages of monarchy include the following: Good intentions, ability, industry are not hereditary. Therefore, a monarch could be a bad leader. A monarch could also be despotic to keep the people weak so that they may be unable to resist him. Forms of Monarchy-Broadly, there are two types of monarchy: Hereditary and Elective. Absolute monarchy: This occurs when there is no established constitutional authority to check the king's power. The king rules as the head of government and head of state. Examples are Frederick the Great of Russia, the Queen of England, Louis XIV of France, before the French Revolution. Hereditary monarchy can be found in countries such as Britain or even in the old Oyo Empire where the Alaafin of

Oyo or the Hausa Fulani Empire, where the Sultan of Sokoto were regarded as the personifications of the state. Despite the incursion of foreign rule and the displacement of traditional rulers under the post-colonial dispensation in many African states, monarchy has survived even with diminished power and authority. The phrase “the king reigns but do not rule” aptly captures the present position occupies by monarchs in contrast to the days of unlimited absolutism.

Constitutional Monarchy

The power of a constitutional monarch is regulated by the constitution. The monarch can promulgate only those laws that are agreed upon by the resolution of the elected parliament as in Britain. Also, he or she is bound to respect not only the spirits of the constitution but also the laws of the state. He assents to only those laws that passed by the elected parliament. Britain is a good example of a constitutional monarchy.

Assessment Exercise (SAE): 1

Describe the differences between absolute and constitutional monarchy.
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1.3.2 Aristocracy

Aristocracy is a government that is led by the best citizens; the quality, which marks out the aristocrat from others, is virtue: moral and intellectual superiority. Because the aristocrat possesses these qualities in abundance, he only assumes leadership; he does not need to explain or justify his claims to superiority or leadership positions.

In short, his deeds, not his words attest to his preeminence. In the view of Appaduria (2004), any time an aristocrat is compelled to justify his power, “it will be proof that his position is crumbling.” The distinctive qualities which characterize an aristocracy include

noble birth (aristocracy of family), culture and education (aristocracy of priest or of scholars), age (aristocracy of elders), military distinction (aristocracy of knight), or property (aristocracy of landowners). Several Scholars have tried to justify aristocracy as a form of government. Carlyle said “it is the everlasting privilege of the foolish to be governed by the wise” Rousseau also contended that it is the best and most natural arrangement that the wisest should govern the many. Montesquieu equally noted that aristocrats usually possess the great virtue of moderation. This quality also makes them to be cautious in their leadership role in order not to ignite resistance from the rank of the masses, who have the advantage of number. Plato indeed likened democracy to a mob rule, and argued that a few people with high quality, if allowed to rule could do better for a society. Although Aristotle was not as cynical about democracy like Plato, yet he preferred aristocracy to a democratic government. He even contended under certain conditions, the judgment of a few could be equal to or wiser than that of the will of many. According to Aristotle, the upper class contained people of the greater refinement or quality and as such they were best equipped to provide better government for the society as a whole {Baradat 2000}.

Self-Assessment Exercise (SAE): 2

Analyse the differences between monarchy and aristocracy.

1.3.3 Theocracy

Theocracy is a government by divine guidance or by officials who are regarded as divinely guided. Theocracy means literally „the rule of God“ and the term was invented by Josephus (AD 38-c. 100), to describe the ancient Hebrew constitution and the role of

Mosaic Law. Theocracy can also be defined as a government by a priesthood or religious leader. It is divine and the laws made are of divine inspiration. In many theocracies, government's leaders are members of the clergy or Islamic clerics, and the state's legal system is based on religious laws. Theocratic rule was typical of early civilizations. However, the era of Enlightenment marked the end of theocracy. The Vatican City in Rome, for example, is a theocratic state headed by the Pope. Other contemporary examples of countries practicing theocracy include Saudi Arabia and Iran. A more secular version of the meaning of theocracy is that it is priestly rule. In theocracies, the religiously revealed laws or policies are unchallengeable, even by a popular majority or by an inherited monarch. It should however be noted that even such regimes which claim that their laws are divinely ordained and thus immutable, do not make this claim in respect of all laws. Theocracy is a form of government in which a god or deity is recognized as the state's supreme civil ruler, or in a higher sense, a form of government in which a state is governed by immediate divine guidance or by officials who are regarded as divinely guided. For believers, theocracy is a form of government in which divine power governs an earthly human state, either in a personal incarnation or, more often, via religious institutional representatives such as the church, replacing or dominating civil government. Theocracy should be distinguished from other secular forms of government that have a state religion, or are merely influenced by theological or moral concepts, and monarchies, which is based on divine rights of king. A theocracy may be monist in form, where the administrative hierarchy of the government is identical with the administrative hierarchy of the religion, or it may be dualist, having two arms, in which the state's administrative hierarchy is subordinate to the religious hierarchy.

Theocracy is also a form of government where people do not govern; it is God who governs through the priests. By not separating religion from the state, Islam also sanctions theocracy.

1.4 Totalitarianism/Dictatorship

Since the 1950s, some scholars have argued that the extreme type of authoritarianism is best described as “totalitarianism.” Robert C. Fried (1966:3) noted that totalitarian and dictatorial institutions related, but they differ in one respect. The characteristics of the former include complete control over government, complete autonomy from outside and total control of social life. The latter shares the first two characteristics of the former, but does not possess control over social life. The nature of government of government is important, since it determines the burden the political leadership shoulders. If a government is dictatorial, the burden is heavy. This is unlike a democracy where the burden does not disappear but the people share it.

In addition to the characteristics already cited above, “totalitarianism” implies “an official ideology which members of the society must adhere to and which covers all aspects of life in the society”; “a system of terroristic police control which supports, and supervises on behalf of the leader, and which is directed against the „enemies“ of the State”; and “central control and direction of the entire economy.” Other characteristics of totalitarianism include the subordination of all to the interest of the political elites and to the specification of the ideology designed and adopted by them. In a totalitarian state, all groups the youth, labor unions, cultural associations and other intermediate social structures including the educational system are organized to serve the interest of the state and its rulers. Indeed, there is no distinction between the state and society. While

the ruler controls sophisticated state apparatus of propaganda to communicate and force the will of the political leadership on the citizens, there are no institutional channels for assuring feedback communication from the population to the elites. In short, authoritarian governments are content to control the overt behaviour of the citizen and to eliminate any sign of organized opposition. Totalitarian governments attempt to control not only their citizen behaviour but their thoughts as well. So instead of the dictators giving the people cutleries to make them survive, they throw cutlasses at them to make them fight the war to defend their rulers. But ironically, history is replete with major achievements recorded by some dictatorial leaders: In spite of the notorious Nazi concentration camps Hitler rebuilt a shattered German economy and conceptualized a Volkswagen, a “people’s car”; while Stalin’s desperate struggle to even out with the United States at the onset of the cold war did not stop him from transforming the Soviet Union from a backward agrarian to a military superpower. Chairman Mao also put China out of a primitive state, and transformed it into an atomic power (Anyanwu 2002).



1.5 Summary

We have examined in this unit different forms of governments. We first discussed the monarchy as a hereditary institution headed by a person, who rules either as an absolute ruler, or in other circumstances, as a constitutional monarch. We also examined aristocracy, which is a form of government headed by men of rare attributes of virtue, distinction and valor. We also treated theocracy as a form of government in which the state makes no distinction between the divine/ spiritual and temporal or secular. We finally discussed a totalitarian government as the type in which fundamental human rights

of the citizens are suppressed, and where no distinction is made between the state and society.

Each of these forms of government at different times in the development of political institutions occupied a central place in the running of human society. While monarchy is obviously the first and earliest known form of government, and its prominence as a form of government can be dated to the pre-Enlightenment epoch when it was sustained by the divine right of the King. Both aristocracy and theocracy also competed with monarchy, but the latter seems to have survived the challenge, since only few countries subscribed to either aristocracy or theocracy. Irrespective of its form, a government has to fulfill certain basic tasks. It has to keep the nation alive, guard its independence and preserve its cohesion.



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1.7 Possible answer to self-assessment exercise (s) within the content

Self-assessment exercise 1

Describe the differences between absolute and constitutional monarchy

Answer

The first and earliest form of government is monarchy. Simply, it is a form of government that is headed by individual who is not subject to legal limitations, or who

does everything according to his own will. Monarchy is a type of government headed by a Queen a King or an Emperor. Examples are the United Kingdom and the Kingdom of Saudi Arabia. A constitutional monarchy is one that is subject to legal limitations like that of the United Kingdom, in contradistinction to the absolute monarchy of Saudi Arabia. However, it should be noted that hereditary monarchy is the normal type but elective forms do exist also. Therefore, the essence of monarchy is the personification of the majesty and sovereignty of the state in an individual. Monarchy can bring about a stable political system; it is also a natural institution, where obedience to the king is seen as obedience to God. Britain probably offers the most contemporary example of a country operating a monarchy. Indeed, British monarchy had evolved from the days of absolute monarchy of the Tudors to that of the constitutional monarchy of Queen Elizabeth. This transition was a consequence of the Puritan revolt that erupted between the King and the parliament. It was later resolved bloodily after what came to be known as the Glorious Revolution in 1688. The characteristics of monarchy include the following: monarchy is an age-long form of government; the government of the country is in the hands of a king, emperor or queen; it is a type of government that is based on hereditary pattern. In some forms of monarchy, e.g. absolute monarchy, the ruler has no constitutional limitation. In some monarchies, e.g. constitutional monarchy, the ruler is under checks by the constitution.

A monarchical form of government has some advantages: Monarchy can bring about a stable political system; it is a natural institution where obedience to the king is seen as obedience to God and thus promotes total loyalty to the state. A stable political system and can best be secured only where supreme authority is vested in a single ruler.

Monarchy could be adopted to make for emergency situation when the state requires undivided loyalty of the people to the government of the day. In a monarchical system decision-making is faster since the monarch need not consult anybody before necessary and urgent decisions are taken. Monarchy helps to harmonize different interests and prevent social strife. In some circumstances, the king may serve as the protector of the people at large, from the tyranny of the few. Where a hereditary kingship has been in existence for a considerable time like in Britain it may be unwise and unnecessary to abolish it. Democratic principle can be grafted into as it was done in Britain with admirable success. The disadvantages of monarchy include the following: Good intentions, ability, industry are not hereditary. Therefore, a monarch could be a bad leader. A monarch could also be despotic to keep the people weak so that they may be unable to resist him. Forms of Monarchy-Broadly, there are two types of monarchy: Hereditary and Elective. Absolute monarchy: This occurs when there is no established constitutional authority to check the king's power. The king rules as the head of government and head of state. Examples are Frederick the Great of Russia, the Queen of England, Louis XIV of France, before the French Revolution. Hereditary monarchy can be found in countries such as Britain or even in the old Oyo Empire where the Alaafin of Oyo or the Hausa Fulani Empire, where the Sultan of Sokoto were regarded as the personifications of the state. Despite the incursion of foreign rule and the displacement of traditional rulers under the post-colonial dispensation in many African states, monarchy has survived even with diminished power and authority. The phrase "the king reigns but do not rule" aptly captures the present position occupies by monarchs in contrast to the days of unlimited absolutism.

Constitutional Monarchy

The power of a constitutional monarch is regulated by the constitution. The monarch can promulgate only those laws that are agreed upon by the resolution of the elected parliament as in Britain. Also, he or she is bound to respect not only the spirits of the constitution but also the laws of the state. He assents to only those laws that passed by the elected parliament. Britain is a good example of a constitutional monarchy.

Self-assessment exercise 2

Analyse the differences between monarchy and aristocracy.

Answer

Aristocracy is a government that is led by the best citizens; the quality, which marks out the aristocrat from others, is virtue: moral and intellectual superiority. Because the aristocrat possesses these qualities in abundance, he only assumes leadership; he does not need to explain or justify his claims to superiority or leadership positions.

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be cautious in their leadership role in order not to ignite resistance from the rank of the masses, who have the advantage of number. Plato indeed likened democracy to a mob rule, and argued that a few people with high quality, if allowed to rule could do better for a society. Although Aristotle was not as cynical about democracy like Plato, yet he preferred aristocracy to a democratic government. He even contended under certain conditions, the judgment of a few could be equal to or wiser than that of the will of many. According to Aristotle, the upper class contained people of the greater refinement or quality and as such they were best equipped to provide better government for the society as a whole {Baradat 2000}.

UNIT 2: PRESIDENTIAL SYSTEM OF GOVERNMENT

Structure

- 1.1 Introduction
- 1.2 Learning Outcome
- 1.3 Main Contents
 - 1.3.1 The Meaning of Presidential System of Government
 - 1.3.2 Characteristics/Features of a Presidential System of Government
 - 1.3.3 Merits and Demerits of Presidential System of Government
- 1.4 Application of the Presidential System of Government
- 1.5 Summary
- 1.6 References/Further Reading
- 1.7 Possible answer to self-assessment exercise (s) within the content



1.1 Introduction

The presidential system is one of the popular models of government in operation in many countries, developed and developing, in the world today. This unit takes a look at this system of government by first defining it and identifying its major characteristics. It also examines its advantages and disadvantages as well as its practice in specific countries such as the United States and Nigeria



1.2 Learning Outcome

By the end of this unit, you should be able to:

1. Define the presidential system of government including its basic features
2. Identify the benefits as well as the danger that can accrue to a country where the system of government is in practice
3. Use the examples of some countries that will be cited in the unit to understand the practical application of this model of government



1.3 Main Contents

1.3.1 The Meaning of Presidential System of Government

The institution of a single man and non-parliamentary executive chiefly characterizes the presidential system of government. The same person who holds the title of head of state is also head of government. The real political or executive power is combined with the ceremonial powers and are both exercised by a single man who is also addressed as the Commander in Chief of the armed forces. The executive headed by him is the government and it is headed by the president who is also the head of the executive. The president is normally elected directly through popular votes or, indirectly via the collegiate system, otherwise known as the Electoral College and he is directly accountable to the electorate. The election to the office of the president is independent of the election to the legislature.

The whole country constitutes a single constituency to the president. On assumption of office the president is seen as the symbol of national unity, a magnet of loyalty, a centre of ceremony and chief administrator for the nation. Agarwal et al (1994) define the presidential system as that type of government in which the three organs of government, that is the legislature, the executive and the judiciary are separated and co-ordinate in power, each of them acting independently within its own sphere. The holder of the office of president is often called executive president, because he is solely responsible for the implementation of legislative decisions.

Examples of countries in the world that practice this system of government are U.S.A, Spain, France, and Nigeria. The tenure office of the president is fixed; he stays in office for a specific tenure and he can be re-elected for a second term. The number of years a president stays in office depends on the constitution of the country concerned.

In Nigeria the fixed tenure for any president is four years.

Unlike the Prime Minister who is first among equals in a parliamentary system the President in a presidential system of government does not share his power with any other person. While commenting on the American president and his cabinet, Dennis Brogan (1966) said: "There is in American theory and practice no question of primus inters pares. The famous story of Lincoln consulting his cabinet and announcing. Noes seven, Ayes one, the ayes have it" expresses perfectly the spirit of the American Constitution"

Functions of the President in a Presidential System of government

1. The Executive president is both head of state and head of government. He has the power to sign a bill into law. He can however refuse signing a bill if he is sufficiently convinced that the content of the bill does not conform to his programmes or if it contain some anomalies, until the adjustments are made to make the bill conform to the president's fancies.
2. The President addresses the joint session of the National Assembly in Nigeria, for example, or what is called the annual State of the Union Address in the United States. The President prepares the annual budget or supplementary estimates for the consideration and approval of the Legislature, before any spending can be constitutionally made from the Federation Account or the Consolidated Revenue Fund.
3. The President is the chief security officer of the whole country, and in exercise of this power he sees to the maintenance of law and order in the country. The President he is also the commander-in-chief of the armed forces, which confers on the occupant

of that office the power to declare war to defend the independence, sovereignty and territorial integrity of his country.

Self-Assessment Exercise (SAE) 1

Analyse the major difference between the functions of a President as Head of State and Head of government

1.3.2 Characteristics/Features of a Presidential System of Government

The president exercises veto power Under the Presidential system of government, the President who has the whole country as his constituency is elected separately for a fixed term of four years, and separately from the Congress. The President is the head of state, head of government and commander-in-chief of the armed forces. But in some respects despite having the whole country as his constituency, the President in exercising his major functions of legislations, appointments; treaty making and declaration of war shares his power with the Congress.

- 1. Combination of two offices in one:** The combination of the office of head of state and head of government makes for quick and prompt decisions, especially on rare occasions when delays or vacillations may be dangerous for the corporate existence of a nation. To facilitate this, the American presidential system, for instance, allows the president the power to issue executive orders without recourse to the congress, while the Nigerian system also permits a president to take steps in exceptional circumstances, before seeking the approval of the National Assembly. This was in line with the view of the Constitution Drafting Committee, which had recommended in its report that: The single executive has the merit of unity, energy and dispatch...This is not, of course to deny the virtue of collective discussion and consultation...Yet it is essential to effective leadership in government that there

- should be a single individual in the capacity of a Chief Executive who can decide and act promptly when dispatch is demanded and who can impose his will when differences of opinion among cabinet members threatened to paralyse government.
2. **Presidential discretion in Appointments:** The President also has a free hand in appointing his ministers and other government appointees. It is possible for ministers to be chosen from outside the president's party. This is due to the insulation of the president from Party Politics under the presidential system of government.
 3. **A single countrywide constituency:** The whole country constitutes a single constituency for a president in a presidential system of government
 4. **Separation of Powers and Checks and Balances:** The presidential system of government is anchored on the twin mechanisms of separation of power and checks and balances. This is not the case in the parliamentary system where power what operate is a fusion of power among the three organs of government
 5. **Fixed Tenure of Office:** The President under the presidential system has a fixed tenure in office, usually a four-year period before another election is due, when he can seek for a re- election for another term in office. In Nigeria and the United States, no president can serve in office for more than two terms. The late president Franklin Roosevelt of U.S. however had a singular distinction to be elected into the office of president for more than two terms, a situation which arose partly because of the contingency of the war situation and his immense popularity. But this is no longer possible since the amendment of U.S. constitution.
 6. **Veto Power:** there is adoption of veto power by the president in the presidential system of government, the president is constitutionally empowered to refuse to assent

any bill passed by the legislature that he considers to be against public interest, but it isn't a feature in the parliamentary system of government.

7. **Primacy is accorded to the Constitution:** The constitution is the supreme law in the presidential system. This is unlike most parliamentary system where supremacy lies with the parliament.

Self-Assessment Exercise 2

Discuss major features of the American Presidential system
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1.3.3 Merits and Demerits of Presidential System of Government

Merit presidential system of government

1. **Quick and decisiveness in Decision-making:** The presidential system of government makes for decisive actions because the president knows that „the buck stops on his desk“, a phrase popularized by the late Harry Truman, when he decided to use nuclear weapons against two Japanese cities in order to bring about a decisive end to World War II. In America and Nigeria, the constitution did not even make it mandatory for the president to call a meeting of the executive council before he can take action on any issue. The president is at liberty to either consult his ministers or any of them, or refuse to seek their opinion in taking decisions. The ministers or any other functionaries are mere advisers to the president and it is not binding on the president to go along with the council of ministers, unlike the case under the parliamentary where the prime minister is always at pains to secure the support of the cabinet, and unanimity of opinions among its members. This promptness in decision-making

therefore makes the response of government to issues, especially in situations where any delay in taking action may be dangerous.

- 2. Presidential discretion in Appointments:** One major advantage of the presidential system of government is that the President has a free hand in appointing his ministers and other government appointees. Ministers could be chosen from outside the president's party, a situation that confers high degree of latitude on the president to select the best materials from any part of the country. Since the bulk stops at his desk, the president can easily replace or fire any of his appointees because they are directly responsible to him.
- 3. A single countrywide constituency:** The fact that the electorate popularly elects the president makes the whole country a single constituency for him, and as such, the party does not have an overbearing control over him, beyond offering him advice at party caucuses. He rather than his party or his appointees bear singular responsibilities for his actions and inactions. This constitutes a consistent source of pressure on him to perform since he cannot shift blame to any other person.
- 4. Merits of Separation of Powers and Checks and Balances:** The mechanism of separation of power enhances the effective performance of each arm of government in its functions while checks and balances also ensures that a president who by nature is dictatorial can be brought under constitutional checks. The combination of the two devises will obviously improve the performance of government as whole and its capacity for optimal service delivery.
- 5. Fixed Tenure of Office:** The fixed tenure in office enjoyed by a president under the presidential system makes for the stability of the government and the continuity of

policies. A stable government also allows for both medium and long term planning, rather than the instability that characterises a parliamentary system of government. A new general election can be called in a parliamentary system any time a vote of no confidence is passed on the government

6. Individual Ministerial Responsibility Unlike the parliamentary system, which allows a non-performing minister to shelter under the concept of collective responsibility, the presidential system makes it easier for an ineffective minister to be identified and singled out for blame or even dismissal. His dismissal will not affect other ministers or even, in the extreme make a government to collapse.

7. Insulation from Party Politics: The president is often described to be above party politics. This therefore offers him unlike the Prime Minister in a parliamentary system who is enmeshed in party politics to view every issue on its merits and not solely, and sometimes unwisely, according to party dictates. This has often been the case in the United States when the two parties are able to rise above the traditional party divisions in what is normally called a bi-partisan approach to national issues. Many past U.S Presidents and congressmen have been able to view major issues like during the Vietnamese War, the Persian Gulf War and the September 11, 2001 terrorist attack outside the prism of political party affiliations.

Demerit of the Presidential System of Government

1. Prone to Dictatorship: The presidential system is prone to dictatorship or abuse of office, which is dangerous to the democratic process. This is a result of enormous power that is concentrated in the office of the president. Presidentialism focuses too much on the personality of the president and his capacity; and when that individual is

undermined the office is undermine and the system may even be threatened. For instance it took a long time before the presidency in the United States recovered from the shock that gripped the office due to the Watergate Scandal, which occurred due to one moment, though grave act of indiscretion by President Richard Nixon. The disposition of president to be autocratic can also be attributed to the cumbersome process that is required before a sitting president can be impeached. President Obasanjo's tenure in office can best be described as a chronicle of alleged constitutional breaches, yet all attempts to remove him from office through impeachment failed.

2. **Friction among Government Organs:** Separation of powers can cause delays in the execution of government programmes, especially in situations where executive legislative relations are not properly managed. In less matured democracies of the developing world, this problem is more acute when different political parties are in control of the executive and the legislature. A water tight separation of power often inhibits the smooth running of government, especially if attempt by one organ to moderate the activities of the other through the mechanism of checks and balances is being resisted
3. **Lack of flexibility in Tenure of Office:** The operation of the presidential system has been criticized for being too rigid and not amenable to changing circumstances. For example in the United States during World War II all the scheduled elections under the stipulated electoral calendar were held since the system did not allow for any flexibility in form of postponement. What only ensured stability of the system and continuity of U.S. „war policy was the popularity of President Franklin Delano

Roosevelt, who was re-elected twice during the World War II. However, during the same period in Britain the tenure of the government that was held together under a war coalition structure was easily extended. Such flexibility is unknown to the presidential system in the United States or Nigerian and could not be contemplated without a prior constitutional amendment. Nigeria is presently (October 2010) embroiled in a debate on whether the Independent National Electoral Commission can conduct credible General Elections in January 2011, in view of the time constraints imposed on it by the amended 1999 constitution and the newly enacted Electoral Law.

4. **Very Expensive to Operate:** Another disadvantage of the Presidential system is that it is very expensive to run. The parliamentary system is considered to be more cost effective since it is from the elected members of the parliament that the Prime minister and other ministers, who constitute the nation's cabinet, are appointed. This arrangement is economically more efficient than that of the presidential system, which requires elected members of the legislature to resign before they can be appointed as ministers. The system also put a lot of public funds such as security vote and contingency fund, which are not subject to legislative scrutiny or public audit at the disposal of the president. This presidential spending latitude creates opportunity for lack of fiscal discipline, or even corruption of all forms.
5. **Absence of Party Discipline:** Unlike the parliamentary system where party discipline is very strong and which fuses the cabinet and the parliament into one like a Siamese twin which must swim and sink together, this is not the case in a the presidential model. The fluid party under the presidential system structure may make the

relationship between the executive and the legislature prone to disagreements and less easy to manage; and thus hamper the operation of the business of government.

6. **The process of Lobbying can encourage Corruption:** Although lobbying, if decently applied, has become an acceptable means by which pressure groups influence public policies; yet it is also open to abuse or misuse by a more than determined chief executive who is determined to have his ways at all costs. This was very evident during the early days of the fourth Republic in Nigeria when „Ghana Must Go“ bags allegedly funneled from the presidency and meant to bribe members of the National Assembly were displayed publicly for everyone to see.

1.4 Application of the Presidential System of Government

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1.5 Summary

In this unit we began with the treatment of the presidential system of government by defining it and stating its basic features. We also discussed the advantages and the disadvantages of this system of government. We finally used the United States and Nigeria as case studies to illustrate the practice of the presidential system of government.

The American experience of over two hundred years has shown that the presidential system of government can be a success story. But the Nigerian experience since 1979 when the system was first adopted does not present a cheery or similar story. For this reason there has been clamor for Nigeria to return to the parliamentary system of government which collapsed fatally in 1966. In spite of its many advantages it is claimed by the opponents of the model that the presidential system of government is too expensive to maintain, especially by less developed countries and that it cannot readily guarantee a responsive, or provide responsible government.



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1.7 Possible answer to self-assessment exercise (s) within the content

Self-Assessment Exercise 1

Analyse the major difference between the functions of a President as Head of State and Head of government

Answer

Functions of the President in a Presidential System of government

1. The Executive president is both head of state and head of government. He has the power to sign a bill into law. He can however refuse signing a bill if he is sufficiently convinced that the content of the bill does not conform to his programmes or if it contain some anomalies, until the adjustments are made to make the bill conform to the president's fancies.
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Self-Assessment Exercise 2

Discuss major features of the American Presidential system

Answer

The president exercises veto power Under the Presidential system of government, the President who has the whole country as his constituency is elected separately for a fixed

term of four years, and separately from the Congress. The President is the head of state, head of government and commander-in-chief of the armed forces. But in some respects despite having the whole country as his constituency, the President in exercising his major functions of legislations, appointments; treaty making and declaration of war shares his power with the Congress.

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A single countrywide constituency: The whole country constitutes a single constituency for a president in a presidential system of government

Separation of Powers and Checks and Balances: The presidential system of government is anchored on the twin mechanisms of separation of power and checks and balances. This is not the case in the parliamentary system where power what operate is a fusion of power among the three organs of government

Fixed Tenure of Office: The President under the presidential system has a fixed tenure in office, usually a four-year period before another election is due, when he can seek for a re- election for another term in office. In Nigeria and the United States, no president can serve in office for more than two terms. The late president Franklin Roosevelt of U.S. however had a singular distinction to be elected into the office of president for more than two terms, a situation which arose partly because of the contingency of the war situation and his immense popularity. But this is no longer possible since the amendment of U.S. constitution.

Veto Power: there is adoption of veto power by the president in the presidential system of government, the president is constitutionally empowered to refuse to assent any bill passed by the legislature that he considers to be against public interest, but it isn't a feature in the parliamentary system of government.

Primacy is accorded to the Constitution: The constitution is the supreme law in the presidential system. This is unlike most parliamentary system where supremacy lies with the parliament.

UNIT 3: THE PARLIAMENTARY SYSTEM OF GOVERNMENT

Structure

- 1.1 Introduction
- 1.2 Learning Outcome
- 1.3 Main Contents
 - 1.3.1 The Meaning and Structure of Parliamentary System of Government
 - 1.3.2 Characteristics/Features of a Parliamentary System of Government
- 1.4 Applications of the Parliamentary System of Government
- 1.5 Merits and Demerits of the Parliamentary System of Government
- 1.6 Summary
- 1.7 References/Further Readings
- 1.8 Possible answer to self-assessment exercise (s) within the content



1.1 Introduction

This unit deals with the parliamentary system of government and discusses its major characteristics and features. It also examines the dual nature of its executive and the balancing role it was meant to serve. The Unit then considers the merits and demerits of the parliamentary system of government.



1.2 Learning Outcome

By the end of this unit, you should be able to

1. Define and explain the basic features of the parliamentary system of government
2. Understand the primacy of the parliament as well as role of the cabinet as the clearing house, jointly working to ensure the success of the parliamentary system.
3. Know the advantages and the disadvantages of the Parliamentary system of government.
4. Use Britain as one model to demonstrate the success of the parliamentary system of government



1.3 Main Contents

1.3.1 The Meaning and Structure of Parliamentary System of Government

Essentials of Parliamentary System of Government

Parliamentary system of government is the system of government in which the office of the head of government is different from head of government. The head of government performs the real and executive function. In Britain, a good example of a country operating the parliamentary system of government, the prime minister, who is the head of government, performs the substantive executive functions. The prime minister is usually appointed by the head of state from the party that controls majority seats in the legislature. The head of state, like the Queen in Great Britain performs ceremonial duties like welcoming foreign dignitaries, presiding over important national functions or ceremonies, signing bills into law in the parliament and addressing the parliament at the beginning and the end of parliamentary life. The position of head of state in Britain is heredity. In Britain the parliament is made up of the Queen, the House of Lords and the House of Commons. In a parliamentary system of government the Prime minister occupies a pivotal and key position; he appoints ministers from the elected members of House of Commons, and they are all answerable and accountable to the parliament for the discharge their functions. The prime minister is the chairman of the cabinet and he has primary responsibility for the execution of policies.

Parliamentary System as a Responsible Government

A Parliamentary system of government is otherwise referred to as a responsible government. This term can be applied to the British system in three ways viz: First, a major characteristic feature of the British system is that Governments act in a responsible manner; in the sense that they do not abuse the wide legal powers that they possess as a

result of the various features of the constitution, particularly its unwritten part which concentrates considerable powers in the Government. Thus, in this sense a responsible government is a trustworthy government. Second, a parliamentary government is responsive to public opinion, and acts in accordance with what it judges to be the wishes of the majority of the people. Here, there is an overlap between two meanings, for it is assumed today that in order for a government to be regarded as trustworthy it must be responsive to public opinion. Third, a very important feature of a parliamentary system is that government is accountable to parliament. This is based on the principle that ministers are drawn from parliament and (b) that government has to have the support of the majority of members of House of Commons in order to survive. Two doctrines stem from this third meaning (1) Collective Government Responsibility and (2) Individual Ministerial Responsibility to Parliament.

Collective Responsibility

This means that all members of the government are collectively responsible for the successes/failures of the government and all ministers, not just departmental ministers concerned, must collectively share moral responsibility for its policies. Implicit in the doctrine is the notion that all ministers are bound to support government decisions before the public, parliament and the party, and at the very least, must refrain from openly criticizing government policy. This doctrine also implies that a minister who dislikes a particular government policy must reconcile his differences or resign from the government. Sometimes resignation comes immediately, as Mr. Christopher May how did when he resigned over defence policy in 1966. Alternatively, the ministers may remain for a time in the cabinet hoping to convert its views as with Mr. Frank Cousins

who was known to be hostile to the prices and incomes policy of the then Labour government long before he eventually resigned in 1966. A similar lack of cabinet solidarity on a fundamental issue was revealed in 1974 when both Michael Foot (Secretary of State for Employment) and Eric Heffer (Minister of State for Industry) openly disagreed with the Labour Government's decision to supply arms to the then new anti-Communist regime in Chile. The maintenance of a united government front is an essential prerequisite for the preservation of party discipline in the Commons, and to the answering of opposition and public criticism of government policy. In this respect collective responsibility also serves as a means of suppressing differences of opinion within the government itself. The doctrine applies to all ministers, from senior cabinet ministers to junior ministers.

Ministerial Responsibility

This related concept also has a number of meanings: In a legal sense it means that the ministers not the monarch, is responsible for a particular aspect of governmental activity, and in this sense it is the logical expression of the principle that the monarch exercise prerogatives only on the advice of ministers.

Self-Assessment Exercise 1

Mention major distinctions between Collective Responsibility and Ministerial Responsibility

1.3.2 Characteristics/Features of a Parliamentary System of Government

It might be appropriate here to examine the differences between the presidential system, which we have discussed in the previous unit (Unit 1.) and the parliamentary (cabinet) system which we are examining presently. This will also help to bring out vividly the

major characteristics of the parliamentary system of government. The two systems differ in a number of ways which we shall examine below.

DUAL EXECUTIVE

In the cabinet system of government, the head of state is different from the head of government; the Queen performs the ceremonial functions while the Prime Minister performs the executive functions (as it operates in Great Britain). However in the presidential system of government, the head of state is also the head of government, as it obtains in Nigeria presently where President Goodluck Jonathan combines both the ceremonial functions and the executive duties.

FUSION OF POWERS

The theory of separation of power is not strictly observed in the cabinet system of government, since there is no separation of powers between the executive and legislature, the cabinet members are also members of the legislature; they both take part in drafting bills (The minister in Britain is also a member of the legislature which makes it possible for him to combine an executive and legislature functions), but in the presidential system of government, there is clear cut separation of powers, the president and the member of the executive are not member of the legislature and if any member of the executive wants to join the legislature, such a person would have to resign his position and contest election, and vice versa. In the cabinet system of government, the executive depends on the legislature for its existence since there is fusion of power but in the presidential system of government no organ of government depends on the other for its existence since they have distinct functions to carry out, and also acts as watch dogs over one another.

TENURE NOT GUARRANTTEED

In the cabinet system of government the head of government Prime Minister will lose his position while the government he heads will resign when a vote of no confidence is passed against him in parliament. This implies that the Prime Minister can only remain in office for as long as his party still control majority of seats in parliament. This is unlike the presidential system of government where there is a stated tenure during which a president would remain in office, except if he willingly resigns or if he is removed from office through the rigorous process of impeachment (the stated tenure in Nigeria is four years).

POWER OF ATTAINMENT

Another difference between these two systems of government is the power of attainment, which can throw up an elected member of the legislature into the position of a prime minister, on the strength of his ability to command the loyalty of his former colleagues. In Britain today, the Prime Minister, Mr. David Cameron initially an elected member of House of Commons on the ticket of the Conservative Party before he rose to become the British prime minister. His party presently leads a coalition government with the Liberal Democratic Party while the Labour Party becomes the official opposition party. This is not the case in a presidential system of government where the president is elected through popular votes and the candidate from the party that has the highest number of votes and a nationwide spread becomes the president.

OFFICIAL OPOSITION

In the parliamentary system of government the opposition party is officially recognized, i.e. the party that is strongly recognized with the majority seats in the legislature forms

the government while the other party constitutes the opposition. The leader of the opposition party forms the shadow cabinet and is ever ready to form a new government on the collapse of the ruling party. However in the presidential system of government no party is officially recognized as the opposition party in the legislature. Indeed members of the ruling or the president's party can form a cluster of opposition against their party's position or even combine with members of the opposition parties to defeat programmes sponsored by their party.

PARLIAMENTARY SUPREMACY

In the parliamentary system of government, the constitution is not supreme, rather the primacy lies with the legislature, or the parliament as it is called in Britain. The legislature can re-write or edit the written parts of the constitution and also dissolve the cabinet at any time. In Great Britain the Queen can dissolve the parliament when advised to do so by the Prime Minister. The situation is different in the president system government where the constitution is supreme since all the three organs of government derive their power from it. Here, the president has no power to dissolve the legislature.

PARTY DISCIPLINE

In the parliamentary system of government there is existence of party discipline (adherence to party ideals and proposal) if the party discipline is weak the party in power would find it difficult to maintain a majority in the legislature and so some of its policies may be defeated. It is also essential that ministers must come from the same party with the prime minister in the cabinet. However in the presidential system of government ministers may belong or may not belong to the same party with the president. This gives a president a free hand in appointing his ministers.

Self-Assessment Exercise 2

Analyse major characteristics of the parliamentary system of government

1.4 Applications of the Parliamentary System of Government

Britain is one country in the world that is foremost in its adoption and practice of the Parliamentary system of government. It is a system of dual executive in which there is separation between the head of state (the Queen) and the head of government (the Prime Minister). Under this system which is also referred to as cabinet government the parliament is the supreme legislative body in Britain. Nigeria also operated the parliamentary system of government in the First Republic, and like Britain its Parliament was bicameral (the Senate and House of Representatives, but unlike the British model, she operated a written constitution. Before Nigeria became a republic in 1963, the head of state was designated a Governor-General, then a titular head just like the Queen he represented. But after 1963 when Nigeria became a republic the post of head of state was renamed the president. The title of Prime Minister for the head of government was retained in 1963, as it was in 1960 when Nigeria became independent.

Nigeria however discarded the parliamentary system in 1979 after the return to democratic government, because the ills and consequent failure of the First Republic was partly blamed on the parliamentary system of government. In Britain the parliamentary system after centuries of its operation has remained an admirable success story. Since we have discussed extensively the British system under Unit 4 of Module 3 of POL 111 it will be superfluous to dwell at length on the British model of the parliamentary system here. But it will not be out of place to take a closer look at the institution of the British

parliament, and whether it is possible to reconcile the idea of its much vaunted supremacy with the concept of rule of law.

1.5 Merits and Demerits of the Parliamentary System of Government

Merits of the Parliamentary System of Government

1. The parliamentary system of government curbs autocracy and dictatorship in government. It is very difficult for the system to breed or produce dictators since the government is always conscious of the fact that if it does, it will incur the wrath of members of parliament which may lead to the passing of a vote of no confidence on it. The notion of party discipline which requires that both the government in power and members of parliament follow the laid down policies and programmes of the party as contained in its manifestoes usually ensure that neither the government nor the parliament crosses the line.
2. Parliamentary system promotes dedication and efficiency in government. The ministers at party caucus must have thoroughly discussed proposals/bills before bringing them to the parliament for consideration. This ensures quick approval of policies and enacted of laws since members of the cabinet also sit in parliament where they see to their passage. In addition, in order to avoid criticisms and the possibility of vote of no confidence on his government, the Prime Minister is always conscious of putting in the best. This is done through regular check on the activities of his ministers. The efficiency of ministers is further open to closer scrutiny during Question Time. This is the period when members of parliament from ministers what has been done or left undone in their ministries, and seek to know why. The

- legislators can also use this period to offer suggestions on how ministers can improve on their performance.
3. There is a lot of merit in the concept of collective responsibility and ministerial responsibility which is built on the principle that the cabinet should be united in all its decisions. This makes the cabinet as a body and the ministers as individuals to be careful about their conduct in office because it may have far reaching implications on the stability and survival of the government. The principle of ministerial responsibility also discourages passing of bulk or shifting of blame by individual ministers. The parliamentary system is equally more democratic responsive to public opinion. This is because the cabinet is not responsible to the Prime Minister who appoints them, but to the parliament.
 4. The presence of an officially recognized opposition party in a parliamentary system of government makes the ruling party or the governing coalition to be conscious of its responsibilities to the electorate. For this reason the government is always alert to alternative views that may be canvassed by the opposition so as to know where to improve its performance. The role of the opposition party therefore is not only to constructively criticize the government as an effective watchdog, but also to see itself as the government in waiting or as an alternative government, that is ready to take over the government should the situation arises.
 5. The fusion of power which ensures that cabinet members are also parliamentarians promotes mutual understanding between the legislative and the executive branches of government. The fact that members of the executive also sit in the legislature as lawmakers ensures that process of decision making is faster. It does not require

- further elaboration to know that consensus on major issues can be easily reached since the cabinet usually operates as a committee of the parliament.
6. The parliamentary system is less expensive to run because ministers are chosen from elected members of parliament. This is not the case under the presidential system of government where ministers are chosen from outside the parliament. Indeed, in a presidential system a serving member of the legislature parliament must first resign and vacate his seat in the house before he can be qualified to be appointed as minister. Thus, the additional money that will be required to hire more hands outside the legislature is thereby saved in a parliamentary system of government.
 7. In spite of changes of government at regular intervals the non-partisan but largely ceremonial and symbolic role of the monarch or head of state in a parliamentary system contributes to continuity and sustenance of state institutions. For example, in Britain because the Queen has been in office since 1953, she has remained the anchor of stability of the British institutions and values, despite changes in governments in the country in the past 53 years now.

Demerits of the Parliamentary System of Government

1. The best people may not be in government since the Prime Minister is restricted to appoint ministers into his cabinet from members of his party. This is not the case under the presidential system of government the executive president is popularly elected, and enjoys a high degree of flexibility and freedom in the choice of those who will serve him in the cabinet. It is even possible for non- card carrying party member to be appointed to serve in the cabinet and other key positions in government.

2. Parliamentary system violates the principle of separation of powers and the expectations that liberty of the citizens and rule of law will be guaranteed. A major disadvantage of fusion of powers is that it may lead to needless bottleneck in the relationships among the organs of government and complexity in administration of government.
3. There is also the danger of personality clash or conflict of interest between the head of state and head of government in a parliamentary system of government. It has been further argued that a division of power between the head of state and government is alien to African societies where political leaders are used to wielding enormous power. This type of conflict of interest manifested between Dr. Azikiwe, then President and Alhaji Tafawa Balewa, then Nigeria's Prime Minister of Nigeria in the First Republic when the two of them disagreed over the conduct and outcome of the December 30, 1964 federal elections. One of the reasons that made Nigeria decided in favour of the presidential system of government in 1979 was the fear of a possible repeat of the constitutional crisis, which enveloped the country in the aftermath of this disagreement between the two leaders. In September 2010, the Somalia Prime Minister, Omar Abdirashid Ali Sharmarke resigned from office due to personal disagreement between him and president Sheik Sharif Ahmed. While defending his resignation, Sharmarke explained: "After seeing that the political turmoil between me and the president has caused security vulnerability, I have decided to resign to save the nation..." (The Guardian, 22nd September, 2010).
4. Another disadvantage of the parliamentary system of government is that it can also throw up a person who is not countrywide popular or known as a Prime Minister.

Unlike the presidential system, which requires the leader of government (president) to have a countrywide appeal before he can be elected, the requirements for the office of a Prime Minister are less stringent. Any elected member of House of Commons from a single member constituency who is believed to have the majority support of other members can become the leader of government in Britain. This was exploited in Nigeria during the First Republic when the leaders of the Northern People's Congress did not bother to campaign in the other regions because they were confident that votes from the Northern region alone were sufficient to earn them the prestigious post of Prime Minister.



1.6 Summary

In this Unit, we have discussed the parliamentary system of government and identified its basic features. We also noted that the Parliament is the hub of the parliamentary system while the cabinet is its caucus where the operators of the system regularly meet to shape public policies. We identified the merits and demerits of this system of government and cited the example of Britain, despite its unwritten constitutional structure, as one country in which the culture of Westminster parliamentary system is fully developed and thriving. The Parliamentary system of government is widely acclaimed as Britain's invention meant for export to the rest of the world. Its practice in Britain has been so successful that countries outside the Commonwealth of Nations are craving to adopt it. Indeed Canada, despite its proximity to the United States and its readiness to always collaborate with the latter in other areas continues to retain its parliamentary system while its leaders regard it as near sacrosanct. Although the parliamentary system is not without its drawbacks, but

when compared with the presidential model, on balance, it is seen by some as a preferable system of government.



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1.8 Possible answer to self-assessment exercise (s) within the content

Self-assessment exercise 1

Mention major distinctions between Collective Responsibility and Ministerial

Responsibility

Answer

Collective Responsibility

This means that all members of the government are collectively responsible for the successes/failures of the government and all ministers, not just departmental ministers concerned, must collectively share moral responsibility for its policies. Implicit in the doctrine is the notion that all ministers are bound to support government decisions before the public, parliament and the party, and at the very least, must refrain from openly criticizing government policy. This doctrine also implies that a minister who dislikes a particular government policy must reconcile his differences or resign from the

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Self-assessment exercise 2

Analyse major characteristics of the parliamentary system of government

Answer

It might be appropriate here to examine the differences between the presidential system, which we have discussed in the previous unit (Unit 1.) and the parliamentary (cabinet) system which we are examining presently. This will also help to bring out vividly the major characteristics of the parliamentary system of government. The two systems differ in a number of ways which we shall examine below.

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the prime minister in the cabinet. However in the presidential system of government ministers may belong or may not belong to the same party with the president. This gives a president a free hand in appointing his ministers.

UNIT 4: UNITARY POLITICAL SYSTEM

Structure

- 1.1 Introduction
- 1.2 Learning Outcome
- 1.3 Main Contents
 - 1.3.1 Meaning of a Unitary System of Government
 - 1.3.2 Characteristics of a Unitary System of Government
- 1.4 Applications of the Unitary System of Government
- 1.5 Merits and Demerits of a Unitary System of Government
- 1.6 Summary
- 1.7 References/Further Reading
- 1.8 Possible answer self-assessment exercise (s) within the content



1.1 Introduction

This unit discusses, first, the meaning and characteristics of a unitary system of administration of government. It also uses the examples of some countries in the world to illustrate the application of unitarism. Lastly, the unit examines the advantages and disadvantages of the unitary system



1.2 Learning Outcome

By the end of this unit, you should be able to 1. Define the unitary system of government, in addition to knowing its major features. 2 Use the examples of countries practicing unitary government to have a deeper understanding of this form of government. 3 Explain the benefits as well as the weaknesses that are inherent in the practice of unitary form of government.



1.3 Main Contents

1.3.1 Meaning of a Unitary System of Government

A government is regarded as unitary when the national or central government is supreme over other levels of government that might exist in a given state. Other levels of government referred to in the above definition are the local governments or units. The central government has full legal right to over-rule such Local governments. They are not only created by the center, they owe their existence to the center and are subordinate to the national Government. The principle that governs a unitary constitution is Unitarianism. The word „Unitarianism“ means the concentration of political power in the hands of one visible sovereign power; be it that of a parliament or a legitimate dictator. In short, a unitary constitution means that sovereignty is exercised from one source rather than from many sources. It is a unit centre of power, meaning that power emanates from one source only. According to Chief Obafemi Awolowo (1966), the only thing which distinguishes a unitary from a federal constitution (government) is where the supreme legislative authority in the state resides”. He expatiates further: Whereas in the case of a federal constitution the supreme legislative authority is shared between the general or central government and the regional, provincial, or state governments, all of which are co-ordinate with and independent of one another in regard to the powers and functions expressly or by necessary implication vested in them by the constitution. We must note that the terms unitarism and federalism are contradictory and mutually exclusive. To put it differently, while there are different types of unitary or federal constitution, we cannot, strictly speaking have a constitution which is, at the same time, unitary and federal, The phrase quasi federal or quasi unitary is a hybrid, which merely seeks to derive the best from both ends, and is therefore unrealistic. Though a full discussion of the federal form of government in the next unit, but it will be of benefit to you here if we enrich this

discourse by introducing what the late Chief Awolowo once popularized and described as the linguistic principles. Although the first and fourth of these four principles are particularly relevant to our discussion on the unitary form of government, it will be more illuminating if mention the other two, as follows:

- a. If a country is unilingual and uni-national, the constitution must be unitary.
- b. If a country is unilingual or bilingual or multilingual, and also consists of communities which, over a period of years, have developed divergent nationalities, the constitution must be federal, and the constituent states must be organized on the dual basis of language and nationality.
- c. If a country is bilingual or multilingual, the constitution must be federal and the constituent states must be organized on a linguistic basis.
- d. Any experiment with a unitary constitution in a bilingual or multilingual or multinational country is bound to fail, in the long run

Self-Assessment Exercise 1

Explain unitary system as a political concept.

1.3.2 Characteristics of a Unitary System of Government

The following are the major characteristics or features of a unitary system of government:

- a. There is only one center of power from which authority flows to subordinate levels that are created by the centre.
- b. The central government not only has the power to dissolve the subordinate levels it has created, it can equally modify or reduce the powers given to them.

- c. The subordinate levels are created as agents of the center to administer the local areas on behalf of the centre and to also convey the wishes of the people in the local areas to the center where real power lies.
- d. A unitary government may either operate a unicameral or bicameral legislature. For example Ghana and Britain are unitary states, with the former operating a unicameral while the latter a bicameral legislature.

Self-Assessment Exercise (SAE) 2

List the main features of a unitary system of government
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1.4 Applications of the Unitary System of Government

Britain operates a unitary system of government. Under this arrangement, all governmental powers are concentrated at the central level. Any local level of government that exists are created and allocated powers by the central government. This is unlike the United States where the states as federating units derive their powers from the constituents, and are equal, exercising co-ordinate authority with the federal government in those powers allotted to them.

According to Chief Awolowo (1966), there are many more countries in the world operating the unitary system of government. One obvious reason for this preference for this form of government is that many states in the world are smaller and less heterogeneous. Awolowo cited the example of unitary states like Costa Rica, Cuba, Dominican Republic, Haiti, Jamaica and Trinidad and Tobago which together had a combined population of 28 million, compared with 234 million people in three federal states: U.S.A., Canada and Mexico.

1.5 Merits and Demerits of a Unitary System of Government

Merits of Unitary System of Government

1. Since the logic and mechanism of a unitary government avoids the division of a country into autonomous regions or states, it can help to preserve and promote national unity. Unlike a federal system that promotes regionalism and tribalism, which further engender dual citizenship and double allegiance, one supreme central government under a unitary framework will put an end to all these divisive and centrifugal forces.
2. In the unitary system there is the absence of duplication of centres powers as it is in the federal states. Since decisions on all-important issues are made at the centre it makes the costs of running the administration or of the government less expensive.
3. Concentration of power rather than its dispersion ensures a strong government. This is because there is minimal diversity in a unitary state. In a unitary system of government due to much identical culture, economic and social composition of the people in the state/country there is usually the absence of friction, tension or rancor, that often characterize the federal system in the struggle for “unity in diversity.”
4. The principle ensures that even development is realized in a state that operates a unitary system of government.
5. There is uniformity of laws and administration of the government of a unitary state. This ensures that there is no overlapping or conflict of jurisdiction throughout the state. This makes the allegiance of the citizens“ allegiance to the state to remain undivided. Unlike in the federal system of government where citizens owe allegiance both to the centre and the region to which they belong, such a situation that can breed

separatist tendencies is avoided in a unitary state. In short, the unitary system does not stand divided.

6. The unitary system of government is also credited with the advantage of pursuing vigorous foreign and domestic policies. Since all powers are concentrated with the centre, clear cut foreign and home policies can be laid down and boldly followed. This is because the federal tendencies that may affect a state's foreign policy negatively are not there nor are there much ethnic factions, religions and social heterogeneity found in federal states.

Demerits of a Unitary System of Government

In a unitary system of government, power is highly centralized and concentrated in one sovereign. This can lead to totalitarianism, oligarchy or even autocracy in the running of the affairs of the state. The unitary system as a result of the point mentioned above often makes it difficult for the masses to take active part in civic affairs of their country.

There is also no local initiative in a unitary system of government. This is because the little or residual power delegated to the local authorities can be taken away from them at the whims and caprices of the centre. In France, for example, „the Minister of Interior presses the button and the prefects, the sub prefects, the Mayors and the Deputy Mayors do the rest.“ The central government is not always aware of local problems; it leaves the distant authorities with the determination of policies and the regulation of affairs, which in fact, may be of no concern to any, except the people of the particular localities affected.

The unitary system can also easily collapse. Single central authority may easily collapse under stress from within and without. Multiplication of centres of power serves as a safeguard against such a danger.



1.6 Summary

In this unit we began with the examination of unitary form of administrative system, by giving its definition, meaning and characteristics. We also observed that a unitary system is most suitable for smaller states with less diversities of population, and for this reason, it enjoys wider acceptance in today's world of mini, or even in certain cases, miniature states. Lastly, we discussed the advantages and disadvantages of a unitary system of government.

Unitary system of administration, like federalism, which we will discuss in the next unit, is very popular among states. Its major attraction is the simplicity of its structure and organization. It is also not open to contestation that may arise due to disagreement over sharing of powers because it provides for one level of authority thereby removing the danger of dual allegiance. Yet, inspite of the aforementioned a unitary system of government is not applicable to the circumstances of every state.



1.7 References/Further Reading

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1.8 Possible answer self-assessment exercise (s) within the content

Self-assessment exercise 1

Explain unitary system as a political concept.

Answer

A government is regarded as unitary when the national or central government is supreme over other levels of government that might exist in a given state. Other levels of government referred to in the above definition are the local governments or units. The central government has full legal right to over-rule such Local governments. They are not only created by the center, they owe their existence to the center and are subordinate to the national Government. The principle that governs a unitary constitution is Unitarianism. The word „Unitarianism“ means the concentration of political power in the hands of one visible sovereign power; be it that of a parliament or a legitimate dictator. In short, a unitary constitution means that sovereignty is exercised from one source rather than from many sources. It is a unit centre of power, meaning that power emanates from one source only. According to Chief Obafemi Awolowo (1966), the only thing which distinguishes a unitary from a federal constitution (government) is where the supreme legislative authority in the state resides”. He expatiates further: Whereas in the case of a federal constitution the supreme legislative authority is shared between the general or central government and the regional, provincial, or state governments, all of which are co-ordinate with and independent of one another in regard to the powers and functions expressly or by necessary implication vested in them by the constitution. We must note that the terms unitarism and federalism are contradictory and mutually exclusive. To put it differently, while there are different types of unitary or federal constitution, we cannot, strictly speaking have a constitution which is, at the same time, unitary and federal, The

phrase quasi federal or quasi unitary is a hybrid, which merely seeks to derive the best from both ends, and is therefore unrealistic. Though a full discussion of the federal form of government in the next unit, but it will be of benefit to you here if we enrich this discourse by introducing what the late Chief Awolowo once popularized and described as the linguistic principles.

Self-assessment exercise 2

List the main features of a unitary system of government

Answer

The following are the major characteristics or features of a unitary system of government:

1. There is only one center of power from which authority flows to subordinate levels that are created by the centre.
2. The central government not only has the power to dissolve the subordinate levels it has created, it can equally modify or reduce the powers given to them.
3. The subordinate levels are created as agents of the center to administer the local areas on behalf of the centre and to also convey the wishes of the people in the local areas to the center where real power lies.
4. A unitary government may either operate a unicameral or bicameral legislature. For example Ghana and Britain are unitary states, with the former operating a unicameral while the latter a bicameral legislature.

UNIT 5: FEDERAL POLITICAL SYSTEM

Structure

- 1.1 Introduction
- 1.2 Learning Outcome
- 1.3 Main Contents
 - 1.3.1 Meaning and Definitions of Federalism
 - 1.3.2 Features of Federalism
- 1.4 Factors enhancing the choice of Federalism
- 1.5 Merits and Demerits of Federalism
- 1.6 Summary
- 1.7 References/Further Reading
- 1.8 Possible answer to self-assessment exercise (s) within the content



1.1 Introduction

Federalism is a very complex political system that requires tolerance, compromise and accommodation from its operators before it can succeed. This unit takes a closer look at the federal system by first defining it and stating its features. The unit also examines the factors that can predispose a country in the direction of federalism as a system of government, as well the different types of federal systems that are being practiced across the world. The unit finally discusses the merits and demerits of the federal system of government.



1.2 Learning Outcome

By the end of this unit, you should be able to:

1. Know the meaning and features of Federalism
2. Understand conditions necessary for federal structure in a country.
3. Identify forms of federal systems and reasons for different variants suitable for different countries.



1.3 Main Contents

1.3.1 Meaning and Definitions of Federalism

Federalism is a type of political system in which the powers of government are divided between self-governing parts and the national or central government. Each of these parts operates within its own jurisdiction or sphere as defined or specified in the constitution. Put differently, in a federation the distribution of powers between the inclusive government and the federating units are guaranteed by the constitution of the country. In the view of Adele Jinadu (1979), “Federalism, is usually viewed as a form of governmental and institutional structure, deliberately designed by political “architects”, to cope with the twin but difficult task of maintaining unity while also preserving diversity.” A.V. Dicey, also defines a federal state as “a political contrivance intended to reconcile national unity and power in the maintenance of state rights.”

Kenneth Wheare (1963), a foremost authority on federalism defined it as a constitutional arrangement in which “neither the central nor regional governments are subordinate to each other, but rather the two levels of government are coordinate and equal.” Wheare also set out conditions that can make a federal constitution/system succeed. According to him the component units must be fairly equal in size and population so as to prevent one unit from dominating the other or a combination of two or more units, from dominating the entire federation. This definition is what Lateef Adegbite (1979) elaborated on when he wrote: A federal state essentially has a divided government: the central or general government which exercises power throughout the political territory, and the several constituent ones, variously termed regional, state or provincial governments, which exercises their respective powers over specified geographical areas of the political

territory. The constitution demarcates the functions of the Central government on the one hand and those of the constituent governments on the other, in such a way that each tier of government is autonomous in its own sphere.

According to Ball and Guy Peters, a federal form of government is one in which political power is divided between the central or federal government and the constituent states or provinces that compose the federal union (Quoted in Mbah, 2007). Furthermore, in a federal system the constituent units have some rights of existence which empower them to perform certain functions which are guaranteed by a constitution. This means in effect that the powers being exercised by these component states are distributed along what is known in America as reserved or shared powers, or in Nigeria as Exclusive, Concurrent and Residual powers. Indeed, in most federations the constituent units often predated the central government. The United States of America (the oldest federation), Canada, Russia, and the Peoples Republic of China, India, Pakistan and Nigeria are good examples of federations. From the above examples of federal states we must note that a federation is either a union of autonomous states that have come together to become a larger political entity as in USA (Aggregative federation) or a federation where a large country is broken into smaller units, as it is the case in Nigeria(Dis-aggregative federation) (Ayoade, 1980:5-8). We should also note that in a federation, two governments control the same group of people but with each level handling different political matters. The allocation of responsibilities to the component parts by the constitution, and respect of their competence in those areas is vital to the survival of federations. The reason for this is that most federations are often the result of a political compromise by which reluctant member-states were induced to come together in a larger

union with a promise that their desire for autonomy in certain areas will be respected. This was the case with the United States when the original 13 states, after the collapse of the Confederation structure saw in a federal arrangement a more realistic structure that could make them cooperate in a union, without the federating units losing their autonomy to handle matters that were of local concern, or specific to them. Federalism can also be viewed either as a process or condition and that is why federations operate in a variety of different political contexts and is associated with a variety of different political outcomes. In other words there is no distinctively federal pattern of relations between the national and regional level of government. This further implies that no two federations are structured alike since the nature of communities that come together to form a nation differ. This is why federal theories appear not clearly cut out, or sometimes confusing. Federal theories have produced about three models: Dual, Cooperative and Organic. Dual Federalism held sway in the 19th Century, co-operative federalism in the 20th Century and organic federalism in the late 20th Century. From the above, it seems K.C. Wheare's view of federalism seems to have placed more emphasis on the institutional criteria in his definition, a position which other scholars have criticized as being too legalistic because it has neglected other cultural factors that help define some federal states. It is this legalistic oversimplification of the federal idea by Wheare that scholars like Carl Frederick sought to correct when he stated that "federalism is a process and not a design...Any particular design or pattern of competencies or jurisdictions is merely a phase, a short-run view of a continually evolving political reality". In this definition, Frederick thus introduced the sociological perspective to his conceptualization of federalism. Therefore, we can have a better understanding of federalism as a distinct

political system of government if we expand our focus beyond the formal constitutional or institutional matters.

Self-Assessment Exercise 1

Explain Kenneth Wheare's views on federal system of government

1.3.2 Features of Federalism

Mclean (1996: 176), agrees with Frederick when he incorporated other political phenomena such as political cultures, party systems, the influence of bureaucrats, and external pressure into these notions of the distinctiveness of federalism and its commitment to decentralization. If we can borrow Livingston's terminology as culled from Adele Jinadu (1979:17), "federal instrumentalities can be found in several forms of political systems, ranging from centralised to decentralize and also to a loose structure of supranational cooperation". Indeed the idea of intergovernmental relations, though not in any way unique to federal systems, however seems to assume a special place and more relevant to federalism. This is why Thomas Graves in (Ayoade, 1980:5), expressed a somewhat sweeping statement when he stated that "intergovernmental relation is synonymous with federalism".

Self-Assessment Exercise 2

Identify and discuss the major features of any federal state

1.4 Factors enhancing the choice of Federalism

Historical Factor

The most fundamental reason why states decide to federate is historical. This reflects the fact of common association and similarity of political institutions that had existed

between the federating units that made formerly independent states to agree at a point in their history to form a common union. This was the case with the United States of America after its war of independence with Britain in 1776 and the failure of the Articles of Confederation. It is similar with the Nigerian Federation after the historical factor of the amalgamation of the Northern and Southern protectorates in 1914, British colonial rule as well as the adoption of common political institutions by the North and South during this period eventually led to the adoption of the federal system in 1954.

Geographical Contiguity

The nearness of states to one another in geographical term is usually a major factor that can induce them to form a federation. It is inconceivable to have states widely separated by land or sea forming a federation. It can be plausibly argued that one of the reasons why Nigeria adopted a federal structure is because the various ethnic groups in the country are geographically contiguous. The fact of this proximity among the different nationalities in Nigeria, a similar feature of other federal states such as the United States, the old Soviet Union and the present Russian federation, makes communication easier a major step in deciding to form a federation. On the other hand, the absence of this factor largely accounted for the disintegration in 1971 of the union between West and East Pakistan to form Pakistan after the Partition of India by the British in 1947. Bangladesh came about due to the physical separation of West and East Pakistan by a distance of about one thousand miles.

Ethnic and Cultural Diversities

Some states may decide to federate in recognition of the fact that their peoples are so diverse in culture, language and interests and for this reason, the unitary option may

provide a ready answer for such social heterogeneity. For example, the Nigerian and Indian Unions were recognition that federalism is the most effective way of allaying the fears of these groups against one another in order to forge unity in diversity. Unity in diversity is achieved in federations because peoples with different cultural backgrounds are allowed to develop along the lines that interest them.

Economic and Administrative Advantages

The need to create large internal market and to pool human and material resources together can lead to the formation of union of states. This factor, which is similar to what economists call the drive for large economic of scale, has made the United States of America today to become a continental size country. The present over 9 million sq kilometer territory of USA came about due to accretion in size, or what federalists call aggregation. Indeed Louisiana, now a state in USA was purchased from France in 1803 while President Andrew Jackson forcefully acquired East Florida from Spain. The notion „the bigger the better“ syndrome also fits into the economic calculations of the former colonial masters in working out the amalgamation policy for the north and south of Nigeria, which assisted them to utilize the available few British administrators in the most economic and efficient manner. Nigeria with a territory of 923,766 square km. and a population (as at 2010) of about 150 million has huge economic potentials and offers tremendous opportunities, all consequent to its large market.

Fear of Domination

Insecurity and fear of domination by external power or possible rebellion by a disaffected element (s) within a country can also encourage the formation of a federation. According to Eme Awa, 1976) in the Nigerian case it was lack of trust among the ethnic groups that

led to the forging of the Nigerian federation, a political arrangement they saw as a more effective device that can safeguard and guarantee their separate local autonomy and independence.

Political Leadership

One of the strongest factors that tend to promote the establishment of a federal union is the quality of leadership. Awa (1976), Agarwal et al (1994) and Mbah, (2001) have at separate points observed that it is the quality of leadership which combine with other factors into a meaningful whole and at the same time gives them weight and direction necessary for a federal union. They all contend that because federalism is a complex system of government its success depends on politically competent as well as enlightened people. A federal system requires statesmen who can provide leadership not only at the formative stage such as when George Washington was at the helm in the United States, at critical and divisive point of Abraham Lincoln tenure as well as the internationalist eras of Theodore Roosevelt and Woodrow Wilson. Earlier in the Federalist Papers, the trio of James Madison, Paul Hamilton and John Jay were instrumental in swinging the United States in the direction of federalism both in their joint essays on federalism and at the Philadelphia Constitutional Conference. Similarly, Chief Obafemi Awolowo for example, wrote a book Thoughts on Nigerian Constitution where he, with convincing arguments, made a case for a federal system as the best constitutional option for Nigeria

1.5 Merits and Demerits of Federalism

Merit of Federal System

1. A Federal system encourages unity in diversity and is a very potent instrument for national integration in plural societies. One major advantage of the federal

arrangement is that it ensures unity under conditions of diversity. In a federation, diversity like ethnic differences, religion, language, economic structure, education, social welfare, etc. usually exists among the component units. Federal arrangements therefore are attempts at bridging these gaps or divide in order to bring about political and social unity without destroying the identity of the federating units. Thus, the federating units are able to retain their separate peculiar identities and are not completely submerged in it.

2. Federalism is an ideal system of government for countries like the United States, China, Russia, India and Nigeria with huge population and territorial size. It is not an accident that Russia, the largest country in the world with a territory of over 17 million square kilometer, covering eleven time zones and China with over 1.3 billion population, the highest in the world are federal states. According to Mbah (2007:195) as at 1995, out of about 190 countries in the world, only 18 of them practice federal systems. Yet these countries, which account for approximately 9.5% of the states in the world, contained a disproportionate 36 percent of the world's population and covered 41% of the world's land area.
3. Another advantage of practicing a federal system of government is that it promotes economic advantages by facilitating greater economic of scale. This is because of a big home market for the purchase of raw materials and the sale of manufactured goods as well as in the easy mobility of labour. Federalism also encourages the possibility that what is available in one part can be of benefits to the other parts of the country. In Nigeria today the non-oil producing parts of the country can equally gain from the petroleum deposits that are in abundance in the Niger Delta area. The

reverse was the case in Nigeria in the First Republic in Nigeria before the discovery of oil in commercial quantities. Similarly, the land-locked inter-land of the country can also benefit from access to the sea via the Lagos ports without the additional burden of paying custom duty. This is in addition to the benefit of sharing from the proceeds of the value added tax, the bulk of which accrues to Lagos State in view of its huge population and its position as the nation's commercial centre/capital. Furthermore, subjects of common interests are administered by the center with the result that the individual states do not have to border or burden themselves with the administrative structures to support such matters.

4. Federalism prevents the danger that of a despotic central government that will erode into and absorb the power of the other units in the federation since the division of powers is constitutionally guaranteed. More so, in a federal system the powers of each level of government are clearly defined and delineated in a written constitution. This helps to curb the centre from exceeding its authority or become autocratic. This also facilitates the establishment of democratic institutions and wider political participation by the citizens. In other words, more people are able to take part in the government of the federation either at the state, region or at the local or grass root levels of governance. This encourages the development of local talents, which may not be the case under the unitary system. These local talents can also be nurtured to become national leaders in future.
5. A Federal system of government leads to efficient administration, because the allocation and dispersal of powers to the various tiers of government help to reduce the work load at the disposal of the inclusive government, without at the same time

over loading the federating units. By preventing administrative overstretch federalism is thus a deterrent against an unwieldy and complicated administrative structure which may lead to inertia and possible collapse of government apparatus. Federalists are of the opinion that multiplicity of centres of authority in a federation allows for flexibility while competitions among the different levels of government encourages complementarily of views, arising from forces, within and without. According to them, unlike the single government in a unitary system that acts like a leviathan that can overpower the subordinate units it has created, this is not possible in a federal system where there are many levels of governments and centers of authority covering a vast territorial.

6. In a federal system local affairs are well looked after by the government. This is made possible by the fact that local matters are assigned to the government at the grass root. Within a federal arrangement local people are able attend to matters like chieftaincy and other traditional and customary issues which are peculiar to them. For example, Sec. 7 of the 1999 constitution of the Federal Republic of Nigeria assigned a wide range of local affairs to each local government council in the fourth schedule. A federal system of government encourages healthy rivalry among the component units, which in turn breeds varied social and economic developments. The Nigerian federation of the first republic is a good example of this point, because during this period, with good and high level of leadership, the various regional government were competing among themselves in the provision of infrastructures and welfare facilities to their people. This brought about development of the regional level of governance.

7. A federal system promotes international prestige for countries that practice it. The components parts of a federation or the smaller federating units if left to exist alone as autonomous states could hardly command international prestige. Though federating units loses their individual sovereignty by coming together under one central government, they nevertheless, stand to gain by becoming part of a larger federation. The strength of Nigeria in Africa today, and countries like India, Pakistan in Asia, and perhaps in the world, lies partly in their huge sizes, which came about due to their federal structure. Indeed the United States, China and the former Soviet Union have been variously described as a continental size country, a colossus and, a behemoth in the world, respectively, as a result of huge accretion in their sizes, consequent to their federal structure. Federal government can also serve as a model for world federations as we have seen in various regional integration efforts such as the European Union (EU), African Union (AU) and North American Free Trade Area (NAFTA).

Disadvantages of a Federal System

1. The first disadvantage of a federal system is that it involves high cost in running the administrative structures (i.e. government ministries departments and agencies) that are duplicated or multiplied at all levels. This duplication is typical of countries like the United States with 50 states and Nigeria with 36 states presently. Indeed most of these structures are replicated in all the 774 local government areas in the country, with the consequent increase in recurrent spending to service these needs.
2. The diversity of groups in a federation along ethnic, language and religious lines, if not well managed, may create problems for a federal system. While the United States

has succeeded in forging one nation out of many, Nigeria is yet to come to term with her diversity. The salience of ethnic solidarity groups and militias such as the Odua Peoples' Congress (OPC), Arewa Peoples 'Congress (APC) and Egbesu and Bakassi Boys in Nigeria are indicative that the country's federal system is still being threatened by these divisive and disruptive centrifugal forces.

3. By the nature and dynamics of a federal system it is also slow blamed for not being able to take quick decisions. The need to strike a workable balance and compromise among the different groups that usually inhabit a federation may impair the capacity of the state to take quick decisions or respond promptly to issues that demand urgent attention of the government. This problem is further worsened by the bicameral structure of the legislature in most federal states where the concurrence of both chambers is normally the requirement before a major legislation can be passed. Added to this is the often rigid nature of the constitution of most federal states in which the advantage of flexibility is lost.
4. A federal system may also engender uneven development of its component parts. This may come about due to differences in resource endowments, or access to it; inequality in educational opportunities. Because of this, states have no alternative than to pursue different socio and economic policies and programmes which may further intensify the differences among them. The designation of certain states as viable or oil rich states, or educational advantaged and others as less endowed or disadvantaged in a federal setting like Nigeria is to underscore the unevenness in the development pattern among them. It is not even unusual to have indigenes of states

- with surplus skilled manpower to work in other states as contract staff, thereby exacerbating the problem of indigenes-settlers dichotomy.
5. Despite the provision for division of powers among the different levels of government, there are cases where conflict of jurisdiction may also hamper harmonious relationships, particularly between the central government and the state, on one hand, or between one state and the other, on the other hand. A case in point in Nigeria, in the first instance, was the conflict of jurisdiction between the federal government and Lagos State government over the creation of additional local government by the latter. The other instance was the strain in inter-government relations between the governments of Oyo and Osun states over the ownership of Ladoke Akintola University of Technology (LAUTECH).
 6. Federal states also face the possible danger of secessions because of some in-built mechanisms to guarantee the autonomy of the states. At times some of these provisions may be interpreted by overzealous leaders to pursue the agenda of self-determination. This was the experience of Nigeria during the civil war (1967-70) and presently in Sudan between the North and South. Due to the seeming irreconcilable difference between the Northern and Southern Sudan, a referendum is due in January 2011 to determine the future of the country.

In the final analysis federalism is a delicate arrangement that requires mutual tolerance. This is why the role of the judiciary or the court is vital in a federal system to ensure that no level encroaches on the other, and if it happens the judiciary comes in as an arbiter.



1.6 Summary

In this unit we have examined federalism as an administrative system and observed that it is more suitable to govern large and heterogeneous societies. Citing relevant examples from different countries in the world we identified the factors that can make a state opt for the federal system of administration, and noted that there are different types of federal systems around the world. We also stated that the federal system offers many advantages, while at the same time possessing some inherent weaknesses, which can make its management both complex and challenging.

Federal solution to the problem of diversity has become a popular response among nations since 1787, when states with similar challenges like the United States followed the lead of the American founding fathers to surmount their own problems. It is not that a federal system offers a kill all panaceas for all the ills that normally face heterogeneous and complex societies, but from the experience of those countries that have adopted the model, it has proven to be a more successful system. Federalism is equally flexible in adapting to the specific needs of each society and more effective in managing the challenges thrown up by groups' diversity in a country



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1.8 Possible answer to self-assessment exercise (s) within the content

Self-assessment exercise 1

Explain Kenneth Wheare's views on federal system of government

Answer

Kenneth Wheare (1963), a foremost authority on federalism defined it as a constitutional arrangement in which “neither the central nor regional governments are subordinate to each other, but rather the two levels of government are coordinate and equal.” Wheare also set out conditions that can make a federal constitution/system succeed. According to him the component units must be fairly equal in size and population so as to prevent one unit from dominating the other or a combination of two or more units, from dominating the entire federation. This definition is what Lateef Adegbite (1979) elaborated on when he wrote: A federal state essentially has a divided government: the central or general government which exercises power throughout the political territory, and the several constituent ones, variously termed regional, state or provincial governments, which exercises their respective powers over specified geographical areas of the political territory. The constitution demarcates the functions of the Central government on the one hand and those of the constituent governments on the other, in such a way that each tier of government is autonomous in its own sphere.

Self-assessment exercise 2

Identify and discuss the major features of any federal state

Answer

Mclean (1996: 176), agrees with Frederick when he incorporated other political phenomena such as political cultures, party systems, the influence of bureaucrats, and

external pressure into these notions of the distinctiveness of federalism and its commitment to decentralization. If we can borrow Livingston's terminology as culled from Adele Jinadu (1979:17), "federal instrumentalities can be found in several forms of political systems, ranging from centralised to decentralize and also to a loose structure of supranational cooperation". Indeed the idea of intergovernmental relations, though not in any way unique to federal systems, however seems to assume a special place and more relevant to federalism. This is why Thomas Graves in (Ayoade, 1980:5), expressed a somewhat sweeping statement when he stated that "intergovernmental relation is synonymous with federalism".

Module 3

ORGANS OF GOVERNMENT AND THEIR FUNCTIONS

UNIT I: THE LEGISLATURE: FUNCTIONS AND STRUCTURE

- 1.1 Introduction
- 1.2 Learning Outcome
- 1.3 Main Contents
 - 1.3.1 The Origins and Evolution of the Legislature
 - 1.3.2 Functions of the Legislature
- 1.4 The Structure of the Legislature
 - 1.4.1 Unicameral Legislature
 - 1.4.2 Bicameral Legislature
 - 1.4.3 The Significance of the Legislature
- 1.5 Summary
- 1.6 References/Further Reading
- 1.7 Possible answer to self-assessment exercise (s) within the content



1.1 Introduction

The legislature is perhaps the most important organ of government in the sense that no society can exist without law. It is also believed that an elected legislature is a major distinguishing feature between a democratic and a military government, since all forms of government do law making. This unit examines the place and role of the legislature as a major institution of government. It also discusses the different types of legislature and the reasons why some countries prefer one to the other.



1.2 Learning Outcome

By the end of this unit, you are expected to:

1. Know the origin and the development of the legislative arm of government
2. Understand the functions it performs in the process of governance
3. Explain the reasons why countries operate different legislative structures



1.3 Main Contents

1.3.1 The Origins and Evolution of the Legislature

The Legislature is one of the three organs of government. A democratic society is composed of the representatives of the people. The legislature is perhaps the earliest organ of government. The history of this organ of government can be traced back to the classical days of the Greece and Roman Empire. Both countries had legislative bodies. Indeed the idea of the senate as the upper house had its origin in Rome. The Roman's Senate was exclusively composed of the leading aristocrats in the country and thus, members were proudly referred to as the "Fathers of Rome. The term senate has since struck as many countries; including Italy, France, the United States and Nigeria have copied it into their constitutional framework, without doubt, as the upper house. The equivalent of the senate in the British system is the House of Lords, which is the oldest second chamber in modern world, and the largest. In order to capture the interest of the vast majority of the citizenry, Rome also created the popular assemblies. This is the precursor of the modern day representative legislature, which has increasingly assumed more prominence since it conforms to the democratic principle of popular sovereignty or the mandate theory of representation. The struggle between the then pliant or rubber stamp parliament and the absolute monarchy, popularly known as the Puritan "Revolt" which later culminated in what is today known in Britain as the concept of parliamentary supremacy is a major event in the evolution of today's legislature. It was meant to underscore the fact that the legislature should occupy a pre-eminent position in its relation with the executive. Since then, other countries have accepted the legislative institution as the bedrock of democracy. It is however possible to have some countries

that claim to be democratic where the legislatures have been pitifully transformed into appendages of the executive arms of government. But in some countries like the Nazi Germany or Fascist Italy of the inter-war years, there was no pretence about what their leaders saw as the subservient place of the legislature in the countries' political systems. This was also true of the Supreme Soviet, the legislative body of the former Soviet Union, which the constitution of the country made an integral and subordinate institution to the communist party, and its rigid imposition of conformity throughout the country. The picture is not different with the China's National People's Congress. There also some countries in the Middle East such as the Kingdom of Saudi Arabia where no legislative bodies exist; while others make use of members of the royal family to play advisory roles to the monarchs ruling the countries. Under military dispensations, unelected bodies are often set up to perform legislative functions, though in abridged, if not attenuated capacities.

Self-Assessment Exercise (SAE) 1

Trace the origin of the legislature as an organ of government in your country

1.3.2 Functions of the Legislature

1. Law-Making

The fundamental and primary function of the legislature is to make laws for the good and well-being of the people as well as for the order and security of the country. Such laws are made in accordance with the constitution of a country and in line with the standing laws and procedure that the assembly has stipulated. We shall fully examine the stages involved in law making in Unit

2. Though law making is exclusively preserve of the legislature, it is also possible to find the other two organs of government legally intruding into this domain. This process, which is far from an aberration but borne of expediency or even necessity is known as delegated legislation. The concept will also be exhaustively discussed in Unit

Representative function

This function derives from the status of the legislature as a body composed of elected representatives of the people. Individual members of the legislature in a democracy are representing different constituencies. The theories of representation, especially the mandate theory, require them to mirror the interests and aspiration of their constituents, which forms the basis of their elections. As the major link between the government and the governed, they are expected to visit their constituencies regularly and consult with the voters in order to feel their pulse, gauge public opinion to better represent them in the legislative chambers.

Deliberative function

To be able to discharge its duties effectively the legislature is also an arena for keen deliberations; and for this reason, it has been correctly described as a deliberative body. Some people derisively described the legislature a “talking chamber” by some people. But in order to stress the importance of keen and animated deliberations before vital decisions the laws of most democratic countries grant to law makers what is called legislative or parliamentary immunity. Under the law no law legislator can be held accountable for anything he or she says on the floor of the legislative assembly. The idea of filibustering-prolong speaking with the intention of obstructing progress in the

business of the assembly- is also permitted, especially by the minority members who always believe that they must have their say before the majority have their way.

Approval of Annual Budgets

In most countries, the legislature is always known to possess what is called the power of the purse. This implies that the executive cannot legally make any spending without the authorisation of the legislature. For this reason, the law requires the executive to lay before the legislature its annual spending proposals and its sectoral break down for the consideration, vetting and possible approval of the assembly. It is only after approval has been given that any valid withdrawal can be made from the Federation Account or the Consolidated Revenue Fund in Nigeria, for example. The same applies to supplementary budgets. It is through this power that the legislature, on behalf of the electorate, can hold the government and its officials accountable either for misappropriation, miss-application or outright misuse of public funds (corruption)

Confirmation of Nominations made by the Executive

Under the constitution, the executive can only make nominations to major government positions as ministers, judges and ambassadors. Until these nominees are screened and confirmed by the legislature they remain only designates into positions. They can be deemed to have been validly appointed only after the approval of the legislature, usually the Senate, the upper chamber in Nigeria. In the United States for example the President must submit the names of nominees along with the assigned portfolios to the Congress to enable members determine the suitability of such persons into positions assigned to them. This is not the case in Nigeria where the President is at liberty to assign or re-assign portfolios after the confirmation by the Senate.

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Censure/Impeachment of the Executive

The legislature also reserves the power to invoke the extreme step of censoring and impeaching the President in a presidential system or forcing the resignation of a Prime Minister and the government he presides over, if the parliament passes a vote of no

confidence on it. In the United States President Richard Nixon resigned from office on August 9, 1974 to escape his impeachment the process, which had already commenced in the congress. The move to impeach President Bill Clinton of the United States failed because the Senate could not muster the mandatory two-thirds majority. At the state level, the House of Assembly can also remove a Governor from office.

Ratification of Treaties/Agreements

The constitution of most countries stipulates that for a treaty or agreement between one country and another to have a full force of the law, and have a binding effect on the peoples of both countries, it must be ratified by the legislature. In 1920 the United States could not join the League of Nations simply because the country's Senate refuse to ratify the Treaty of Versailles, in which was embodied the Covenant of the League. This was in spite of U. S's President Woodrow Wilson dominant role in nurturing the idea that crystallised in the formation of the League of Nations.

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Constitutional Amendments

Another important function of the legislature is the power to amend the nation's constitution. It may modify sections of the constitution or replace it in its entirety. In a federal system, this power is shared between the inclusive government and the government of the component states. In the recent constitutional amendments carried out in Nigeria in 2010, the procedure commenced with the National Assembly before it went to the states for their concurrent consideration and approval. Under the Nigerian constitution, a bill for the amendment of the constitution must receive the support of two-thirds of members of both houses of the National assembly as well as 24 out of the 36 of the states presently in the country.

Without meeting these stringent requirements, the bill cannot receive presidential assent.

Self-Assessment Exercise (SAE) 2

Explain the functions of the Legislature that is most central in the process of governance
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1.4 The Structure of the Legislature

There are two types of legislature: the unicameral and the bicameral legislatures.

1.4.1 Unicameral Legislature

If a country has a single legislative chamber it is called a unicameral legislature, but if on the other hand, it has two chambers or houses it is called a bicameral legislature. Countries with unicameral legislature include Ghana, Turkey and Greece. There are a few other countries that started with bicameral legislature but ended with bicameral

legislature because they later abolished the upper chamber. They include New Zealand, which abolished her upper chamber in 1950, Denmark in 1954, and Sweden in 1970 (Mbah, 2007).

Advantages of Unicameral National Legislature

1. A Unicameral legislature is less expensive to run. The salaries and allowances that would have been paid to the members of the second chamber can be easily spent on other facilities and infrastructures. This is a major form of relief in countries such as Nigeria where the emoluments of the legislators constitute a large chunk of government recurrent expenditure.
2. The passage of bill can also be done without delays that are associated with another round of scrutiny in the second chamber. This has the advantage of making government business easier, less cumbersome as well as making the response of government to challenges quicker, especially in situations of emergency.
3. In a Unicameral legislature the state is spared of the internal rivalry and conflict that are associated with a bicameral structure where the two houses often disagree on supremacy claims. This was witnessed in Nigeria when the Joint Committee of the Senate and House of Representatives on Constitutional Amendments openly disagreed over which of the two houses would produce the chairman. There is also no need to set up a joint committee to harmonise differences between the two houses in a unicameral legislature, thereby saving time.

Disadvantages of Unicameral National Legislature

1. It is possible in a unicameral legislature for hasty laws to be passed since the opportunity of a second look by the other chamber is not available. There is therefore

- the danger that the single chamber may fall victim to public hysteria and pass legislations based on the mood of the moment without carefully weighing the long term implications of such laws on the society.
2. Since the second chamber is usually composed of matured, seasoned and distinguished citizens in a country, a country operating a unicameral legislature is denied the benefit of wisdom, experience and partisan detachment that are usually associated with people who had previously served the country in many capacities in the past, and who see service at the upper chamber as unique recognition of their abilities and a call to higher national service.
 3. A unicameral structure is not suitable for large and heterogeneous federal states like the United States and Nigeria where the second chamber is usually designed to allay the fears of the minorities and promote their interests. Therefore unicameral legislature can only work well in smaller states like Ghana and Gambia where centrifugal forces are not salient.

1.4.2 Bicameral Legislature

There are more countries with bicameral legislature, and they include the United States, Britain and Nigeria. The Senate in the United States has 100 members elected based on two Senators from each of the fifty states in the country while 436 members of the House of Representatives are elected on the basis of population from the country's single member constituency. In Nigeria, there are 107 senators elected based on three Senators to represent each of the country's thirty-six states and one senator to represent Abuja, the Federal Capital Territory. There also 360 members in the nation's House of Representatives elected, like its equivalent in U.S.A. on the basis of population. The

equal representation in the U.S. and Nigerian Senate seeks to balance bigness and smallness, majority rule and majority rules, centripetal and centrifugal forces that are typical of most federal systems. The upper house of the British Parliament has about 900 members, although only about 250 are normally present. Among the members who sit in Britain's upper chamber are Archbishops, Bishops, Law-lords and hereditary peers. The lower house, the House of Commons is composed of 650 elected members.

Merits of Bicameral Legislature

1. Bicameral legislature has the advantage of wider representation, including those of minorities and special interests. Since representation in the second chamber countries like the United States and Nigeria is based on equality of states irrespective of population disparities bicameral legislature enables the countries operating it to cope with, and manage the pull of centrifugal forces.
2. The second chamber can also help a country in checking hasty legislation since bills emanating from the first chamber can always go to the second for fresh considerations, during which amendments can be made to enrich the quality of legislations, since it is said that two heads are better than one.
3. Bicameralism can also guard against the potential despotism of a single chamber. It can therefore save the nation from the corrupting influence of undivided power. A second chamber therefore serves as guarantee of liberty and safeguard against legislative tyranny of a single house.
4. The second chamber also performs the role of a conservative stabilizer since it is usually composed of senior citizens of a country who can always bring their wisdom

to bear on law-making, thereby tempering the youthful radicalism of members of the lower house.

Shortcomings of Bicameral Legislature

1. A two-chamber legislature is very expensive to operate, especially in term of financial outlay, for not only the conduct of elections into the houses but also for the payment of salaries, allowances and other benefits for the members and their personal aides and support staff within the bureaucracy. In Nigeria presently there are 360 members in the House of Representatives and 107 in the Senate. And the number will certainly increase if new states are created, especially in the Senate where the law allocates equal representation to each state irrespective of population.
2. From the above, it could be argued that the second chamber is a duplication of effort, and a waste of material, financial and human resources especially in less developed countries where resources are acutely scarce. The process of election, which is a major element of democracy, is in itself, a very expensive project and to again burden the national treasury with a second chamber is nothing but a superfluous exercise.
3. The establishment of two legislative houses can also create conditions for avoidable conflict between the two chambers. This conflict usually crop up during the passage of bills, and which under the law must involve the two houses, or at the 64 point of harmonizing differences between the two chambers or during joint sessions. A case in point in Nigeria was a proposed joint sitting of members of 6th National Assembly to be addressed by late President Musa Yar'Adua was put off because the two

Chambers could not agree on the venue of the sitting and who to preside between the Senate President and the Speaker.

4. It is also possible in countries where membership of the second chamber is not by election for the executive to convert it to an avenue for political patronage. This was the case in Nigeria in the First Republic when the Senate was turned into arena to reward politicians who had been rejected by the electorate during elections. The same possibility exists in Britain where peers were appointed into the House of Lords as reward for political loyalty to the Crown, and by implication the Prime Minister on whose advice the Monarch always acted.

1.4.3 The Significance of the Legislature

From what we have discussed so far, it is obvious that the legislature is a very important organ of government. Indeed, in any reference to democratic governance, whether parliamentary or presidential, the organ that captures the mind of many citizens as a symbol of democracy is the legislature. The Legislative assembly is the place where the public sees democracy in action, in form of debates and consideration of motions, resolutions and bills. Indeed, the closest politician to the voter is the representative of his constituency in the legislature, like the councilor in a local government council.

Ben Nwabueze (2004) a leading constitutional lawyer in Nigeria, acknowledged the significance of the legislature when he wrote: The legislature is the distinctive mark of a country's sovereignty, the index of its status as a state and the source of much of the power exercised by the executive in the administration of government. Professor Nwabueze further argues that the common reference to the President of a country and the Governor of a state as the first citizen is not meant to displace the primacy that the

legislature occupies in the organisation and structure of government. According to him, the president of a country like Nigeria is the first citizen of the country because he is also the head of state, and not because he is the chief executive. He buttressed his argument with the example of Britain where the two offices are separated, and in which the head of state (the Queen) is the first citizen, and not the Prime Minister, who is the chief executive and head of government. Therefore, if the legislature of any state is not viewed with high esteem it is not from lack of legislative primacy, but from the exhibition of negative values and practices by those who are supposed to be honourable or distinguished members of the hallowed chambers. According to Itse Sagay: The sovereignty of the state is believed to be identified in the organ that has power to make laws by legislation, and to issue „commands“ in the form of legislation binding on the community. A closer look at the arrangement of the Constitution of the Federal Republic of Nigeria, 1999, will reveal that the legislature is dealt with before the other organs of government. Thus, Section 4 deals with Legislative powers, Section 5 with Executive powers and Section 6 with judicial powers. During the Fourth Republic in Nigeria, for example the Legislative branch both at the federal and states levels have acted in manners that seem to bring its members into public odium, and the institution itself into disrespect, or even derogate from its independence. First, in the enactment of the Electoral Act of 2001 the National Assembly wrongly assumed sweeping legislative powers by elongating the tenure of elected local government councils. In A.G. Abia State vs. A. G. of the Federation and others, the Supreme Court voided this flagrant legislative excess when it ruled that the legislative powers of the National Assembly were limited to only subjects included in the Exclusive Legislative List. In the other example, during the process of

amendments to the 1999 Constitution Houses of Assemblies from 16 states of Nigeria curiously rejected the plan to give the state Legislature financial autonomy. While members of the National Assembly voted in support of the amendment proposed to Sec. 9 of the Constitution to make the funding of the Houses of Assembly to be charged on Consolidated Revenue Fund (first line charge) members of 16 state Assemblies opted to remain tied to the apron strings of the Executive. In spite of the legislative excess and self-imposed limitation cited above the legislature remains a very important institution of government in any state. The greatest authority of the legislature in a democracy, says Sagay, “is not in its legal powers as contained in the constitution, but its moral authority, as the conscience of the nation and the protector of the sovereignty of the people”. In summing up John Stuart Mill wrote, it is the duty of the legislature “to watch and control the government (Executive); to throw the light of publicity in its acts, to compel a full exposition and justification of all of them, which anyone considers questionable”



1.5 Summary

Within the classical conception in political science, there is no debate about the primacy of the legislature in its relation with the other arms of government. However, over time in many countries, and for different reasons the legislature is losing ground to the executive. For example, though the legislature still retains the power to appropriate, it is the executive that exercises the real power of when to release funds, where to spend the monies and how (in tranches or supplementary) to allocate the funds. This problem is more acute in developing states where the Legislators are still struggling to wean their independence from over-bearing executives where the Legislature enjoys primacy de jure, while the Executive exercises power de facto.

In this unit, we examined the origin and evolution of the legislature as an organ of government. We also discussed the functions being performed by the legislative arm and noted that for this reason, the legislature is, arguably, the most important institution of government, especially in a democratic society. We also looked into the different types of legislature as well as the reasons why some countries operate a unicameral while others prefer a bicameral legislature.



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1.7 Possible answer to self-assessment exercise (s) within the content

Self-assessment exercise 1

Trace the origin of the legislature as an organ of government in your country

Answer

The Legislature is one of the three organs of government. A democratic society is composed of the representatives of the people. The legislature is perhaps the earliest organ of government. The history of this organ of government can be traced back to the classical days of the Greece and Roman Empire. Both countries had legislative bodies.

Indeed the idea of the senate as the upper house had its origin in Rome. The Roman's Senate was exclusively composed of the leading aristocrats in the country and thus, members were proudly referred to as the "Fathers of Rome. The term senate has since struck as many countries; including Italy, France, the United States and Nigeria have copied it into their constitutional framework, without doubt, as the upper house. The equivalent of the senate in the British system is the House of Lords, which is the oldest second chamber in modern world, and the largest. In order to capture the interest of the vast majority of the citizenry, Rome also created the popular assemblies. This is the precursor of the modern day representative legislature, which has increasingly assumed more prominence since it conforms to the democratic principle of popular sovereignty or the mandate theory of representation. The struggle between the then pliant or rubber stamp parliament and the absolute monarchy, popularly known as the Puritan "Revolt" which later culminated in what is today known in Britain as the concept of parliamentary supremacy is a major event in the evolution of today's legislature. It was meant to underscore the fact that the legislature should occupy a pre-eminent position in its relation with the executive. Since then, other countries have accepted the legislative institution as the bedrock of democracy. It is however possible to have some countries that claim to be democratic where the legislatures have been pitifully transformed into appendages of the executive arms of government. But in some countries like the Nazi Germany or Fascist Italy of the inter-war years, there was no pretence about what their leaders saw as the subservient place of the legislature in the countries' political systems. This was also true of the Supreme Soviet, the legislative body of the former Soviet Union, which the constitution of the country made an integral and subordinate institution

to the communist party, and its rigid imposition of conformity throughout the country. The picture is not different with the China's National People's Congress. There also some countries in the Middle East such as the Kingdom of Saudi Arabia where no legislative bodies exist; while others make use of members of the royal family to play advisory roles to the monarchs ruling the countries. Under military dispensations, unelected bodies are often set up to perform legislative functions, though in abridged, if not attenuated capacities.

Self-assessment exercise 2

Explain the functions of the Legislature that is most central in the process of governance

Answer

Law-Making

The fundamental and primary function of the legislature is to make laws for the good and well-being of the people as well as for the order and security of the country. Such laws are made in accordance with the constitution of a country and in line with the standing laws and procedure that the assembly has stipulated. We shall fully examine the stages involved in law making in Unit

Though law making is exclusively preserve of the legislature, it is also possible to find the other two organs of government legally intruding into this domain. This process, which is far from an aberration but borne of expediency or even necessity is known as delegated legislation. The concept will also be exhaustively discussed in Unit

Representative function

This function derives from the status of the legislature as a body composed of elected representatives of the people. Individual members of the legislature in a democracy are

representing different constituencies. The theories of representation, especially the mandate theory, require them to mirror the interests and aspiration of their constituents, which forms the basis of their elections. As the major link between the government and the governed, they are expected to visit their constituencies regularly and consult with the voters in order to feel their pulse, gauge public opinion to better represent them in the legislative chambers.

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UNIT 2: EXECUTIVE - DEFINITION AND FUNCTIONS

- 1.1 Introduction
- 1.2 Learning Outcome
- 1.3 Main Contents
 - 1.3.1 Definitions of the Executive Organ
 - 1.3.2 Functions of the Executive Arm
- 1.4 Structure of the Executive
- 1.5 Summary
- 1.6 References/Further Reading
- 1.7 Possible answer to self-assessment exercise (s) within the content



1.1 Introduction

The executive is the organ of government responsible for the implementation of public policies and decisions. In this Unit, we will examine the role and importance of the executive arm in the organization of government. The discussion will entails examination of the types, structure and functions of the executive as an organ of government.



1.2 Learning Outcome

By the end of this unit, you should be able to:

1. Discuss the concept and the place of the executive as an arm of government
2. Explain the structure and types of Executive organ of government
3. Mention the functions and responsibilities of the executive branch of government



1.3 Main Contents

1.3.1 Definitions of the Executive Organ

The executive is the organ of government charged with the implementation and execution of government policies. Anifowose and Enemu (1999:171), define the executive as those who apply the authoritative rules and policies of a society. In a general sense the

executive branch, in their view, is that branch of government, which gives binding effect to the will of the state by carrying out or executing laws of a country. According to Olisa, et al (1990:47), the executive is “one of the three arms of government whose principal duty is to carry out the general administration of the country. In the course of administering a country, the executive enforces laws, introduces bills into parliament and organise the structure of the civil service or the bureaucracy of a country to make it perform optimally. Ball and Guy Peter (2000:197), conceive the executive as “those primarily responsible for executing the laws but who are gradually intruding into the law-making responsibility of the legislature”. Presently at the federal level in Nigeria, for example, the president is chief executive of the whole federation, a position that puts him at the head of federal executive council. The council composed of ministers and the secretary to the government of the federation meet once in a week (every Wednesday) to attend to the business of government. At every session of the council usually presided over by the president, or in his absence, the vice-president memoranda presented by each ministers are considered, vetted and approved. At the state level, the Governor is the head of the state’s executive council composed of commissioners. Otherwise called the cabinet, this body also formulates government policies at the state level and sees to their faithful implementation. This arrangement is also replicated at the local government where the chairman and his supervisory councilors take charge of the execution of government programmes at the third tier level of government. The executive is often described as the most powerful, not necessarily the most important organ of government. For this reason, those who occupy executive positions may be tempted to be authoritarian, or at times, predatory simply because they control and deploy state funds

and coercive forces. In many countries, the head and members of the executive arm of government are increasingly assuming importance. In the first place, the head of executive at all level is often regarded as the head, symbol and personification of government. The office he occupies is either described as the State House or government House. It is for this reason that the White House, the resident of United States President, No. 10 Downing Street the office of the British Prime Minister and Aso Rock that of Nigeria's President are widely known and regarded as green zones. Similarly, due to the importance attached to the functionaries of the executive branch of government, especially the head and his senior officers, their personal security including that of members of their immediate family is of utmost concern to the state. There are also protocol and scheduling officers attached to them to ensure that their daily activities and official assignments are routinely streamlined, timed and regulated to avoid mix-ups. All these steps are taken to surround the occupants of the executive arm, and the offices they occupy with dignity, since as it is said; authority is increased by a show of dignity. The heads of executive arm of government are also aware of this to the extent that some of them are always ready to flaunt, use or even misuse the privileges or prerogatives they enjoy. Furthermore, in less developed societies executive privileges are better known as incumbency power or advantages, which are often deployed for purposes other than those for which they were originally intended, especially in relations to the opposition members, or perceived opponents. Though not entirely free from occasional misuse, leaders of more developed countries have demonstrated more restraint and circumspection in the manner they use executive orders, which are meant to be rarely exercised without recourse to the legislature. But the extent to which the head of the

executive seek to free him from legislative control will depend on the type of executive that a country operates. This is the focus of the next section of this unit.

Self-Assessment Exercise 1

Explain the role of the Executive as an organ of government

1.3.2 Functions of the Executive Arm

It is important to stress here that the functions of the executive devolve primarily in the office of the president in a presidential system, or the office of the prime minister in a parliamentary system of government, respectively. In Nigeria, for example, apart from expressly stating the functions of the President who is the chief executive of the country, and his vice, the 1999 Constitution did not elaborate on the functions of the executive as an organ of government. The President is to, among other functions determine the general direction of domestic and foreign policies of the government of the federation and co-ordinate the activities of the vice president, ministers and the agencies of government in the discharge of their executive responsibilities. From this sketchy provision, we can distil the following functions of the executive arm of government.

1. **Providing policy making leadership in a government:** The primarily function of the executive is to formulate and decide the policy direction for the state. In a democratic system, such policies are usually derived from the manifesto presented to the citizens during the elections and upon which the power was voted into office. While in office, it is the responsibility of the party in government to translate this blue print into concrete policies and programmes of the government of the day. During the Second Republic in Nigeria, for instance, President Shehu Shagari at the federal level saw to the implementation of his party's housing and agricultural (Green Revolution)

programmes. Similarly, in the states where the Unity Party of Nigeria was in control the chief executive of those states ensured the implementation of the party's four cardinal programmes. The Seven- Point Agenda is also the policy thrust of President Musa Yar'Adua and Goodluck presidency because it was so promised during the electioneering campaign. This is however not to say that the government cannot change, or reshape a policy if the chief executive considers it necessary in view of changing realities, which may be different from what, obtains during the period of elections. For this reason policy evaluation, re-orientation and enrichment constitute additional responsibility of the executive of a state.

2. **Legislative Functions:** The executive whether as a chief executive in a presidential system or in a dual executive, where power is shared between the ceremonial and substantive heads perform the following functions that fall within the legislative realm. The Chief executive in the United States or the monarch in Britain inaugurates the congress or summons the parliament after the periodic general elections. In Britain, he also dissolves the parliament after a vote of no confidence on a subsisting on or after a defeat at a general election to pave way for a new government. The chief executive or ceremonial head of state also gives assent to bills already passed by both houses of the congress or parliament before they can become law. He can also withhold assent if he is not satisfied with the content of a bill or aspects of it.
3. **Judicial Functions:** The executive make appointments into judicial positions into offices such as those of the chief justice and other justices of the Supreme Court at the center and judges at the states level. The executive also exercises the power of prerogative of mercy. This is the power to grant pardon to a convicted person or an

offender who is yet to be tried in a court of law, including the power to commute a death sentence into life imprisonment, or the substitution of a less serious form of punishment for a more severe one. The power to discontinue a case already being tried in a court of law, known as *nolle prosequi* (decision not to proceed with case) is also exercised by the Attorney-General at the instance and on behalf of the executive.

4. **Miscellaneous and Emergency Functions:** The executive perform other functions like award of national honours to distinguished citizens and foreigners who have made positive contributions to the affairs of a country. The exercise of emergency powers during civil wars or war with other nations, internal disturbances or during constitutional crises also falls within the purview of the executive arm. In the definition of what constitutes a state of public emergency the executives of modern governments exercise high degree of flexibility, which forms the basis of which they assume emergency powers. Indeed, as early as the First Republic in Nigeria there were controversies on the justifications or not for the exercise of emergency powers by the federal government over the affairs of the former Western region in 1962. Similar reactions greeted the declarations of a state emergency in both Plateau and Ekiti states by the federal government during the reign of President Olusegun Obasanjo. To make the discharge of these executive functions and responsibilities easier and more effective the Nigerian constitution also established some bodies that are meant to assist the chief executive of the country. They include the National Council of State, Federal Civil Service Commission, Federal Electoral Commission, Federal Judicial Service Commission, National Defence Council, National Economic Commission, National Population Commission, National Security Council and Police

Service Commission. Some of these bodies are replicated at the state level, in addition to the State Council of Chiefs, which specifically fall under the residual powers of state governments.

Self-Assessment Exercise 2

Discuss the importance of policy leadership to the functions of the executive arm of government

1.4 Structure of the Executive

The executive branch of government is broadly divided into two: the members of the cabinet and other political office holders who hold temporary or tenure appointments, and career civil or public servants who hold permanent and pensionable positions. While the former are in charge of initiating government policies, or deciding the direction of the government of the day, the latter concern themselves with the implementation of such approved policies. In the parlance of public administration, while the political head is the master of policy, the administrators are the instruments of policy. Therefore, the executive arm can only function effectively if there is cooperation and mutual understanding between its two segments. It is common to hear people describe the political office holders as birds of passage. The reason is that their grip on government's policies is tenuous and also changes to reflect the swings of popular electoral mandate periodically given to political parties. This is not the same with career officers who regularly see every government in and out of power. For this reason, their role in preserving the integrity of the executive arm, and ensuring the continuity of the government as a whole cannot be overemphasized. But for them to be able to discharge this role with respect and dignity they are guided by certain principles and ethos, which over time become second nature to members of this class. It is beyond the scope of this

course to expatiate on these principles. The principles of impartiality and anonymity of the civil service, to mention just two of them, is so fully developed in the advanced countries of the world that they have gradually evolved into a distinct culture. This is why Max Weber says: The code which must guide the administrator in the tropics is to be found in no book of regulations. It demands that in every circumstance and under all conditions, he shall act in accordance with the tradition of an English gentleman. The job in hand comes first: the interests and opinions of the person carrying out the work should be subordinates. This is the essence of what is known as bureaucracy, the backbone of the major activities of the executive arm. While there is virtue in the practice of bureaucracy, yet there are dangers in over-reliance on it and its rigid, almost mechanical prescriptions. It creates the dual problem of how to preserve customary values and practices as well as how best to use the human and material resources of the state to effect rapid economic development. This challenge has led to introduction of the concept of development administration as a new philosophy of public administration, which has already been adopted by developing countries. It has also contributed to the clamour for the eradication of, or less emphasis on the practice of the spoils system by the executives in the administration of a country. The spoils system, according to the World Book Encyclopedia Vol. 18, 2006 edition, is the practice of giving public offices as political rewards for party services. This system can be found in any country that practices multiparty democracy. When a political party comes into power, some of its faithful followers or officials are given political or public as a reward for supporting the party, or compensation for their roles in assisting the party to win elections. Many people feel this system is justified because they argue that a victorious party must shape policies to

satisfy its supporters. Others however feel that the practice is not justified because able occupants are being displaced from their positions to make room for others who may not be competent, but whose recruitments are based solely to party affiliation or loyalty. Historically, the idea of using the spoils system to enhance presidential control of the bureaucracy had its origin in the United States during the reign of President Andrew Jackson. His friend, Senator William L. Marcy of New York popularised the slogan “to the victor belong the spoils of the enemy”. The consequence of the spoils system is that it bred corruption in the public service of the United States. Opponents of the system were unrelenting in their agitation against. Indeed a disappointed office seeker in the United States shot and killed President Garfield and his death increased the momentum of public demand for the reform of the civil service in U.S. Despite the reforms, it has not been possible to dissuade the executives in the United States, and indeed of most governments in the world from the practice of the spoils system, with the consequence that the performance of the government where the practice is the norm has been less optimal.



1.5 Summary

In theory, the legislature is said to enjoy primacy in its relations with the executive. This is premised on the classical proposition and constitutional requirements that every major executive action must receive legislative sanction before it can become operation, as well as the assumption that popular sovereignty primarily inheres in the elected representatives of the people who sit in the legislative council. However, in practice the executive arm in many countries today has become more powerful than the legislature, and arguably the most powerful organ of government, largely because it controls the power of the purse and sword. More importantly, as the process and activities of

government become more complex and sophisticated those who control the executive arm have devised numerous ways by which they circumvent legislative scrutiny or even subvert its oversight functions.

In this Unit, we have examined the executive organ of government, its structure, types and functions. We also observed that though the function of the executive is primarily the implementation of the policies and programmes of government, but it has become increasingly involved in certain activities that were previously the exclusive preserve of the two other organs. This intrusion by the executive has become imperative for the purposes of the organic working of government, and prompt response to situations that could not be readily or immediately foreseen.



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1.7 Possible answer to self-assessment exercise (s) within the content

Self-assessment exercise 1

Explain the role of the Executive as an organ of government

Answer

The executive is the organ of government charged with the implementation and execution of government policies. Anifowose and Enemuoh (1999:171), define the executive as those who apply the authoritative rules and policies of a society. In a general sense the executive branch, in their view, is that branch of government, which gives binding effect to the will of the state by carrying out or executing laws of a country. According to Olisa, et al (1990:47), the executive is “one of the three arms of government whose principal duty is to carry out the general administration of the country. In the course of administering a country, the executive enforces laws, introduces bills into parliament and organise the structure of the civil service or the bureaucracy of a country to make it perform optimally. Ball and Guy Peter (2000:197), conceive the executive as “those primarily responsible for executing the laws but who are gradually intruding into the law-making responsibility of the legislature”. Presently at the federal level in Nigeria, for example, the president is chief executive of the whole federation, a position that puts him at the head of federal executive council. The council composed of ministers and the secretary to the government of the federation meet once in a week (every Wednesday) to attend to the business of government. At every session of the council usually presided over by the president, or in his absence, the vice-president memoranda presented by each ministers are considered, vetted and approved. At the state level, the Governor is the head of the state’s executive council composed of commissioners. Otherwise called the cabinet, this body also formulates government policies at the state level and sees to their faithful implementation. This arrangement is also replicated at the local government where the chairman and his supervisory councilors take charge of the execution of government programmes at the third tier level of government. The executive is often

described as the most powerful, not necessarily the most important organ of government. For this reason, those who occupy executive positions may be tempted to be authoritarian, or at times, predatory simply because they control and deploy state funds and coercive forces. In many countries, the head and members of the executive arm of government are increasingly assuming importance. In the first place, the head of executive at all level is often regarded as the head, symbol and personification of government. The office he occupies is either described as the State House or government House. It is for this reason that the White House, the resident of United States President, No. 10 Downing Street the office of the British Prime Minister and Aso Rock that of Nigeria's President are widely known and regarded as green zones. Similarly, due to the importance attached to the functionaries of the executive branch of government, especially the head and his senior officers, their personal security including that of members of their immediate family is of utmost concern to the state. There are also protocol and scheduling officers attached to them to ensure that their daily activities and official assignments are routinely streamlined, timed and regulated to avoid mix-ups. All these steps are taken to surround the occupants of the executive arm, and the offices they occupy with dignity, since as it is said; authority is increased by a show of dignity. The heads of executive arm of government are also aware of this to the extent that some of them are always ready to flaunt, use or even misuse the privileges or prerogatives they enjoy. Furthermore, in less developed societies executive privileges are better known as incumbency power or advantages, which are often deployed for purposes other than those for which they were originally intended, especially in relations to the opposition members, or perceived opponents. Though not entirely free from occasional misuse,

leaders of more developed countries have demonstrated more restraint and circumspection in the manner they use executive orders, which are meant to be rarely exercised without recourse to the legislature. But the extent to which the head of the executive seek to free him from legislative control will depend on the type of executive that a country operates. This is the focus of the next section of this unit

Self-assessment exercise 2

Discuss the importance of policy leadership to the functions of the executive arm of government

Answer

It is important to stress here that the functions of the executive devolve primarily in the office of the president in a presidential system, or the office of the prime minister in a parliamentary system of government, respectively. In Nigeria, for example, apart from expressly stating the functions of the President who is the chief executive of the country, and his vice, the 1999 Constitution did not elaborate on the functions of the executive as an organ of government. The President is to, among other functions determine the general direction of domestic and foreign policies of the government of the federation and co-ordinate the activities of the vice president, ministers and the agencies of government in the discharge of their executive responsibilities. From this sketchy provision, we can distil the following functions of the executive arm of government.

Providing policy making leadership in a government: The primarily function of the executive is to formulate and decide the policy direction for the state. In a democratic system, such policies are usually derived from the manifesto presented to the citizens during the elections and upon which the power was voted into office. While in office, it is the responsibility of the party in government to translate this blue print into concrete

policies and programmes of the government of the day. During the Second Republic in Nigeria, for instance, President Shehu Shagari at the federal level saw to the implementation of his party's housing and agricultural (Green Revolution) programmes. Similarly, in the states where the Unity Party of Nigeria was in control the chief executive of those states ensured the implementation of the party's four cardinal programmes. The Seven- Point Agenda is also the policy thrust of President Musa Yar'Adua and Goodluck presidency because it was so promised during the electioneering campaign. This is however not to say that the government cannot change, or reshape a policy if the chief executive considers it necessary in view of changing realities, which may be different from what, obtains during the period of elections. For this reason policy evaluation, re-orientation and enrichment constitute additional responsibility of the executive of a state.

UNIT 3: THE JUDICIARY: ITS ROLE AND INDEPENDENCE

Structure

- 1.1 Introduction
- 1.2 Learning Outcome
- 1.3 Main Contents
 - 1.3.1 The institution of the Judiciary
 - 1.3.2 Functions of the Judiciary
- 1.4 The Meaning of Independence of the Judiciary
 - 1.4.1 Ingredients of the Independence of the Judiciary
 - 1.4.2 Limitations to the Independence of the Judiciary
- 1.5 Summary
- 1.6 References/Further Reading
- 1.8 Possible answer to self-assessment exercise (s) within the content



1.1 Introduction

The judiciary is a very important organ government, and it is often referred to as the last hope of the common man. In this Unit, we are going to discuss the role and functions of the judiciary as well the notion of judicial independence which is meant to enhance the performance of the functions of judicial officers. We will also discuss how judicial pronouncements can, over time become laws when they are cited as precedents as well as the concept of delegated judicial power.



1.2 Learning Outcome

At the end of this unit, you should be able to:

1. Understand the functions of the Judiciary as an arm of government.
2. Know the concept and ingredients of the independence of the Judiciary and its limitations.
3. Appreciate that judicial officers in the discharge of their duties can sometimes perform legislative functions, or the executive intruding into the judicial realm



1.3 Main Contents

1.3.1 The institution of the Judiciary

The Judiciary is the institution charged with the responsibility of seeing that the society's laws are observed and of adjudicating over disputes, arising from nonobservance or breach of these laws and of awarding redress. It is in furtherance of these objectives that the Court System was established. The establishment of the Court System and the emergence of an organized legal profession are significant landmarks in society's search for justice. Before Courts were established every man was law unto himself. Then the weak were at the mercy of the powerful. It was then the age of quest and conquest, comparable to the Hobbesian's „State of Nature“. But with the establishment of Courts men laid aside their arms and took their grievances to those courts with the fervent hope of obtaining justice. Thereafter courts soon become the tribunals for the administration of justice, for the punishment of offences against the peace and tranquility of the state, and for the settlement of disputes and disagreements between individuals on one hand, as well as between individuals and the state on the other. This manner of administration of justice can happen in a democratic society where the citizens have enforceable rights and not in a totalitarian setting where the identity of the individual is absorbed by, and dissolved in and into the omnipotent state.

In the United States Article III Section (1) of the country's Constitution, invest the Supreme Court and such inferior courts as may be established by Congress, with judicial power covering “all cases in law and Equity arising under this constitution”. In Nigeria it is the judiciary that is vested with the power to ensure due observance of the constitution and that can pronounce on non-compliance by any of the levels or organs of government.

Therefore, for the judiciary to meet up the expectations imposed on it by the constitution of the various countries, especially in the arduous task of sustaining democratic values in any society, it must strive to entrench constitutionalism, due process, rule of law, transparency, accountability, and respect for human right. Without this, no society, especially the developing states can optimize good governance or realize the much expected democratic dividends. In the particular of Nigeria a major expectation from the judiciary is what it can offer to protect the sanctity of the ballot box and assist in ensuring that truly sovereignty returns to the people. The only way the judiciary can meet these challenges, including that of growth and development is by helping in consolidating the country's democratic process. For the judiciary to effectively perform its role there must be courageous judges, who are of great of learning and integrity; judges that cannot be compromised. We also need capable hands to man judicial offices.

Self-Assessment Exercise 1

Analyse the place of the judiciary in the organization of government.

1.3.2 Functions of the Judiciary

Interpretation of the laws and Settlement of Disputes

The main function of the judiciary is the interpretation of the laws and the settlement of disputes that may arise between one individual and the other, or between individuals and government or any of its agencies. The cases that usually come before the courts may range from civil and criminal cases. These different courts are structured in hierarchical basis and they entertain cases that fall within their jurisdictions, while appeals are made from lower to higher courts, until the cases are finally determined at the Supreme Court, usually the apex of the judicial ladder in countries such as the United States and Nigeria.

A.V. Dicey once declared that the American Courts had “become the pivot on which the constitutional arrangements of the country turn”

Interpretation of the Constitution

Whenever there is any conflict or ambiguity over the actual meaning, import or intent of a constitutional provision such misunderstanding or confusion is usually referred to the judiciary to make a pronouncement or declaration on both the letter, and even the spirit of the constitution. Section 231 subsections (1) and (2) of the 1999 Constitution of Nigeria gives the Supreme Court original jurisdiction over Constitutional interpretations. As at October 2010, the federal government is at the Supreme Court to seek a legal pronouncement from the apex court in the country on whether an ascent of the president to the amended constitution was required before the document becomes operational.

Power of Judicial Review

The power of judicial review undertaken by the courts is in two categories. The first is review of legislative enactments to ensure that they keep with the provisions of the constitution. Where the contrary is the case such laws becomes invalid to the extent of their inconsistencies with the supreme law of the country. This is particularly the case in a federal system where there is constitutional division of powers between different levels of government, and where one level is not meant to encroach in the other’s areas of competence. The practice in federal state is that where states law conflict with federal laws, the laws of the latter will prevail. These two categories of conflict when they cannot be managed politically are usually referred to the judiciary to make its declaration on their legality or otherwise. The 1999 constitution of the federal republic of Nigeria specifically safeguards the sanctity of the supervisory powers it conferred on the judiciary

in the country against encroachment by the other organs of government. In section 4 (8) reads:Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly shall be subject to the jurisdiction of the 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 oust or purports to oust the jurisdiction of a Court of Law or a judicial tribunal established by law..... It is important to stress that this type of protective provision is consistent with the practice under a democratic government, since it is in the tradition of military government to amputate the judiciary by ousting the jurisdictions of the courts of laws. But whether in a civilian or military setting certain attributes are required of judge before they can effectively perform the functions we have stated above. First, judicial decision on important and controversial cases and issues should be based on merit and principle, rather than based on political expediency. Judges should also resist the pressure of hysteria and fanaticism. It is this spirit that can make a judge rise above passion, public clamour and above the politics of the moment. It is obvious that the united effort of the three branches of government is the search for justice through the law. Justice is the end which all the laws passed by the legislator, all the executive functions of government, and the administration of laws in the courts must seek to attain. We also need to emphasise that any power given to the judiciary is not for the gratification of the judge but rather to enable him more effectively administer justice, to enable him protect innocent citizens from power and its abuse by the various concentrations of power. Protection from power is thus the necessary roles of the courts and the citizens“ last line of defence in their unequal combat with power. This is why the idea of the independence of the judiciary is imperative for the courts to be able

to discharge the functions discussed above. Therefore, it is not only an erudite, courageous and fearless judge but also an independent Bench that can protect the citizens of a country from the abuse of power. The independence of the judiciary is thus the citizens' bulwark against oppression, his charter of liberties and a force for stability, peace and progress in a country. It might be pertinent at this point to explore the concept of the independence of the judiciary in greater detail.

Self-Assessment Exercise 2

Critically assess the essence of judicial review as a major function of the judiciary.

1.4 The Meaning of Independence of the Judiciary

In order to better understand the concept of the independence of the judiciary, it is more appropriate to know what the concept is not: The independence of the judiciary does not mean, nor does it imply that judges should have unlimited power. As Cicero once observed during the days of Roman Jurisprudence: "We are all slaves of the law so that we may be free" Judicial independence does not give the judge freedom to sit when he likes, to rise when he likes, thus leaving unattended to a backlog of cases. Judicial independence does not give the judge the licence to treat counsel and witnesses as he likes. Every judge should appreciate that the counsel and witnesses are as much indispensable functionaries of justice delivery as himself. Having understood what judicial independence is not, the next pertinent question then is: What is judicial independence? The independence of the judiciary means that the court and judges must be free from the influence of both the governmental and individuals in the discharge of their functions or duties if justice is to be obtained. It must be noted that in a state or country where judicial decisions are subject to the dictates or preference of those in

government there can hardly be justice. Therefore, only courts, which are not tied to the apron, string of the executive; courts that are free from legislative pressure, political pressure, and even mob pressure can guarantee judicial independence. As Ojo (1973:22) pointed out “if judges are under the control of the government of the day their judgments become the dictate of the government and such judgments are subject to change if there are changes in government”. In other words, the idea of justice will lie at the discretion of the government of the day. Under this condition, it becomes difficult if not impossible for the citizens of a country to obtain justice, especially when their rights clash with the rights of those in government. The implication of a situation where government is able to hamper justice is that its functionaries become tyrannical and oppressive. It is for this reason that Montesquieu in his theory of Separation of Powers argued that for the life and liberty of the citizens to be guaranteed and for justice to reign, the three organs of government must be exercised independently. Without judicial independence no judge however brilliant and hardworking, however well prepared by qualities of heart, mind and professional training can give full effect to the enduring values enshrined in the constitution, or even to “do justice to justice” (Shittu, The Punch, Monday July 12, 2010)

1.4.1 Ingredients of the Independence of the Judiciary

Mode of Appointments

The methods of appointing judges and other judicial officials must be insulated from political or partisan considerations. In Nigeria, such appointed by the chief executive at the federal or state level is usually based on the recommendations of the Judicial Service Commission. Similarly, judges can only be removed or dismissed from office on ground of misdemeanor or incompetence. If judges can be removed at the will of the government

it means that judges who fail to dance to the tune of the government of the day cannot be sure of retaining their positions, thereby hampering the independence of the judiciary. In the opinion of Lateef Adegbite (1978:49), removal of judges is more crucial to the independence of the judiciary than their appointment “for a judge who refuses to toe a particular line may be removed on one pretext or the other.”

Qualifications for Appointments

Appointments to the bench or judicial positions should also be open to those who have met the stipulated constitutional and statutory requirements. In Nigeria for example the possession of a bachelor’s degree in law, a successful attendance at the Nigerian Law School and a legal practice of between twelve and fifteen years, depending on the level of such appointments are minimum criteria. The danger of rewarding unqualified lawyers with elevation from the bar to the bench is that their benefactors in government can easily manipulate judges who benefit from such unmerited appointments. Thus, the independence of the judiciary is impaired.

Security of Tenure

In order to ensure independence of the judiciary judges must enjoy secured tenure of office. Like other career public servants, judges are expected to retain their jobs until they are due for retirement. The only acceptable exceptions to this rule are when they are no longer productive or have proven to be incompetent, or can no longer retain the quality of good conduct in the dispensation of justice.

Adequate and Unalterable Salaries

The independence of the judiciary will largely depend on the remunerations and allowances that are attached to the office of judicial officers. It is necessary that the

salaries and allowances of judges are reasonably adequate and constitutionally secured so that a political executive not satisfied with a judgment by a judge will not be able to tamper with the latter's remunerations. To achieve this, the practice in many countries is to make salaries of judges a first line in the Consolidated Revenue Fund, a dedicated government account usually insulated from routine meddling by the executive arm.

Immunity of judges from prosecution

If provisions are made in a country's statute books to immune judges from prosecution for all their conduct in the course of performing their duties, it will help in securing the independence of the judiciary. But if the conduct of a judge can be subject to scrutiny on the floor of parliament, or a legal proceedings be brought against a judge in another court, except for the determination of an appeal on a case earlier decided by him, the fear of personal liability may make a judge tilt towards self-preservation rather than the cause of justice

1.4.2 Limitations to the Independence of the Judiciary

The reality, of course, that cannot be disputed is that the judiciary in its determination to support the democratic project is constrained in several ways: undue delays in the justice delivery system, absence of infrastructure, disobedience of court orders by the Executive, needless pressures from several quarters, corruption, perpetual adjournment of cases, poor working environment, pitiable emoluments, and congestion of cases in courts of law due to administrative bottlenecks. The law is often treated as synonymous with justice. It is for this reason that we often refer to „courts of justice“ as a synonym of „courts of law“ even though in practice the former may often fall far short of the ideals of the former. There have been allegations of bribery and corruption against judges and biases against

individual in cases involving the citizens. Under the Buhari Regime Justice Okoro- Idogu once confessed that he surrendered to pressure mounted on him by government to convict Fela Anikulapo Kuti under Decree No. 7 of 1984. On the strength of this disclosure, the late Afro-beat King was immediately released from prison and the judge was retired (Newswatch, May 26, 1986). There is no doubt that in certain instances the judiciary may not have acquitted itself beyond all reasonable doubt. But more often than not the judiciary has been the sacrificial lamb on the altar of societal imperfections and contradictions. When politicians rig elections it is the judiciary that is called upon in place of the electorate or voters to decide who actually won the election. When the national treasury is looted it is the judges that are called upon to determine the culprits either at regular courts or special tribunals. Whatever the verdict the judiciaries is in the middle of a cross-fire and in no-win situations since the loser or culprit charge the judges with allegations of bias, partisanship or miscarriage of justice. This is why it has been argued that there is no justification for serving judges to sit in the determination of election petitions or judicial inquiries into political activities since such involvements may drag their names to political mud. But if judges must sit on such matters then retired judges with unimpeachable record should be used. It is important to stress that constitutional guarantees of judicial independence will come to naught if efforts are not made to insulate the judiciary from politically sensitive matters. Yet constitutional provisions designed to guarantee judicial independence can also be re-examined with a view to ensuring that they are free from political manipulations. If the Judicial Service Commission is peopled by political appointees it futile to expect the body to be detached in the exercise of its advisory role to the executive, or expect the beneficiaries of such

padding appointments not to return favours to those made their appointment possible. Even in the United States where the patronage or spoils system has become accepted it is difficult not to see partisan colour in the appointment of judges, especially given that quasi-political role that the Supreme Court and the federal judiciary perform as guardians and interpreters of the country's constitution. There is no doubt that the encroachments by the executive and the legislature in the realm of the judiciary as a result of constitutional provisions on the appointments of judges takes something away from the independence of the judiciary. This is notwithstanding what may in the statute books to guarantee judicial independence. Indeed in countries such as the United States and Britain, the independence of the judiciary has depended more on the force of tradition than on express constitutional guarantees. Where there is a tradition of judges, standing up for justice, their independence can only be minimally threatened and the cause of justice met. But that is not the case with developing countries like Nigeria where the politicians are yet to imbibe the culture of non-interference and the judges a culture of impartiality irrespective of the desires of their appointer. The Constitutional basis for the removal of a judge on grounds of „inability to discharge the functions of his office“ or „misconduct“ is nebulous and can be abused by a willing political head. With this type of provision the fear of possible removal from office always hang over judges like a Sword of Damocles. More over the provision under the Nigerian law that judicial officers upon their retirements cannot appear as a legal practitioner before any court or tribunal will make most judges faced with this impossible choice to be too willing to hold on to their appointments, at whatever costs, rather than retire to starvation. The hierarchical structure of the judiciary in the country also makes judges to look to the politicians for promotion

or elevation to the upper echelon of the judicial ladder. Such judges who know that the prospect of advancements depend on their rating by politicians will not want to incur the wrath of politicians



1.5 Summary

In this Unit, we have examined the judiciary as a vital institution and organ of government. We have in addition explained its role as a vital component in the organization of government as well as the functions it performs. We also noted that for it to perform its functions fairly and impartially the judiciary must retain its independence from the other organs of government, particularly the executive. We however recognized that inspite of the merit and attractions of the idea of independence of the judiciary it is impossible to fully have it in absolute terms.

The significance of the role of the judiciary cannot be overemphasized in the organization of government. The courts of law which have become the instruments through which the judiciary discharges its functions have been variously described as the temple of justice, or the last hope of the common man. But for the judiciary in any country to acquit itself creditably the political environment within which it operates must be readily supportive, by providing the needed administrative and legal framework, as well as the complement of adequate resources, without which the judiciary will suffer deficit in both performance and credibility.



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1.7 Possible answer to self-assessment exercise (s) within the content

Self-assessment exercise 1

Critically assess the essence of judicial review as a major function of the judiciary.

Answer

The power of judicial review undertaken by the courts is in two categories. The first is review of legislative enactments to ensure that they keep with the provisions of the constitution. Where the contrary is the case such laws becomes invalid to the extent of their inconsistencies with the supreme law of the country. This is particularly the case in a federal system where there is constitutional division of powers between different levels of government, and where one level is not meant to encroach in the other's areas of competence. The practice in federal state is that where states law conflict with federal laws, the laws of the latter will prevail. These two categories of conflict when they cannot be managed politically are usually referred to the judiciary to make its declaration on their legality or otherwise. The 1999 constitution of the federal republic of Nigeria specifically safeguards the sanctity of the supervisory powers it conferred on the judiciary in the country against encroachment by the other organs of government. In section 4 (8) reads:Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly shall be subject to the jurisdiction of the 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 oust or purports to oust the jurisdiction of a Court of Law or a judicial tribunal established by law..... It is important to stress that this type of protective provision is consistent with the practice under a democratic

government, since it is in the tradition of military government to amputate the judiciary by ousting the jurisdictions of the courts of laws. But whether in a civilian or military setting certain attributes are required of judge before they can effectively perform the functions we have stated above. First, judicial decision on important and controversial cases and issues should be based on merit and principle, rather than based on political expediency. Judges should also resist the pressure of hysteria and fanaticism. It is this spirit that can make a judge rise above passion, public clamour and above the politics of the moment. It is obvious that the united effort of the three branches of government is the search for justice through the law. Justice is the end which all the laws passed by the legislator, all the executive functions of government, and the administration of laws in the courts must seek to attain. We also need to emphasise that any power given to the judiciary is not for the gratification of the judge but rather to enable him more effectively administer justice, to enable him protect innocent citizens from power and its abuse by the various concentrations of power. Protection from power is thus the necessary roles of the courts and the citizens' last line of defence in their unequal combat with power. This is why the idea of the independence of the judiciary is imperative for the courts to be able to discharge the functions discussed above. Therefore, it is not only an erudite, courageous and fearless judge but also an independent Bench that can protect the citizens of a country from the abuse of power. The independence of the judiciary is thus the citizens' bulwark against oppression, his charter of liberties and a force for stability, peace and progress in a country. It might be pertinent at this point to explore the concept of the independent of the judiciary in greater detail.

Self-assessment exercise 2

Analyse the place of the judiciary in the organization of government

Answer

The Judiciary is the institution charged with the responsibility of seeing that the society's laws are observed and of adjudicating over disputes, arising from nonobservance or breach of these laws and of awarding redress. It is in furtherance of these objectives that the Court System was established. The establishment of the Court System and the emergence of an organized legal profession are significant landmarks in society's search for justice. Before Courts were established every man was law unto himself. Then the weak were at the mercy of the powerful. It was then the age of quest and conquest, comparable to the Hobbesian's „State of Nature“. But with the establishment of Courts men laid aside their arms and took their grievances to those courts with the fervent hope of obtaining justice. Thereafter courts soon become the tribunals for the administration of justice, for the punishment of offences against the peace and tranquility of the state, and for the settlement of disputes and disagreements between individuals on one hand, as well as between individuals and the state on the other. This manner of administration of justice can happen in a democratic society where the citizens have enforceable rights and not in a totalitarian setting where the identity of the individual is absorbed by, and dissolved in and into the omnipotent state.

In the United States Article III Section (1) of the country's Constitution, invest the Supreme Court and such inferior courts as may be established by Congress, with judicial power covering “all cases in law and Equity arising under this constitution”. In Nigeria it is the judiciary that is vested with the power to ensure due observance of the constitution and that can pronounce on non-compliance by any of the levels or organs of government.

Therefore, for the judiciary to meet up the expectations imposed on it by the constitution of the various countries, especially in the arduous task of sustaining democratic values in any society, it must strive to entrench constitutionalism, due process, rule of law, transparency, accountability, and respect for human right. Without this, no society, especially the developing states can optimize good governance or realize the much expected democratic dividends. In the particular of Nigeria a major expectation from the judiciary is what it can offer to protect the sanctity of the ballot box and assist in ensuring that truly sovereignty returns to the people. The only way the judiciary can meet these challenges, including that of growth and development is by helping in consolidating the country's democratic process. For the judiciary to effectively perform its role there must be courageous judges, who are of great of learning and integrity; judges that cannot be compromised

Module 4
OPERATIONS AND REGULATION OF GOVERNMENT BUSINESS

UNIT 1: THE THEORY OF SEPARATION OF POWERS

Structure

- 1.1 Introduction
- 1.2 Learning Outcome
- 1.3 Main Contents
 - 1.3.1 Origin and concept of Separation of Powers
 - 1.3.2 Objectives/Advantages of Separation of Powers
 - 1.3.3 Disadvantages of Separation of Powers
- 1.4 Applications of Separation of Powers
- 1.5 Summary
- 1.6 References/Further Reading
- 1.7 Possible answer to self-assessment exercise (s) within the content



1.1 Introduction

Separation of Powers is an important principle in the organization of modern government. In this Unit, we will examine the principle behind the doctrine of separation of powers, its objectives and applications in selected countries. In the course of this Unit we will also know whether the theory of separation is compatible with what obtains in practice in the relationship among the three organs of government.



1.2 Learning Outcome

By the end of this unit, you should be able to:

1. Define the doctrine of separation of power and explain its objectives
2. Understand the limitations of the theory of separation of power when applied to the reality of the organization of modern government
3. Know why some countries operate separation of powers while others prefer fusion of powers



1.3 Main Contents

1.3.1 Origin and concept of Separation of Powers

The origin of the doctrine of separation of powers could be traced to earlier political philosophers. But the doctrine received its finest formulation by a French political thinker and jurist, Montesquieu in his book, “Esprit des lois” The Spirit of Law published in 1748. In view of the relevance of Montesquieu’s classical formulation to the theory of separation of powers, it will not be out of place if we quote him extensively thus: When the Legislative and Executive powers are united in the same person or in the same body of magistrates, there can be no liberty. Again there is no liberty if the judicial power is not separated from the legislative and executive powers. Were it joined with the legislative power, the life and liberty of the subject would be exposed to arbitrary control- for the judge would be the legislator... Jean Bodin in his Republic (1576) also wrote that some separation of power was essential, advising that the prince should not administer justice but should leave such matters to independent judges (quoted in Laski). The idea of separation of powers, according to Wale and Phillip may mean three different things:

- a. That the same persons should not form part of more than one of the three organs of government e.g. that ministers should not sit in parliament
- b. That one organ of government should not control or interfere with the exercise of its functions by another organ e.g. that the judiciary should be independent of the ministers or that ministers should not be responsible to the parliament.
- c. That one organ of government should not exercise the functions of another e.g. that minister should not exercise legislative power.

In his *Second Treatise on Civil Government*, John Locke wrote: It may be too great a temptation of human frailty, apt to grasp power, for the same person who have the power of making law to have also in their hands the power to execute them, thereby they may exempt themselves from obedience to the laws they made and suit the law both in its making and execution to their own private advantage. Like Locke, Montesquieu was also concerned about the danger posed to the liberty of the citizens by the concentration of powers. According to him: Concentration of governmental powers in the hands of one individual is the very definition of dictatorship, and absolute power is, by its very nature, arbitrary, capricious and despotic...For it is not that repository of the combined power can pass tyrannical laws and then execute them tyrannically, he can also act arbitrarily in flagrant disregard of the limits of his powers and then proceeds to legalise his action by retroactive legislation. Government in such a situation is not conducted according to pre-determined rules; it is a government not of laws but of will, a government according to the whims and caprices of the ruler. Limited government is therefore the objective of separation of powers and it demands that the organisation of government should be based on some concept of structure, whereby the function of law making, execution and adjudication are vested in separate agencies, operating with separate personnel and procedure. We must however emphasise that it is not possible to have complete separation of powers in which there is no interaction whatsoever between the three arms of government. In actual practice, the three organs of government must function by mutual cooperation. The theory simply enjoins that the same body or person should not be in control of more than one arm of government. Power must not only be separated but must also be exercised by different persons or body of persons, i.e. these powers must not

be combined in the same person or body of persons, but that they should be entrusted to three separate agencies, that are co-ordinate and mutually independent. In the language of law, the same person should not be the prosecutor, judge and jury. Put differently, separation of powers can be described as the political application of the economic concept of division of labour.

Self-Assessment Exercise (SAE) 1

Discuss the concept of Separation of Powers

1.3.2 Objectives/Advantages of Separation of Powers

The theory of separation of powers has been instituted to serve or fulfill certain objectives. These objectives can also be viewed as the advantages or merits of separation of powers. They include the following:

1. **Prevention of Tyranny:** It reduces the abuse of power because powers are separated from one another. There is a political term, which says, “power corrupts and absolute power corrupts absolutely”. Because there is no concentration of governmental powers in one authority, the tendency of having arbitrary rule is very low.
2. **Specialisation and Efficiency:** The theory of separation of powers, which is the political application of economic theory of division of labour, makes for specialization and efficiency in the administration of government. By concentrating on the same job in routine like manner the maxim practice makes perfect becomes the order of the day. It means that by concentrating in law making the legislators will gain expertise in it while the executive also becomes more adept in the task of policy formulation and its execution. Similarly, the judiciary acquires better erudition and distinction in its duty of interpretation of the law and settlement of disputes.

3. **Preservation of Liberty:** The theory of separation of power also preserve and specialization guarantee the rights and liberty of the citizens. If the powers of the three organs of government are placed under one authority there is the likelihood that tyranny and arbitrariness may ensue. According to Lord Action, “Power intoxicates and absolute, power intoxicates absolutely”. Therefore, when power is spread and not concentrated in one authority, the expectation is that the system will promote the observance of the fundamental human rights of the citizens, such as right to life, freedom of association and freedom to own property etc.
4. **Safeguards independence of each organ:** Separation of powers also ensures the independence of each of the organs of government in the functions and also recognizes that the function assigned to each organ by the constitution requires distinct specialties. A judge must possess the qualities of impartiality and detachment combined with brilliance and erudition for him to succeed. A legislator must not only be able to connect and empathise with his constituents, he must also possess the power of communication that will enable him push his proposals through among other members in the parliament. Similarly a chief executive must have the capacity to rank his priorities among many competing issues within the policy agenda. Given the different qualities that are required by those that will occupy these different positions, it is most unlikely that these attributes can be found in one person. Therefore, it is only through separation of powers that individuals with these different but complimentary attributes can be assembled to discharge the three functions of government.

1.3.3 Disadvantages of Separation of Powers

1. A rigid separation of powers may produce negative consequences because it can make it difficult for the legislature and executive, in particular, to cooperate. In the event of lack of cooperation between the law makers and those who enforce these laws the machinery of government may be at best, be impeded, or at worse, grind to a halt.

2. The theory of separation of powers as propounded by Montesquieu has been criticised for been too idealistic and mechanistic, and therefore not realistic. The reason is that given the nature and process of government, it is impossible to keep the three organs of government in separate watertight compartments. Woodrow Wilson, a former U.S. President in his critique of separation power wrote: The trouble with the theory is that government is not a machine but a living thing...No living thing can have its organs offset against each other as check and live...Government is not a body of blind forces, it is a body of men with highly differential functions...but with common purposes. This view was shared by Mbah (2007) who rightly opined that any attempt to achieve the idea of separation of powers as conceptualized by Montesquieu will amount to „a motionless balance“.

The idea of checks and balances is meant to introduce flexibility or a lubricating force separation of powers. Yet the mechanism of separation of powers can produce the unintended consequences of preventing government functionaries from taking quick decisions.

Critics of separation of powers argue that complete separation of the functions of government is impossible in reality. They argue that it is not possible to define the area of concern of each organ in such a manner that each is independent and supreme in its area

without the other having a role to play. According to them the process of law-making is incomplete until the executive gives its assent.

Self-Assessment Exercise (SAE) 2

Discuss the possible danger associated with the theory of Separation of Powers

1.4 Applications of Separation of Powers

Separation of Powers in the United States

The principle of separation of powers is clearly incorporated in the constitution of the United States. Richard Neustadt (1960:13) described Separation of Powers under the U.S.'s government as a system not of separated powers but of "separated institutions sharing power". Similarly, S .E. Finer (1949) also stated that the American constitution was consciously and elaborately made an essay in the separation of powers and is today "the most important polity in the world which operates upon the principle. The United State"s Constitution divides the Congress into two bodies: the Senate and the House of Representatives; and the two legislative chambers are primarily and exclusively vested with the law making powers. The executive powers also solely lie with the executive arm, while the judicial functions are handled by independent courts. Through the mechanism of checks and balances, which we shall discuss in the next unit, the needed flexibility is introduced into the operations of separation of powers in the United States.

Fusion of Powers in Britain

The British constitution does not provide for the principle of separation of powers. Rather what obtains in Britain is what is popularly known as fusion of powers. This is

manifested in different ways. First, the members of the legislature and the executive are brought into their different offices through the same election. Put differently, the Prime Minister, who is the head of the executive and his ministers who with him forms the cabinet must have been elected into the parliament before they can qualify to serve in the executive arm. Second, the parliament in Britain comprises the House of Commons, House of Lords, and the Queen, and interestingly the monarch is the head of state in Britain, which makes him or her ceremonial head of the executive. Third, the Lord Chancellor is not only the head of the House of Lords, the upper house in Britain, he is also the minister of justice, and the head of the Privy Council, the equivalent of U.S. Supreme Court. The implication of the examples cited above is that there is no separation of powers in the operations of the British government



1.5 Summary

In this Unit, we have discussed the doctrine of separation of powers, its origin and objectives. We further looked into the advantages and disadvantages of separation of powers and cited the examples of the United States and Britain to illustrate the two extremes in the application of the principle of separation of powers in the two countries. The principle behind the idea of separation of power is unassailable, especially in the expectation that it can help safeguard the liberty of the citizens by preventing accumulation and possible abuse of power. However in reality it is not possible to have water tight or complete separation of powers as it was conceived in the classical sense. This is why the practice of checks and balances, which we will discuss in the next unit, has been accepted by some countries as an inevitable corollary of separation of powers, without which the operations of government may be deadlocked.



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1.7 Possible answer to self-assessment exercise (s) within the content

Self-assessment exercise 1

Discuss the concept of Separation of Powers

Answer

The origin of the doctrine of separation of powers could be traced to earlier political philosophers. But the doctrine received its finest formulation by a French political thinker and jurist, Montesquieu in his book, "Esprit des lois" The Spirit of Law published in 1748. In view of the relevance of Montesquieu's classical formulation to the theory of separation of powers, it will not be out of place if we quote him extensively thus: When the Legislative and Executive powers are united in the same person or in the same body of magistrates, there can be no liberty. Again there is no liberty if the judicial power is not separated from the legislative and executive powers. Were it joined with the legislative power, the life and liberty of the subject would be exposed to arbitrary control- for the judge would be the legislator... Jean Bodin in his Republic (1576) also wrote that some separation of power was essential, advising that the prince should not administer justice but should leave such matters to independent judges (quoted in Laski). The idea of separation of powers, according to Wale and Phillip may mean three different things:

- d. That the same persons should not form part of more than one of the three organs of government e.g. that ministers should not sit in parliament
- e. That one organ of government should not control or interfere with the exercise of its functions by another organ e.g. that the judiciary should be independent of the ministers or that ministers should not be responsible to the parliament.
- f. That one organ of government should not exercise the functions of another e.g. that minister should not exercise legislative power.

In his *Second Treaties on Civil Government*, John Locke wrote: It may be too great a temptation o human frailty, apt to gab power, for the same person who have the power of making law to have also in their hands the power to execute them, thereby they may exempt themselves from obedience to the laws they made and suit the law both in its making and execution to their own private advantage. Like Locke, Montesquieu was also concerned about the danger posed to the liberty of the citizens by the concentration of powers. According to him: Concentration of governmental powers in the hands of one individual is the very definition of dictatorship, and absolute power is, by its very nature, arbitrary, capricious and despotic...For it is not that repository of the combined power can pass tyrannical laws and then execute them tyrannically, he can also act arbitrarily in flagrant disregard of the limits of his powers and then proceeds to legalise his action by retroactive legislation Government in such a situation is not conducted according to pre-determined rules; it is a government not of laws but of will, a government according to the whims and caprices of the ruler. Limited government is therefore the objective of separation of powers and it demands that the organisation of government should be based on some concept of structure, whereby the function of law making, execution and

adjudication are vested in separate agencies, operating with separate personnel and procedure. We must however emphasise that it is not possible to have complete separation of powers in which there is no interaction whatsoever between the three arms of government. In actual practice, the three organs of government must function by mutual cooperation. The theory simply enjoys that the same body or person should not be in control of more than one arm of government. Power must not only be separated but must also be exercised by different persons or body of persons, i.e. these powers must not be combined in the same person or body of persons, but that they should be entrusted to three separate agencies, that are co-ordinate and mutually independent. In the language of law, the same person should not be the prosecutor, judge and jury. Put differently, separation of powers can be described as the political application of the economic concept of division of labour.

Self-assessment exercise 2

Discuss the possible danger associated with the theory of Separation of Powers

Answer

A rigid separation of powers may produce negative consequences because it can make it difficult for the legislature and executive, in particular, to cooperate. In the event of lack of cooperation between the law makers and those who enforce these laws the machinery of government may be at best, be impeded, or at worse, grind to a halt.

2. The theory of separation of powers as propounded by Montesquieu has been criticised for been too idealistic and mechanistic, and therefore not realistic. The reason is that given the nature and process of government, it is impossible to keep the three organs of government in separate watertight compartments. Woodrow Wilson, a former U.S.

President in his critique of separation power wrote: The trouble with the theory is that government is not a machine but a living thing...No living thing can have its organs offset against each other as check and live...Government is not a body of blind forces, it is a body of men with highly differential functions...but with common purposes. This view was shared by Mbah (2007) who rightly opined that any attempt to achieve the idea of separation of powers as conceptualized by Montesquieu will amount to „a motionless balance“.

The idea of checks and balances is meant to introduce flexibility or a lubricating force separation of powers. Yet the mechanism of separation of powers can produce the unintended consequences of preventing government functionaries from taking quick decisions.

Critics of separation of powers argue that complete separation of the functions of government is impossible in reality. They argue that it is not possible to define the area of concern of each organ in such a manner that each is independent and supreme in its area without the other having a role to play. According to them the process of law-making is incomplete until the executive gives its assent.

UNIT 2: THE CONCEPT OF CHECKS AND BALANCES

Structure

- 1.1 Introduction
- 1.2 Learning Outcome
- 1.3 Main Contents
 - 1.3.1 Meaning and Objectives the of Concept of Checks and Balances
 - 1.3.2 Process and Application of Checks and Balances
 - 1.3.3 The Relevance of Checks and Balances
- 1.4 Summary
- 1.5 References/Further Reading
- 1.6 Possible answer self-assessment exercise (s) within the content



1.1 Introduction

The concept of checks and balances is generally referred to as a corollary to the theory of separation of powers. In other words the mechanism of checks and balances is to ensure that the process of governance is devoid of the gridlock that would have occurred if the theory of separation of powers is strictly followed. This unit examines the mechanism of checks and balances, its relevance and applications in some countries.



1.2 Learning Outcome

By the end of this unit, you should be able to:

1. Define the mechanism of checks and balances
2. Explain its objectives and relevance to the organization and operation of government.
3. Understand its application, especially in countries practicing the presidential system of government



1.3 Main Contents

1.3.1 Meaning and Objectives the of Concept of Checks and Balances

Checks and balances works with the existence of separation of power because it deals with the process whereby the organs of government look into or control the affairs and duties of one another to ensure that governmental functions are properly performed. It is only when the powers of each organ of government are separated before they can check by one another and correct the mistakes made by the other organs. The legislature looks into the activities of both executive and judiciary. The executive looks into the activities of both legislature and judiciary while the judiciary looks into the activities of the legislature and the executive. To discuss the subject satisfactorily we need to understand the American system of government where separation of powers is in full swing. The 1787 American constitution specifically provides for the principle of division of power and checks and balances. American is widely known as a model of the presidential system because it is the first country in the world to practice it. The legislature in America is the Congress, which is bicameral, meaning two legislative chambers, the upper house (Senate) and the lower house (House of Representatives). Law making is the primary function of the members of the Congress who are elected directly by the electorate. The executive functions are vested in the president who is equally elected by the people. The Supreme Court exercises judicial powers together with other courts like the High Court, Court of Appeal etc. This will show that the powers of the three organs of government are clearly delineated and separated. Yet checks and balances ensures that the president can only appoint ministers , judges, ambassadors with the approval of the Senate, even though these appointees are answerable to him in the discharge of their functions. The President also presents annual budgets to the legislature for approval; this

serve as checks by the legislature on the executive. The president and the staff are not members of the congress nor are they members of the judiciary.

If a member of the congress wishes to join the executives, he has to resign and vice versa. The president is elected to hold office for a fixed period of four years while members of the Congress stay in office for two years. The Congress has no power to remove the president except through the process of impeachment while the president cannot dissolve the congress. The people also check the executive by writing to criticize the government and suggesting ways of remedying the situation. The judiciary checks the executive policies by declaring its actions unconstitutional to the point of inconsistency. The bills passed into laws by the legislature can also not become laws until the executive gives them assent. Judiciary checks the legislature by interpreting laws made by the congress. The control, which the executive has over the judiciary, is that the executive nominate the judges to the various courts. Due to the aforementioned points, separation of powers and checks and balances exist in the American presidential system of government.

Self-Assessment Exercise (SAE) 1

Examine the principle of Checks and Balances
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1.3.2 Process and Application of Checks and Balances

This is a mechanism through which each branch of government in USA is able to participate in and influence the activities of the other branches. Its major examples include the power of the President to veto Congressional legislations, the Senate's power to confirm presidential appointments and the power of the Judiciary to review laws enacted by the Congress. According to Ray (2006: 145) the primary objective of the Federalist Papers for instituting the doctrine of checks and balances was "to provide for

an equilibrated system of interaction among the three principal institutions of the executive, the legislature and the judiciary”. Indeed, the doctrine of checks and balances is recognition of the reality in the process of government: To run a government, powers must not only coordinate, they must also overlap. This is a mechanism through which each branch of government in USA is able to participate in and influence the activities of the other branches. Its major examples include the power of the President to veto Congressional legislations, the Senate’s power to confirm presidential appointments and the power of the Judiciary to review laws enacted by the Congress. According to Ray (2006: 145) the primary objective of the Federalist Papers for instituting the doctrine of checks and balances was “to provide for an equilibrated system of interaction among the three principal institutions of the executive, the legislature and the judiciary”. Indeed, the doctrine of checks and balances is recognition of the reality in the process of government: To run a government, powers must not only coordinate, they must also overlap.

Self-Assessment Exercise (SAE) 2

Enumerate the objectives of checks and balances

1.3.3 The Relevance of Checks and Balances

The relevance of checks and balances are as follows:

Accountability

It makes possible accountability due to the fact that powers are separated and it becomes easy to assess the performance of any of the organs of government. Through this mechanism the three organs of government will be accountable to themselves and to the people. The people can sue the legislature and the executive to the court of law for any

breach of the law or misconduct. They can also write to criticise any government policies or implementation of policies and also suggest ways to correct the abnormalities

Rule of Law

The rule of law comprises of three things: equality before the law, supremacy of the law and fundamental human rights. Through checks and balances and separation of power, the rule of law is encouraged. The principle is introduced to encourage government of law and not government of men. This is to ensure that those who rule do so according to the laid down rules and regulations. The constitution stipulates the various functions of the organs of government and how they are controlled. Due to the existence of checks and balances, the principle of the rule of law is strictly observed because everybody, both government and the governed see themselves as equal before the law, supreme before it and no one must infringe on each other's right. Due to check and balances we are able to practice the rule of law when you know that if you don't follow it, you are bound to be checked and prosecuted by other separated organ.

Passage of Bills into Laws

Laws made by the legislature are bound to be good laws because the passage of law takes rigorous process and also as a result of the mechanism of separation of powers, the legislature will not want a situation of it becoming a laughing stock in the eyes of the executive or the judiciary if its laws are regularly vetoed by the former or constantly annulled by the latter.

Good governance

The leader will rule well to get the acceptance of the people because he knows that if he does not rule to satisfaction of the people, he will be checked by the other organs and

which may lead to impeachment. Therefore when there is good governance there is bound to be social justice, rapid development, good security, peace and tranquility, law and order, good infrastructural facilities and also development of the individual towards being patriotic and being a nationalist who have the emotional attachment towards the development of his country.



1.4 Summary

In this Unit, we have discussed the concept of checks and balances. We further examined its objectives and advantages. The unit also examined the application of checks and balances in the United States, and how it has been applied to qualify and complement the theory of separation of powers in the country.

It is obvious from the discussion in this unit that the mechanism and operations of checks and balances in countries like the United States and Nigeria are meant to ensure a good and accountable government. This is not to say that the mechanism does not have its inherent complications, such as creating delays, power tussles and conflicting claims in the operations of government. Yet it remains a very important means of putting breaks, where necessary, on legislative rashness, executive recklessness and judicial arrogance.



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1.6 Possible answer self-assessment exercise (s) within the content

Self-assessment exercise 1

Examine the principle of Checks and Balances

Answer

Checks and balances works with the existence of separation of power because it deals with the process whereby the organs of government look into or control the affairs and duties of one another to ensure that governmental functions are properly performed. It is only when the powers of each organ of government are separated before they can check by one another and correct the mistakes made by the other organs. The legislature looks into the activities of both executive and judiciary. The executive looks into the activities of both legislature and judiciary while the judiciary looks into the activities of the legislature and the executive. To discuss the subject satisfactorily we need to understand the American system of government where separation of powers is in full swing. The 1787 American constitution specifically provides for the principle of division of power and checks and balances. American is widely known as a model of the presidential system because it is the first country in the world to practice it. The legislature in America is the Congress, which is bicameral, meaning two legislative chambers, the upper house (Senate) and the lower house (House of Representatives). Law making is the primary function of the members of the Congress who are elected directly by the

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Self-assessment exercise 2

Enumerate the objectives of checks and balances

Answer

This is a mechanism through which each branch of government in USA is able to participate in and influence the activities of the other branches. Its major examples include the power of the President to veto Congressional legislations, the Senate's power to confirm presidential appointments and the power of the Judiciary to review laws enacted by the Congress. According to Ray (2006: 145) the primary objective of the Federalist Papers for instituting the doctrine of checks and balances was "to provide for an equilibrated system of interaction among the three principal institutions of the executive, the legislature and the judiciary". Indeed, the doctrine of checks and balances is recognition of the reality in the process of government: To run a government, powers must not only coordinate, they must also overlap. This is a mechanism through which each branch of government in USA is able to participate in and influence the activities of the other branches. Its major examples include the power of the President to veto Congressional legislations, the Senate's power to confirm presidential appointments and the power of the Judiciary to review laws enacted by the Congress. According to Ray (2006: 145) the primary objective of the Federalist Papers for instituting the doctrine of checks and balances was "to provide for an equilibrated system of interaction among the three principal institutions of the executive, the legislature and the judiciary". Indeed, the doctrine of checks and balances is recognition of the reality in the process of government: To run a government, powers must not only coordinate, they must also overlap.

UNIT 3: THE CONCEPT OF THE RULE OF LAW

Structure

- 1.1 Introduction
- 1.2 Learning Outcome
- 1.3 Main Contents
 - 1.3.1 Concept of Rule of Law
 - 1.3.2 Rule of law and Democracy
 - 1.3.3 Limitations of Rule of Law
- 1.4 Rule of Law under Military Administration in Nigeria
- 1.5 Rule of Law under a Democratic Government
- 1.6 Summary
- 1.7 References/Further Reading
- 1.8 Possible answer to self-assessment exercise (s) within the content



1.1 Introduction

The concept of rule of law has become a popular mantra in the lexicon of political science and government. It is one-way one distinguishing a government that is guided by laws from one that is dictated by the whims and caprices of the rulers. This unit examines the concept of rule of law, its principles and limitations. The unit in addition compares the observance of rule of law in a democratic government from that of a military or a dictatorial government.



1.2 Learning Outcome

By the end of this unit, you should be able to:

1. Define the concept of rule of law and its principles
2. Know that there are limitations to the concept of rule of law in practice
3. Explain the distinction in the application of rule of law between a democratic and military government.



1.3 Main Contents

1.3.1 Concept of Rule of Law

The rule of law, also called supremacy of law, is a general legal maxim according to which decisions should be made by applying known principles of laws, without the intervention of discretion in their application. This maxim is intended to be a safeguard against arbitrary governance (Rawls, 2003:206-207). The word "arbitrary" (from the Latin *arbitr*) signifies a judgment made at the discretion of the arbiter, rather than according to the rule of law. Generally speaking, law is a body of rules prescribed by the state subject to sanctions or consequences. The predominant view is that the concept of "rule of law" per se says nothing about the "justness" of the laws themselves, but simply how the legal system operates. As a consequence of this, a very undemocratic nation or one without respect for human rights can exist with a rule of law - a situation which may be occurring in several modern dictatorships. What is taken as the classical definition of the concept of the rule of law was given by A.V. Dicey (1958). In his conception, the rule of law means: „the absolute supremacy of regular law as opposed to the influence of arbitrary power, and exclude the existence of arbitrariness or prerogative or even of wide discretionary authority on the part of government“. This definition perceives the rule of law as a principle that seeks to curb government powers by insisting that governance should be in accordance with the laws of the land and not according to the arbitrary rule of office holders. It also implies that no man can be punished except for a proven breach of law. The other major element of the rule of law is the equality of all classes of people before the law as administered by the ordinary courts. The rule of law is further defined as the “principle” that governmental authority is legitimately exercised only in accordance with written, publicly disclosed laws adopted and enforced in accordance

with established procedures. The principle is intended to be a safeguard against arbitrary governance. Today, the concept of rule of law has been expanded beyond the classic formulation provided by Dicey. The doctrine is now recognised to include:

1. the supremacy of the law including judicial authority over all persons and authority in a state;
2. the supremacy of the constitution;
3. the independence of the judiciary;
4. the right to personal liberty; and
5. observance of democratic practices including conduct of regular, free and
6. fair elections as a basis for assuming political power

(Anifowose and Enemu, 2005). In short, rule of law stipulates that government is instituted and limited to its power according to the law and should be devoted to the preservation of the liberties of individual citizens, all of whom are deemed to be equal before the law. By guaranteeing civil rights, the rule of law also creates the basic conditions in which individuals can pursue their own personal development as they choose. The fundamental human rights of the citizens are defined and enforced by the law of the land. One of the main purposes of the rule of law is to ensure that the civil liberties of the citizens are safeguarded from the arbitrary interference of those in authority.

Self-Assessment Exercise (SAE) 1

Define the concept and principles of rule of law
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1.3.2 Rule of law and Democracy

Rule of law is also better realized under a democracy than a dictatorship (Alonge, 2005). Democratic governance is based on the will of the people and is the form of governance

best suited to allowing all people to live in dignity and freedom. This is also emphasised by the Millennium Declaration, in which the international community undertook to promote democracy worldwide. Democracy requires a “rule of law” framework in order to govern the interaction and co-existence of all citizens. The doctrine of rule of law is intimately bound with the practice of democracy. As Sagay (1996) has suggested, „there can be no democracy without the rule of law and vice versa“. The rule of law may be a necessary condition for democracy but it is not a sufficient condition. For much of human history, rulers and laws were synonymous -- law was simply the will of the ruler. A first step away from such tyranny was the notion of rule by law, including the notion that even a ruler is under the law and should rule by virtue of legal means. Democracies went further by establishing the rule of law. Although no society or government system is problem-free, rule of law protects fundamental political, social, and economic rights and reminds us that tyranny and lawlessness are not the only alternatives. But a democratic government is not a guarantee for the respect of rule of law. As argued by Doug Hammerstrom (2002): We who seek to build democracy must not be bound by the false assertion that the rule of law is democratic. A re-examination of our history teaches us that our powerful legal system is a massive fortress against popular sovereignty. One of our most important tasks is to revisit fundamental questions that were resolved by undemocratic means in the past. Indeed, there are countries in the world today such as North Korea, which has democracy prefixed before their names, and yet their citizens contend with the worst form of dictatorship under their oppressive government. Therefore the mere presence of laws is no sufficient guarantee that such laws are in the public interest. Echoing Hammerstrom, Tacitus says: “The more corrupt the Republic, the more

the Laws”. Thus within the rule of law or within a society or state that is governed in accordance with rule of law, the agreed organic law of the land determines „who gets what, when and how“ and not the idiosyncratic behaviour of the ruler(s), be they elected or otherwise. This is why it is argued that within rule of law, there is total supremacy of law. It is obvious that united effort of the three branches of government is the search for justice through the law. Justice is the end, the terminus adquem towards which all the laws passed by the legislator, all the executive function of government, and the administration of law in our courts, naturally end. It is to be emphasized that any power given to the judiciary is not for the gratification of the judge but rather to enable him more effectively administer justice, to enable him protect innocent citizens from power and its abuse by the various concentrations of power. Protection from power is thus the necessary roles of the courts and the citizens“ last line of defence in their unequal combat with power. It is only an erudite, courageous, fearless and independent Bench that can protect the citizens from the abuse of power. The independence of the judiciary is thus the citizens“ bulwark against oppression, his charter of liberties and a force for stability, peace and progress in our land.

Self-Assessment Exercise (SAE) 2

Outline the relationship between the concept of democracy and the principles inherent in rule of law
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1.3.3 Limitations of Rule of Law

Thomas Jefferson, the third President of the United States in his Inaugural Address stated “equal and exact justice to all men of whatever state or persuasion, religious or political”. In other words, he was emphasising that all men are equal before the law. Under the portal of the Supreme Court building in Washington, United States, a similar injunction is

scribble: "Equal Justice under Law". These two quotes represent a statement of the desire of the government and citizens of the country but in reality, these precepts may not be observed or may even be reached on the altar of expediency. Abraham Lincoln, another famous American was once quoted to have said: "Let reverence for the laws be breathed by every American mother to the lisping babe that prattles on her lap, let it be taught in the schools, in the seminaries and in colleges", but he was the first to suspend the habeas corpus in Maryland in the early days of the American Civil War in violation of U.S.'s constitution. Woodrow Wilson found a precedent in Lincoln's denial of rights to justify a similar action by the U.S. government during World War I. What happened in the two cases cited in the United States in the mid 19th century and early 20th century is that the two American Presidents abandoned the principle of justice upon which the doctrine of rule of law is based for the principle of expediency. In totalitarian states, there is no pretence about rule of law, because in those states the law and the courts are regarded as instruments of state policy. Put differently, the law is used to serve the interest of the strong to the detriment of the weak. This is evident that violation of laws or denials of rights for political ends are not peculiar to African and other third world countries. The only difference is that why the abuse and violations are gross in developing societies there are subtle ways by which developed nations dress up or mitigate these denials where they cannot be avoided. We must also note that when compared with the other arms of government the legislature and the executive - the judiciary that is expected to ensure justice, is a cripple. Justice Samuel Miller of the United States once puts it succinctly: Dependent as its courts are for the enforcement of their judgements upon officers appointed by the executive and removable at its pleasure, with no patronage and

no control of the purse or the sword, their power and influence rest solely upon public sense of necessity for existence of a tribunal to which all may appeal...

The principle of equality before the law also has its limitations. The modern state maintains vast paraphernalia for the prosecution of alleged offenders, there is no such organisation for their adequate defence. For example, if a poor person steals conviction follows instantly; if a rich person steals, he is usually set free on the plea of nervous or mental trouble; but if directors of a company in high position pay no attention to the affairs of the company, they are not held responsible when the company is compulsorily liquidated, but if a petty official is confused in his accounts, charges of embezzlement are preferred against him or her. Worse still the legal aid council in Nigeria that is supposed to come to the assistance of the poor does not enjoy the required support from government that can enable it discharge its functions effectively. Fundamental human rights such as rights to life, freedoms of expression, association and movement also have their limitations, and can also be suspended or abridged. Right to Life A government can deny or deprive a citizen right to life under the following conditions: For the defence of any person from unlawful violence or for the defence of property in order to effect arrest or to prevent the escape of person lawfully detained and for the purpose of suppressing a riot.

Right to dignity of human persons This states that no one shall be subjected to torture or inhuman treatment.-No person shall be held in slavery or be expected to perform forced labour except labour necessary in the event of any emergency threatening the life of a people in a state or compulsory labour for the members of the armed forces, compulsory national service which forms part of the education and training of the Nigerian citizens.

Right to personal Liberty Conditions under which a citizen can be deprived of this right include if one commits a serious crime or fails to obey the order of court; for the purpose of one's age or if one has infectious disease or is a person of unsound mind or to prevent unlawful entry into Nigerian or effecting expulsion from Nigeria. Under this right, the following factors must be considered in the case of an arrested person or a detainee; avoidance of false evidence against himself. -a detainee must be informed within 24 hours why he has been detained; shall be entitled to compensation and public apology if unlawful arrested. Right to fair hearing If for the case of this a tribunal is set up, the following procedures must be followed: the tribunal must seat in public, the person so affected must be allowed representation before the tribunal; the decision of the tribunal must not be influent by the government. For one charged with criminal offence shall be presumed innocent until he is proved guilty; informed promptly in the language he understands the nature of his offence; shall be given adequate time and facilities for the preparation of his defence; shall be allowed to defend himself in person or by legal practitioner of his own choice. Right to freedom of expression This emphasizes that individual is entitled to hold opinion, to receive and influence ideas and information without interference. Also every person has right to establish and operate any medium for the dissemination of information, ideas and opinions. Right to peaceful assembly and association, freedom of movement, right to freedom from discrimination and right to own property are also entrenched in the constitution. Most of these rights can be curtailed when a country is under emergency or under an undemocratic government. Also these rights are protected by the judiciary. Anyone whose rights are encroached upon can go to court to seek redress.

1.4 Rule of Law under Military Administration in Nigeria

Under the various military regimes in Nigeria, and despite their pretences to conducting governance, the nature and antecedent of a military government does not allow for strict adherence to the principle of rule of law. Indeed, by definition a military regime is equated to a dictatorship and is always regarded as an aberration. Therefore, for almost three decades in Nigeria, the military relegated the rule of law to the background. For example the Buhari military regime promulgated Decree No.2 under which many Nigerians were detained without trial. The same government also enacted Decree No. 4, which made it an offence to publish the truth if it embarrassed those in government. Two journalists of the GUARDIAN newspaper in Nigeria, (Nduka Irabor and Tunde Thompson) were jailed by the Buhari regime for contravening the Decree number 4. Three cocaine pushers were also publicly executed by the Buhari regime, under a decree that was applied in a retroactive manner, contrary to practice within a society/state governed by rule of law. Although the succeeding Babangida regime revoked Decree number 4, it however retained the more obnoxious Decree No. 2, under which his predecessor, Buhari, and his deputy, Tunde Idiagbon were clamped into detention. To placate the political class, Babangida released several politicians jailed by Buhari in a gesture meant to promote a new image for the military as a responsive government, but not as a country within the ambit of the rule of law. The Babangida's regime, under the pretext of what was called "guided democracy" also experimented with all sorts of political contrivances. He severally extended his tenure in office, which ended in the annulment of June 12, 1993 presidential election; which marked a grand repudiation of Nigerians' will entrusted in Moshood Abiola. The Abacha's regime was more notorious

in its disregard of the principles of rule of law and respect for human rights. During his era, political activists were forced into exile because the political environment was not made conducive for an open and contested terrain which democracy demanded. The Abdusalam's administration was too short to merit any significant analysis except that in 1999, his administration re-enacted the Obasanjo's record of 1979, when it mid-wived another successful transition programme, which was concluded within a comparatively shorter period of ten months. His military dis- engagement brought Obasanjo into power again as a democratically elected President.

1.5 Rule of Law under a Democratic Government

An evaluation of rule of law under a democratic dispensation will always be different from the one done within a military setting. In the First Republic in Nigeria, there were several political crises, which put the observance of rule of law to test. A prominent case was the declaration of a state of public emergency in the then western region of the country in 1962. This was over a fracas, which broke out on the floor of the House of Assembly of the region. A legal suite was then instituted by the Action Group, which sought for the declaration that the action taken by the federal government was illegal and unconstitutional, and for its reversal. In its ruling the Supreme Court refused to rule on the legality or otherwise of the action, but merely affirmed that there was a proper resolution passed by the Parliament. When the Privy Council in London in an appeal brought before it later declared the act null and void the Balewa led federal government promptly ended the jurisdiction of the Privy Council from entertaining cases that emanated from Nigeria.

Another case in which the observance of the rule was put to question was over the creation of Mid-western state from the then Western region in 1963. The crux of the debate was on whether the action was right when it was done without the concurrence of the state from which the new region was to be carved out. Many believed that the action was politically motivated to whittle down the influence of Chief Obafemi Awolowo and his party, the Action Group, in the minority areas of Western region. This view sound plausible especially when the same federal government refused to accede to state creation exercise in the then Northern region which was the biggest in both size and population in the country, and in which agitations for more regions/states were most rife. During the administration of President Shehu Shagari between 1979 and 1983 there were also test cases for the rule of law. A major one was the deportation of Alhaji Shugaba Abdul Rhaman, the then minority leader of the old Borno State House of Assembly on the order of the then Minister of Internal Affairs, Alhaji Maitama Yusuf. Like that of the two cases cited in the First Republic partisan political motives were also insinuated given, the objective of the ruling party in the country then being to silence the voices of opposition as then symbolized in the personality of Alhaji Shugaba. However, a Supreme Court judgment later quashed the deportation order. Similarly a Revenue Allocation Act already signed into law by President Shehu Shagari was annulled by the Supreme Court in a case brought against the federal government by the then Bendel State government on the ground that proper procedures were not followed by the National Assembly in the passage of the bill. After almost three decades of political independence and return to democratic governance under President Olusegun Obasanjo, Nigerians legitimately aspire to the type of government that will meet universal standards of respect for the rule of law.

But on the contrary, while in office, Obasanjo elevated constitutional abuses and executive indiscretions into a virtue. The list is endless. For example, in Odi, Rivers state a whole community was razed down by the Nigerian military acting on the President's fiat. Secondly, in a flagrant disobedience of the Supreme Court's judgment, Obasanjo refused to release the statutory allocations meant for the local governments in Lagos. Under Obasanjo, the country also witnessed unresolved murder cases; prominent among which are those of Chief Bola Ige, Chief Dekibo and Engineer Funsho Williams. President Obasanjo also sought to elongate the tenure of elected local government councils from three to four years, which was aborted midstream. This, he did by rushing to assent a bill which emanated from a joint sitting of the National Assembly, without recourse to the two houses which appointed the body. The move was however invalidated by a Supreme Court judgment. Obasanjo also severally violated appropriation laws by either exceeding, or spending on unauthorized projects, in acts of questionable constitutional breaches, which led to the several moves by the National Assembly to impeach him in 2002. Also in both Plateau and Ekiti states the Presidency, under Obasanjo imposed equally unjustified state of public emergencies, ostensibly for security reasons, but which many people believed had partisan imprint. He also pressurised the National Assembly to approve same, with scant regard for constitutional provisions; thereby displacing elected legislative and executive institutions, and replaced them with appointed sole administrators. Similarly, controversial impeachments were carried out in some states, notably Bayelsa and Oyo, where the hands of the Presidency under Obasanjo were visible. What is also common in respect of the former Chief Executives of the two states in question is that they were not persuaded by the sleight of

hands for a third term in office, which President Obasanjo was visibly interested in. It is difficult to resist the conclusion that the impeachment axe was the price they had to pay for their effrontery towards a more than determined Presidency, to forge ahead despite massive national opposition. Fortunately for Ladoja of Oyo State, his purported impeachment was declared illegal and unconstitutional by the Supreme Court. It is paradoxical that Governor Ladoja who invoked and benefited from rule of law had earlier refused to respect a court order in his own state, which directed him to recognise and swear in a Local Government Chairman who had won the election, but was wrongly barred from taking office. The irony goes full circle when it is realised that it was Gov Ladoja's deputy, Alao-Akala, during his now illegal succession to the governorship seat who finally obeyed the court order. If the aborted attempt by President Obasanjo to amend the 1999 constitution to pave way for his third term in office is added to the list, it will not be far-fetched to conclude that the former president operated outside the framework of rule of law in the reign of arbitrariness and impunity under his watch in Aso Rock. Therefore, what has become evident is that the phrase rule of law has become a mantra that is being selectively used in the country to suit particular situations or circumstances, depending on what is at stake or the matrix of political interests. Unlike the preceding administration headed by a President with a military background, in May, 2007, when Yar'Adua, a man with full civilian antecedents was sworn in, many Nigerians naturally thought that, a watershed had been reached in Nigerian political experiment. This is more so when Yar'Adua in his Seven Point Agenda, among other things, committed himself to the observance of the rule of law. Since the agenda flowed from his electoral campaign promises as the presidential candidate of the People's

Democratic Party (PDP) some have criticised it as a mere vote catching device. But when in his inaugural address Yar'Adua reiterated his commitment to the pursuit of the agenda, Nigerians began to take him seriously. In articulating his Seven-Point Agenda, one of the special areas that his administration promised to focus on, was the observance of the rule of law. It is not surprising that Yar'Adua places rule of law as a priority of his administration, given the eight years of executive recklessness under former President Olusegun Obasanjo. Since the major actions taken under late President Yar'Adua fell under contemporary focus, we intend to take the whole gamut in detail in the next unit



1.6 Summary

This Unit is divided into five sections. In the first section, we examined the concept of rule of law and its basic principles. Section (2) discussed the relationship between rule of law and democracy. In section three, we analysed the limitations to rule of law in practice. Section (4) also examined the observance of rule of law under past military administrations in Nigeria while in section five we compared the rule of law under previous civilian governments in Nigeria against the background of the knowledge gained in section four.

Democratic governance is based on the will of the people and is the form of governance best suited to allowing all people to live in dignity and freedom. This is why the Millennium Declaration in 2000 undertook to promote democracy and rule of law, which are sine qua non to good governance worldwide. Democracy requires a “rule of law” framework to thrive and to deliver its dividends to the citizens. It is only those governments that guarantee human rights, a major component of the rule of law that can

create the basic conditions in which individuals can pursue their own personal development as they choose.



1.7 References/Further Reading

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1.8 Possible answer to self-assessment exercise (s) within the content

Self-assessment exercise 1

Define the concept and principles of rule of law

Answer

The rule of law, also called supremacy of law, is a general legal maxim according to which decisions should be made by applying known principles of laws, without the intervention of discretion in their application. This maxim is intended to be a safeguard against arbitrary governance (Rawls, 2003:206-207). The word "arbitrary" (from the Latin *arbitr*) signifies a judgment made at the discretion of the arbiter, rather than according to the rule of law. Generally speaking, law is a body of rules prescribed by the state subject to sanctions or consequences. The predominant view is that the concept of "rule of law" per se says nothing about the "justness" of the laws themselves, but simply how the legal system operates. As a consequence of this, a very undemocratic nation or

one without respect for human rights can exist with a rule of law - a situation which may be occurring in several modern dictatorships. What is taken as the classical definition of the concept of the rule of law was given by A.V. Dicey (1958). In his conception, the rule of law means: „the absolute supremacy of regular law as opposed to the influence of arbitrary power, and exclude the existence of arbitrariness or prerogative or even of wide discretionary authority on the part of government“. This definition perceives the rule of law as a principle that seeks to curb government powers by insisting that governance should be in accordance with the laws of the land and not according to the arbitrary rule of office holders. It also implies that no man can be punished except for a proven breach of law. The other major element of the rule of law is the equality of all classes of people before the law as administered by the ordinary courts. The rule of law is further defined as the “principle” that governmental authority is legitimately exercised only in accordance with written, publicly disclosed laws adopted and enforced in accordance with established procedures. The principle is intended to be a safeguard against arbitrary governance. Today, the concept of rule of law has been expanded beyond the classic formulation provided by Dicey. The doctrine is now recognised to include:

1. the supremacy of the law including judicial authority over all persons and authority in a state;
2. the supremacy of the constitution;
3. the independence of the judiciary;
4. the right to personal liberty; and
5. observance of democratic practices including conduct of regular, free and
6. fair elections as a basis for assuming political power

Self-assessment exercise 2

Outline the relationship between the concept of democracy and the principles inherent in rule of law

Answer

Rule of law is also better realized under a democracy than a dictatorship (Alonge, 2005). Democratic governance is based on the will of the people and is the form of governance best suited to allowing all people to live in dignity and freedom. This is also emphasised by the Millennium Declaration, in which the international community undertook to promote democracy worldwide. Democracy requires a “rule of law” framework in order to govern the interaction and co-existence of all citizens. The doctrine of rule of law is intimately bound with the practice of democracy. As Sagay (1996) has suggested, „there can be no democracy without the rule of law and vice versa“. The rule of law may be a necessary condition for democracy but it is not a sufficient condition. For much of human history, rulers and laws were synonymous -- law was simply the will of the ruler. A first step away from such tyranny was the notion of rule by law, including the notion that even a ruler is under the law and should rule by virtue of legal means. Democracies went further by establishing the rule of law. Although no society or government system is problem-free, rule of law protects fundamental political, social, and economic rights and reminds us that tyranny and lawlessness are not the only alternatives. But a democratic government is not a guarantee for the respect of rule of law. As argued by Doug Hammerstrom (2002): We who seek to build democracy must not be bound by the false assertion that the rule of law is democratic. A re-examination of our history teaches us that our powerful legal system is a massive fortress against popular sovereignty. One of

our most important tasks is to revisit fundamental questions that were resolved by undemocratic means in the past. Indeed, there are countries in the world today such as North Korea, which has democracy prefixed before their names, and yet their citizens contend with the worst form of dictatorship under their oppressive government. Therefore the mere presence of laws is no sufficient guarantee that such laws are in the public interest. Echoing Hammerstrom, Tacitus says: "The more corrupt the Republic, the more the Laws". Thus within the rule of law or within a society or state that is governed in accordance with rule of law, the agreed organic law of the land determines „who gets what, when and how“ and not the idiosyncratic behaviour of the ruler(s), be they elected or otherwise. This is why it is argued that within rule of law, there is total supremacy of law. It is obvious that united effort of the three branches of government is the search for justice through the law. Justice is the end, the terminus adquem towards which all the laws passed by the legislator, all the executive function of government, and the administration of law in our courts, naturally end. It is to be emphasized that any power given to the judiciary is not for the gratification of the judge but rather to enable him more effectively administer justice, to enable him protect innocent citizens from power and its abuse by the various concentrations of power. Protection from power is thus the necessary roles of the courts and the citizens“ last line of defence in their unequal combat with power. It is only an erudite, courageous, fearless and independent Bench that can protect the citizens from the abuse of power. The independence of the judiciary is thus the citizens“ bulwark against oppression, his charter of liberties and a force for stability, peace and progress in our land.