

# Dialectic Analysis of Checks and Balances in the Oyo Empire and Contemporary Nigeria Politics

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## Abstract

One distinguishing attribute of the Yoruba traditional political institution was the operation of the doctrine of checks and balances amongst the significant actors in the administration of the Oyo Empire which was Republican in nature and structure. Given the preceding, this paper undertakes an analysis of the practicability of the doctrine in the Oyo Empire, which was expected to be manifest in the suicide order passed on any Alafin that was seen to be despotic and the operation of the doctrine in contemporary Nigerian politics where each organ though enjoy some level independence, their still exist the principle of checks and balances which is presumed to act as check on the powers and activities of the various organs of government that is seen to be manifest in the Oyo empire on any erring Alafin in the institution of the Yoruba kingdom. The study which is qualitative in nature relied on data sourced through internet materials, journals, and articles. It adopts the doctrine of separation of power as the framework of analysis. The problem is, evident in the disparity inherent in applying the doctrine in the respective periods of the Oyo and contemporary politics of Nigeria where institutions of government seem to wield some levels of powers and overbearing influence despite the existence of checks from other organs. It recommends that strict observation of separation of powers as contained in the constitution amongst government institutions is fundamental for applying checks and balances, as evident in the Oyo Empire between the Alaafin and the other chiefs.

**Keywords:** Institution, Administration, Traditional, Oyo Empire, Politics

## Introduction

The distinguishing characteristic of contemporary government is the presence of different arms of government, which allows for the

particularised spheres of influence, power and authority for law-making, execution and interpretation and, most fundamentally, a relative level and constitutionally defined level of interaction between these institutions of government with the utmost function of serving the interest of the masses in a complex society and democratic system like Nigeria. These attributes stand out also as a remarkable feature of the traditional system of governance that was adopted and applied in the governance of the Oyo Empire. Suffice it to say, therefore, that this system of administration practised in contemporary governance was built on the fundamental principles inherent in the separation of power which advocates checks and balance as obtained in the Oyo Empire, though with distinction in practice and application.

However, the application and practice of the principle of separation of power and checks and balances as a germane attribute of governance, especially in contemporary times, has become almost non-existence when placed alongside its operations in the Oyo Empire. Falola (2017:P.18) on the structure and operation of the old Oyo empire notes that "government was monarchical and centred on the town. Moreover, though the Yoruba ruler (Alaafin) was a monarch, he was kept in check by religious sanctions and the curbing power of the ruling councils. The communal-oriented spirit of government made it difficult for unfettered despotism to flourish".

Consequent upon the forgoing, the place of checks and balances in the Oyo system of Government presents a level of influence of the other institutions who act as restraints on the activities of the Alaafin, which makes his action consequent upon the dictates of the gods and the interest of the people. However, the same cannot be said of present-day government structures, which, though assumed to have institutionalised principles of separation of power and checks on the actions of the various arms of government but cannot, in practicability, toe the path of sanctions as these other

institutions are often seen as an appendage of the executive in most cases rather than displaying the independence provided for them.

Most importantly, the actions and inaction of public office holders depict abuse of public office which calls for sanction. However, the same cannot be passed-down given the compromising character of these institutions saddled with the function of checking the way power is excised by these institutions, which fundamentally calls to question the relationship between what "checks and balances" were in the Oyo Empire and the present configuration of the Nigerian state which has become a theatre of abuse of power and the privileges that accompanies public offices.

However, in recent times the establishment of checks and balances as a significant provision of government relations was brought to the fore by Denenberg (Bassey, 2006:P.128) "... in separating powers among the executive, legislature and judicial branches, however, the framers did not assign each a distinct function; but rather they made each share the function of government in such a manner as to be dependent on the other. The "checks and balances" thus rely not upon independence but interdependence among the branches".

The imperative of this statement is evident in the relations of checks seen in the Oyo Empire between the Alaafin and the Chiefs and also between the present executive-legislature-judicial arms of Government. Though these checks and balances have a limitation when placed along the lines of the result that are obtained in the periods in question, especially in terms of applicability and conformity, the powers of the Alaafin and that of the Executive head has been considerably put in check and interdependence established in the interest of the Empire and State.

Given the above scenario, this paper critically analyses the operations of the principle of checks and balances as inherent provisions of the separation of powers between and amongst the various institutions that wield power and authority to act

individually and collectively and consequently with intentions of checking the tendencies for excesses in the discharge of functions as obtained under traditional administration of the Oyo Empire viz-a-viz its applicability in the contemporary Nigerian polity.

The structure of traditional and contemporary governmental institutions presents the division and sharing of power between various organs of government, which allows for the use of power within a considerable level of restraints as seen in the notion that power is seen to corrupt and the absoluteness of power is assumed corrupt more absolutely especially when there is no form of check or balance amongst the various arms of government.

However, the application and observation of these principles of checks and balances in the present body polity of the Nigerian state raise a fundamental question of strict observance, especially when placed within its application in the Oyo Empire, where it was seen to have achieved commendable observance and outcome with defining character and existence of the actors in the traditional institution. However, this problem presents a dysfunction in the present configuration of the Nigerian state. Due to a lack of systemic and institutionalised checks and balances, especially between the executive, legislature and judiciary, abuse has become a recurring decimal among these institutions.

Therefore, the point of emphasis in this paper is seen in endless friction, unresolved disputes between arms of government, procured judgment and, most fundamentally, the inability of these arms of government to check the actions of one another and execute the whole provisions of the constitution in cases where abuse of office and powers are glaring which were not the case in the Oyo Empire.

### **Theoretical Framework**

The theoretical framework used in this paper is the theory of separation of power, which explains the division of governmental powers between the various arms of government in a state or an

organisation. The theory of separation of power expresses the distinction in institutional relations with the central focus of avoiding friction and clash of interest in spheres of influence.

According to Nwabueze (Yakubu, 2003:P.92), "the idea of separation of power is of great constitutional importance. This idea is usually attributed to John Locke, who, considering the political situation in seventeenth-century England, felt that it was better to confer legislative and executive power on different organs of government".

Specifically, the theory is attributed to the French Jurist Montesquieu, who gave an elaborate insight into the doctrine of separation of power as that between the executive, legislature and judiciary (Yakubu, 2003: P.92). He states thus "political liberty is to be found only when there is no abuse of power. However, constant experience shows us that every man invested with power is liable to abuse it and to carry his authority as far as it will go ..." To prevent this abuse, it is necessary from the nature of things that one power should be a check on another ... when the legislative and executive powers are united in the same person or body... there can be no liberty. Again, there is no liberty if the judicial power is not separated from the legislature and executive. There would be an end to everything if the same person or body, whether of the nobles or the people, were to exercise all this power.

Early in the modern period Bodin, the French writer, pointed out in *The Republic* (1576) Appadorai. 2004:P.516) notes that "... The prince, he thought, ought not to administer justices in person, but should leave such matters to independent judges". According to him, "to be at once legislator and judge is to mingle together justice and the prerogative of mercy, adherence to the law and arbitrary departure from it: if justice is not well administered, the litigating parties are not free enough, the authority of the sovereign crushes them".

Buttressing the above, *The Federalist* (Appadorai, 2004:P.517) notes that "the accumulation of all powers, legislative, executive

and judiciary, in the same hands whether of one, a few, or many, and whether hereditary, self-appointed or elective, may justly be pronounced the very definition of tyranny".

The theory or principle of separation of power, amongst other things, establishes a distinctive allocation of function and powers of office to the different bodies in order to check abuse of office and misuse of privileges that accompany public office and position of responsibility both in modern-day Nigeria and pre-colonial traditional institutions of the Yoruba people. Also, the theory confers upon the various institutions of governance the primary responsibility of checking the use of power in the respective institution. It creates an atmosphere of interdependence in the administration and determination of public good and the overall interest of the citizens.

Specifically, the theory is seen in traditional Yoruba institutions in the check of the office of the Alafin by the Oyo Mesi and concurrently in the new Oyo Empire by the Ogboni Cult, while in modern-day democratic practices, the institutions of the Executive, Legislature and Judiciary collectively and individually watch the activities of all the institutions in order to avoid the tendencies for abuse of office or tyrannical rule as obtainable in another system of governance that are not democratic.

The emphasis of this theory as it relates to the Oyo empire and the contemporary Nigeria system is hinged on the fact that, the Alafin either in its emergency or removal from office and the exercise of power was dependent on the role played by other organs in the institution and his activities at every point was subject to check by these organs. Though this principle is seen in contemporary Nigerian system but the tendency for abuse of power and privilege by the different office holders and their appointed agents subjects the application of checks and balances which radiates within the principle of separation of power to criticisms.

## **Oyo Empire and the Principle of Checks and Balances**

Multiple traditions exist regarding the formation of the Oyo Empire before, during and after the arrival of the colonial masters in the Yoruba land. However, of all these traditions, it is essential to state that Oyo Empire has often traced its emergence to Ile-Ife, which holds the status of the cradle of Yoruba civilisation. Therefore, the significance of the Yoruba as an integral and core entity in the discourse of Nigerian politics must be considered.

According to Olaopa (2017:P.7), "the historical and socio-political narratives of the Yoruba nation is an interesting and thought-provoking one since the unravelling of the multiple historical circumstances that throw up the Yoruba as a significant factor in colonial and postcolonial politics in Nigeria".

Expressly, the Oyo Empire (Old and New) represent a significant force in determining traditional institutions in pre-colonial, colonial and postcolonial institutions, not just in Nigeria but across Africa. Also, the administration of the Yoruba traditional institution wherever they are found lays credence to the fact that the basis of existence and leadership is based on the principle of collectivity which does not concentrate power in the hands of an individual but rather the task of decision making is jointly shared amongst various institutions of authority that owes their legitimacy to the people.

Also of utmost importance in the Yoruba nation is the presence of communities, villages, towns and Kingdoms that collectively make-up the given society with definite institutions and organs saddled with the responsibility of making law and order and also bestowed with a relative level of authority in the administration of the respective spheres of influence.

According to Atanda (Falola, 2017:P.97), "the key political unit on which Government was based in all the Yoruba kingdoms was the town, *ilu*. Each kingdom consisted of many towns, but this did not mean that there were many independent governments in each kingdom. What happened was that the government of the capital

served as the central government of the kingdoms, while those of the subordinate towns served as the local government".

The Oba in Yoruba land is an absolute ruler ascribed the title of *Oba, alase ekeji orisa* (King, ruler and companion of the gods). This absoluteness, in theory, confers on him the status *Kabiyesi*, meaning (no one can question your authority). The power of Oba assumes the position of life and death over his subject and is divinely not accountable for any of his administrative actions (Atanda cited in Falola, 2017).

However, in practice, the composition of Yoruba traditional institutions does not confer on the Oba any absolute power. Instead, his powers are often put to check by another title holder in the land. The presence of the Oyo Mesi in the Oyo Empire acts as the checker of the action and inaction of any Oba over the humanistic tendencies for tyrannical rule and over personal exigencies that might defile the gods' wishes.

Consequent upon the above, Atanda (Falola (2017:P.97), states that, "in practice, however, the *Oba* was not an absolute ruler. It is true that as the executive head of the Government, he exercised considerable powers, particularly over the ordinary people. He could arrest, punish or even behead them without trial. However, these were powers that he had to exercise sparingly and more with justification than without it. In any event, the powers of the *Oba* were checked in many ways".

To begin with, he did not rule his town or kingdom alone. He did so together with a council known as *Igbimo*. In some places, the *Igbimo* has specific names. They were called the Oyo Mesi in Oyo, the Ilamuran in Ijebu Ode, the Ogboni in Egba towns, and the Iwarefa in Ife, Ijesa, Ekiti and Ondo towns. The administration of the Oyo Empire explicitly raises the point of checks and balances between the various institutions of the Empire. The office of the Alaafin is administratively put in check by the Oyo Mesi, whose powers confer the responsibility of checking the excesses or the



likelihood of the tendencies for excesses by an Alaafin in the discharge of his duties.

Giving a detailed account of the operations of the principle of checks and balances in the Old Oyo Empire, Atanda (Falola, 2017:P.98) states that "... the best-known example was that of the Old Oyo, the capital of Old Oyo Empire. There, the Oyo Mesi, the council of state, could reject an Alaafin who acted *ultra vires* or became oppressive as a ruler. The sentence of rejection, often pronounced by the Basorun and head of the Oyo Mesi on behalf of his colleagues, ran thus: 'The gods reject you, earth rejects you, the people reject you'. Any Alaafin thus rejected had to commit suicide. During the seventeenth century, nine Alaafins were so rejected." In exercising the function of checking the powers of the Alaafin, it was known that in the period (c. 1754-1774) when Basorun Gaha was the most powerful in Old Oyo, four Alaafins were rejected. During the period between c. 1658-1754, seven were rejected by the Oyo Mesi of the eleven Alaafins who reigned between Obalokun and Onisile.

The above position critically presents the existence of Oyo Mesi as a core institution in the Yoruba traditional system of Government that has the primary aim of upholding order in the administration of the Kingdom and concurrently providing leadership following the intention of actualising egalitarian society for the people and also reducing tyranny as much as possible.

In checking the Oba in Yoruba land via the Oyo Empire, religious duties and taboos also come to the fore. According to Atanda (Falola, 2017:P.98), "There is evidence that the chiefs and the people could be in collusion with the priest to impose taboos for political reasons to check despotism. For example, in Old Oyo, a taboo that their Oba must not be touched by an egungun (masquerade) was deliberately used to eliminate the wicked Alaafin Jayin in the seventeenth century.'

The place of the gods in the determination of the people's general well-being was paramount in the land. The deities and

ancestors were constantly propitiated through scarifies and festivals; it was the sole responsibility of the Oba to see that these sacrifices were made following laid down rules and procedures.

One crucial fact that this check presents is that the use or misuse of power by any institution in Yoruba land, specifically in the Oyo Empire, was non-existent due mainly to the presence of the check of the various institutions by other institutions. Therefore, the powers an institution possesses to act contrary to the traditional belief of the Kingdom or the possibility of perpetuating acts that contravenes public good are primarily limited by the function and power bequeathed to other institutions in the Kingdom.

The Ogboni cult, which though was a factor in the historical development of the nineteenth century, was introduced into New Oyo Empire by Alaafin Atiba to curb the excesses of and the unguided tendencies for rejection by the Oyo Mesi as evident in the Old Oyo Empire. In the words of Atanda (Falola, 2017:P.279), "... in consequence of this, the principle of check and balances underlying the system of government of the Old Oyo Empire is now seen as one not only in which that of the Oyo Mesi checked the power of the Alaafin but also in which that of the Oyo Mesi was in turn checked by the Ogboni Cult."

### **Contemporary Government Structure in Nigeria and the Principle of Checks and Balances**

The principle of checks and balances in present-day governance structure explains the division of the powers and functions found in the country and across its federating units between the three arms of Government, namely, executive, legislature and judiciary. The applicability of the principle finds expression in the theory of separation of powers and functions as propounded by Montesquieu. The basis of the theory is to establish a level of independence for each institution of Government and, at the same instance, eradicate

the challenge of abuse of power and office, which is a significant characteristic of public office holders.

The principle of checks and balances was developed as an outgrowth of the classical theory of separation of powers, by which the Government's legislative, executive, and judicial powers were appropriately held to be vested in three different units. The reason for this, and the later development of checks and balances, was to ensure that governmental power would not be abused.

According to Garner (Yakubu, 2003:P.102), "the division of powers is not established to show the supremacy of powers between one arm and another or between the three arms. The three division of power is necessary to balance authority and power for the smooth running of Government at any level. Section 5(4) and (5) of the 1999 constitution shows this clearly. For example, in the law-making process, the assent of the President or the Governor is usually required for the bills that may have lawfully passed through the appropriate legislative house. An infraction of this idea may lead to totalitarianism, despotism and anarchy".

As amended, the constitution of the federal republic of Nigeria 1999 contains sections describing the powers of each arm of Government. Sections 4, 5 and 6 of the constitution deal with the legislature's powers, executive and judiciary, respectively. This division of powers based on function and sphere of influence explains the principle of separation of power. It concurrently provides for checking the activities of each arm by another with the sole aim of achieving balance in the use of powers by these arms of Government and reducing to a considerable extent the possibility of abuse of office and powers that accompany same.

Bassey (Ojo, 2003:P.129) states, "the adoption of presidential as a constitutive principle of Government by the architects of 1979, 1989 and 1999 constitutions was a conscious decision to address the specificity of our plural social system. In a society with deep primordial segmentation along ethnic and religious lines, the fusion of the executive and legislature in the Westminster model

(Parliamentary system) poses serious problems for constitutional practice".

Onyediran et al. (2005:P.64) viewed checks and balance as that arrangement whereby an arm of Government supervises and checks another arm against any possible abuse of powers". This implies that checks and balances, as a constitutional tool, enable the branches of Government to resist any illegitimate expansion of power by other branches. Of course, this is in tandem with Magstadt's (2006:P.74) view when he argued that; "the Madisonian solution was to structure the Government in such a way that selfish interests (faction) pursuing selfish ends would encounter as many hurdles as possible. This idea won the day in Philadelphia and was enshrined in the constitution of the United States of America as the famous checks and balances".

Checks and balances, therefore, are a mechanism for ensuring that each of the arms of the Government supervises and checks one another against possible abuse of powers. Hence, the different arms of Government are vested with the responsibility to monitor the activities of other arms (s) and limit the powers of other arm(s). For good governance, separation of powers and checks and balances must coexist.

From the above, mainly as observed in the Nigerian government structure, each organ of Government is constitutionally empowered to systematically undertake a check on the activities of another to help institute a system that breeds good governance and actualises the people's wishes. Therefore, the law-making function of the legislative arm of Government is open to executive assent, without which such a bill, whether from the executive, legislature or public domain, is expected to remain a bill if the executive refuses the assent. Concurrently, the executive arm of Government is subject to legislative checks in many ways, from appropriation bills to confirmation of government nominees, which has been subjected to abuse by both arms of Government.

Affirming the above position, Ayim-Ben, Okereke and Chijioke (2017:P.81-82) opine that however, in practice, we observe that several parties and personal interests are causing a colossal quagmire in the practical implementation and adherence to the principle of checks and balances in Nigeria. Nigeria has witnessed a crisis in its democratic arrangement as one branch of Government tries to check the other arm of Government. For instance, when the National Assembly (Senate and House of Representatives) attempts to check the activities of the executive through its oversight responsibility, they end up misunderstanding themselves. Similarly, when the executive uses its instrument to regulate the expense and budgeting of the National Assembly, they quickly fight back with the threat of impeachment. Nigeria has never had an exemplary implementation of the principle of checks and balances in the history of her democratic experience and existence.

Indeed, in Nigeria's presidential democracy, there have been several instances of one form of interference/usurpation of power between the legislature and executive since the inception of presidential democracy in 1979. Such interference/usurpation got to its peak in the first 8 years of the Fourth Republic after the inception of the new democratic dispensation in 1999 (Obidimma and Obidimma, 2015:P.78). This conflict of interests between the executive and legislature produced five senate presidents in eight years (1999-2007). Similarly, the cold war between the Buhari government and the legislature over the 2015 budget is also noteworthy. This scenario delayed the passage of the 2016 budget up till the second quarter of the year.

In all, applying the principles of checks and balances in Nigeria is a subject of question due mainly to issues of politics taking pre-eminence over the workings of established democratic institutions of the country. Rather than adopt a holistic check on the activities of each arm of Government, what is operational in Nigeria's democracy is the use of threat against leaders of arms of

Government that seems not to favour the cause of the other arm of Government and predominantly financial inducement has affected the actions of public office holders.

### **Checks and Balances in Oyo Empire and Contemporary Nigeria: An Analysis**

The imperatives of a structurally and functionally effective government predicated on the twin principles of checks and balances and the theory of separation of power explain the inexplicable importance attributed to these concepts in the running of Government in the traditional Yoruba system (Oyo Empire in context) and its entrenchment in the contemporary governance structure of Nigeria. However, the presence of these concepts across the periods under review presents striking differences in operations and applications in the administrations and periods under review.

In the Oyo Empire, for example, it was seen that checks and balances were a fundamental attribute as used by the Oyo Mesi in checking the powers and its use by the Alaafin, which is seen in the established rule of the opening of calabash that signifies rejection by the gods and the people. This saw the removal of five Alaafins by the Oyo Mesi. On the other hand, the operations of checks and balances in present-day governance leave the Nigerian state in doubt, especially as regards issues boarding on Executive-Legislative relations since the country's return to democratic governance in 1999 where though checks and balances exist in theory, the practicability of the concepts is subjected to questions given the after-effects of government actions.

The powers of the Oyo Mesi to check the office of the Alaafin are rooted in something other than threats. However, in actions as displayed in the governance of the Oyo Empire in present-day Nigeria, the powers of the Legislative arm to check the executive powers in situations of arbitrary abuse of office, a threat to act has often accompanied impeachment of executive members (the

President). Since 1999 date threat of impeaching the Executive President has often been impossible.

Alluding to the preceding, Omotola (Ojo, 2003:P.194) notes that "at the federal level, the first threat of impeachment against the President was made in May 2000. Francis Arthur Nzeribe moved the motion after listing a fifteen-count charge against the President. Besides, the House of Representatives also attempted to pass a vote of no confidence on President Obasanjo on the eve of the visit of then-American President Bill Clinton to Nigeria. Both attempts were, however, unsuccessful".

The import of the forgoing raises fundamental questions on the powers of the other arms of Government to check the actions and inaction of the executive arm, which in this context is often open to issues boarding on removal from office. It is important to note that the powers of the Oyo Mesi to check any erring Alaafin in the Oyo Empire have never been a threat by words but with actions.

## **Conclusion**

The paper examined the fundamentals of a structural and functional application of the principle of checks and balances, which is a significant character of a system of governance based on the theoretical and practical application of separation of powers between the arms of Government in a state or Kingdom. The paper focused on the separation of powers between the Alaafin, who is the political head of the Oyo Empire, and a principal member of the council, Oyo Mesi, whose function is seen in the check of the Oba through the opening of the sacred calabash upon his abuse of powers of the office he occupies; and also, the place of this concept in present-day governance structure in Nigeria.

The paper discovered that there exists a disparity in the operations and application of the concept in the two situations under analysis and therefore recommends the following;

The gains inherent in the complete application of what checks and balances represent in the Oyo Empire where the office of the

Alaafin performs his responsibility bearing in mind the sacred calabash should be adopted into the Nigeria political scene in order to serve as restraints to the powers of the executive President that often assume unfounded status over the development of the Nigerian state.

Money politics, seen as the order of the day in Nigerian politics, should be discouraged. This problem was not seen in the Oyo Empire, which allowed the Oyo Mesi to check the office of the Alaafin against tyranny and abuse of office.

Public office holders in Nigeria should, as a matter of principle, carry out the responsibilities attached to the offices they occupy, bearing in mind the general interest of the people as against personal or sectional interest, which is a fundamental requirement for the development of democracy predicated on the principles of checks and balances and the theory of separation of power which the Oyo Empire is known for.

Finally, strict observation of separation of powers as contained in the constitution amongst government institutions is fundamental for the application of checks and balances, as evident in the Oyo Empire between the Alaafin and the other chiefs.

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