

APPRAISING THE LEGISLATIVE PROCESSES IN NIGERIA AND THE UNITED STATES OF AMERICA: A COMPARATIVE APPROACH¹

Abstract

It is a truism that law is indispensable in human societies be it primitive or civilized. From Medieval England down to the Congress of the United States of America, it has become obvious that the powers wielded by law-making organs are enormous and significant. The process of law making, otherwise called the legislative process, is the chief concern of this paper. The Federal Republic of Nigeria and the United States of America are compared in that regard.

Key words: *Legislative process, Nigeria, United States of America, Comparative approach*

1. Introduction

The phrase 'legislative process' has both a restrictive and expansive connotation. In its restrictive sense, it may be limited to the process which the legislature must go through before it can enact policy proposals into laws or statutes. In this sense, it covers the various stages from the formulation to concrete proposal be it political, social, economic, cultural or otherwise to the finished product which is the statute. In the expansive sense, it could be better reclassified as the processes of the legislature. This meaning depicts the ways of the legislature, the powers of the legislature in its entirety and not just its power as it relates to the law making process. Surely, the law making power is relevant and important but it is only perhaps a very important constituent. The expanded connotation will form the fulcrum of this work.

2. Features of a Legislature

A legislature is expected to be one of the numerous complex social institutions instrumental in the establishment and maintenance of the legal order, reception and settlement of conflicts, setting of priorities, making and legitimizing policies, adopting existing rules of society into new revising societal norms and ethics. The legislature is expected to be vibrant and not static. Indeed, the legislature has a leadership role to perform and the people over whom it has jurisdiction must look to it. The legislature is not expected to act solo in the objectives stated above. It is but one of several institutions put in place to move the society forward.² The legislature is not an island unto itself; it can never be. By its very nature, it must recognize other authorities with similar attributes and should endeavour to maintain viable or some other relationship with them. The legislature functions within a larger political system. It is linked with other institutions in various ways, and consequently, its decisions often reflect the interrelationships. Interest groups make claim upon it. Executive officials

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² Kole Abayomi "A Critical Analysis of the Legislative Process in Nigeria," *Nigeria Law and Practice Journal* (N.L.P.J.) vol. 4, No.2, p.26.

help shape its agenda, interpret and implement its legislations. The judiciary may be called upon to explicate the meaning of its constitutionality.

2.2 The Functions of the Legislature under the Constitution

The Constitution of the Federal Republic of Nigeria 1999 (as amended) is the organic law of the country and it is supreme and all other laws must conform to its prescription. This Constitution is supreme and its provisions shall have binding force on all Federal Republic of Nigeria.³ It prescribes the role, duties and functions of both the Federal and states legislature in the same document. Although this paper is designed for the National Assembly, it is neater to consider the corresponding role of the state's assemblies on similar duties and function. By so doing, the National Assembly which is bi-cameral will appreciate what its corollary do at the state level. The legislature has three important and basic functions under the constitution, namely, power to legislate, power and control over public funds, power to generally supervise and ensure that the Executive is accountable to the legislature in respect of duties given to it. Inherent in the powers thus conferred is the duty to educate and inform the public.

2.3 Meaning of Legislative Powers

Essentially, legislative function is the making of new law and the alteration or repeal of existing law. Legislation is the formulation of law by the appropriate organ of the state in such a manner that the actual words used are themselves part of the law. The words not only contain the law, but in a sense they constitute the law.⁴ The Constitution provides that the National Assembly shall have power to make laws for peace, order and good government of the Federation or any part thereof with respect to any matter included in Exclusive Legislative List.⁵ The Exclusive Legislative List set out in Part I of the Second Schedule to the Constitution includes, among others, accounts of the government of the Federation; Arms, Ammunition and explosives; Aviation including airports, safety of aircraft and carriage of passengers and good by air; Banks, banking, bills of exchange; etc.

The matters contained in the Exclusive Legislative List are so wide covering every facet of human endeavour. The Constitution states that the House of Assembly of a state shall have power to make laws for the peace, order and good government of the state or any part thereof with respect to any matter outside the exclusive Legislative List and any matter included in the concurrent legislative list.⁶ The effect of this provision as it relates to the House of Assembly in the state has been watered down by 4 (5), which for ease of reference states: 'If any law enacted by the House of Assembly of a state is inconsistent with any validly made

³ Section 1(1) Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁴ O. Hood Phillips, Constitutional and Administrative Law, Seventh edition, 1987, p9. Section 4(1), Nigerian Constitution, 1999 (as amended).

⁵ Section 4(1), Nigerian Constitution, 1999 (as amended).

⁶ *Ibidem*, section 4(7)(a), (b), (c).

by the National Assembly, the law made by the National Assembly shall prevail and that other law shall to the extent of the inconsistency be void'.⁷

The concurrent legislative list under Part II of the Second Schedule contains a list of not too important thirty items, stating the extent of Federal and State Legislative powers. The items covered under the concurrent list include Allocation and revenue; antiquities and monuments; Archives; Electric power; Exhibition of cinematography film, statistics and trigonometrical, cadastral and topographical surveys.

The sum total of the effect of federal and state legislative power can be found in the doctrine of 'covering the field'. This doctrine was explained by the Nigerian Supreme Court in the case of *Attorney - General of Ogun State v Attorney of the Federation*.⁸ In this case, the court had to interpret, among others, the provision of section II of the 1979 Constitution.⁹ The section states:

- (1) The National Assembly may make laws for the Federation or any part thereof with respect to the maintenance and securing of public safety and public order and providing, maintaining and securing of supplies and service as may be designated by the National Assembly as essential supplies and services.
- (2) Nothing in this section shall preclude a House of Assembly from making laws with respect to the matters referred to in this section, including the provision for maintenance and securing of such supplies and services as may be designated by the National Assembly as essential supplies and services.

Briefly, in this case, each of the then nineteen states of the federation inherited the legislative powers of the former regions and by virtue of this power, each of the nineteen states either enacted or adapted its own public order law. Also having taken over powers of parliament to enact laws, the then Federal Military Government enacted the Public Order Decree. Enactments under reference were repealed on 1st October, 1979 when the Constitution of the Federal Republic of Nigeria 1979 came into force. Thereupon, the President of Nigeria issued an order -- the Constitution of the Federal Republic of Nigeria (Adaptation of Public Order Act) Order 1981 -- commencing on 10th February 1981 in the purported exercise of the powers conferred on him under section 274 (2) of the 1979 Constitution.¹⁰ In three separate suits which were consolidated, the Governments of Ogun, Bendel and Borno States

⁷ *Ibidem*, s.4 (5).

⁸ (1982)3 NCLR. 166.

⁹ This section is the same with section 11 of the 1999 constitution.

¹⁰ See similar provision in section 315 (2) of the 1999 Constitution.

challenged the power and authority of the President to make the Adaptation order. The issues to be determined included, among others:

- (a) Whether or not the Public Order Act 1979 took effect from 1st October, 1979 as a state law or as a Federal law?
- (b) Whether or not the Public Order Act, 1979 is an existing law under section 274 of the 1979 Constitution?
- (c) Who has the authority as the appropriate authority to adopt the Public Order Act 1979?
- (d) Meaning and extent of the principle of ‘covering the field’?

The Supreme Court held among others that:

- (1) By the promulgation of the Public Order Act 1979, in pursuance of its constitutional power under the Constitution (Basic Provision) Decree 1979, the Federal Military Government expressed completely and exclusively what should be the law governing the proper and peaceful conduct of public assemblies, meeting and processions throughout Nigeria. Therefore, at the commencement date, the 16th February 1979, the Public Order Act was meant only to be and indeed it was a Federal legislation and not a State law.
- (2) On 1st October 1979 when the 1979 Constitution came into force, the Public Order Act as an existing law by virtue of Section 274 (4)(b) of the Constitution took effect as an Act of the National Assembly it being a law the National assembly has power to enact law by virtue Sections 4(2); 11(1) and Part 1 of the 2nd schedule to the Constitution.
- (3) By virtue of the relevant provision of the constitution, the president is the only competent authority to adopt the Public Order Act so as to bring it into conformity with the Constitution. In this case it was observed:

Where under a Federal set up, both the Federal and State Legislatures, each being empowered by the Constitution so to do legislate on the same subject then if it appears from the provisions of the Federal law on the subject that the Federal legislature intends to cover the entire field of the subject matter and thus provide what the law on the subject should be for the entire Federation, then the state law on the subject is inconsistent with the Federal law and the latter must prevail and the State law on the subject is invalid. If no general intention to cover the entire field on the subject can be gathered from the Federal law then the mere concurrence of the laws (i.e. the Federal and State laws) on the subject is not *eo ipso* an inconsistency although the detailed rules in the provision of both laws may lead to different results on the same facts’.¹¹

¹¹ Per Idigbe, JSC, Attorney-General of Ogun State.

It appears firmly settled therefore, that where a matter legislated upon is in the concurrent list and the Federal Government has enacted a legislation in respect thereof, where the legislation enacted by the State is inconsistent with the legislation of Federal Government it is indeed void and of no effect for inconsistency.

2.4 Distinction between ‘Legislative Process’ and ‘Exercise of Legislative Power’

The legislative process commences with the gathering of materials for legislation and ends with the enrolment of the Act. But the exercise of legislative power envisaged under the constitution commences with reading in either House of the National Assembly and ends with the assent by the president or passing a second time with two-thirds majority in the National Assembly.¹² It should be noted that the exercise of 'legislative powers, by the National Assembly is part of legislative process.¹³

2.5 Mode of Exercising Legislative Powers

As the exercise of legislative power is by extension part of the legislative process, a clear statement of the provisions relating to it may be necessary. For ease of reference and analysis, sections 58 and 59 of the 1999 Constitution are reproduced hereunder:¹⁴

58. (1) The power of the National Assembly to make laws shall be exercised by bills passed by both the Senate and the House of Representatives and, except as otherwise provided by subsection (5) of this section, assented to by the President.
- (2) A bill may originate in either the Senate or the House of Representatives and shall not become law unless it has been passed and, except as otherwise provided by this section and section 59 of this constitution, assented to in accordance with the provisions of this section.
- (3) Where a bill has been passed by the House in which it originated, it shall be sent to the other House, and it shall be presented to the President for assent when it has been passed by that other House and agreement has been reached between the two Houses on any amendment made on it.

¹² See Attorney-General of Bendel State v. Attorney-General of the Federation, *supra*, especially the statement of Obaseki, JSC, at p.75.

¹³ *Ibidem*, p.34 per Fatayi-Williams C.J.N. see also *Bribery Commissioner v. Ranasinghe (1965) A.C 172 (PC)* at p.193.

¹⁴ CFRN, 1999 (as amended).

- (4) Where a bill is presented to the President for assent, he shall within thirty days thereof signify that he assents or that he withholds assents.
 - (5) Where the President withholds his assent and the bill is again passed by each house by two-thirds majority, the bill shall become law and the assent of the president shall not be required.
- 59 (1) The provision of this section shall apply to:
- (a) An appropriation bill or a supplementary appropriation bill including any other bill for the payment, issue or withdrawal from the Consolidated Revenue Fund or any other public fund of the Federation of any money charged thereon or any alternation in the amount of such a payment; issue or withdrawal; and
 - (b) a bill for the imposition of or increase in any tax, duty or fee or any reduction, withdrawal or cancellation thereof.
- (2) Where a bill to which this section applies is passed by one of the House of the National Assembly but is not passed by the other House within a period of two months from the commencement of financial year, the President of the senate shall within fourteen days thereafter arrange for and convene a meeting of the joint finance committee to examine the bill with a view resolving the difference between the two Houses.
 - (3) Where the join finance committee fails to resolve such difference, then the bill shall be presented to the National Assembly sitting at a joint meeting. And if the bill is passed at such joint meeting, it shall be presented to the President for assent.
 - (4) Where the President, within thirty days after the presentation of the bill to him, fails to signify his assent or where he withholds assent, then the bill shall again be presented to the National Assembly sitting as a joint meeting, and if passed by two-thirds majority of members of both House at such joint meeting, the bill become law and the assent of that President shall not be required.
 - (5) In this section, 'joint finance committee' refers to the joint committee of the National Assembly on

finance established pursuant to section 62 (3) of this Constitution.

It should be stated that section 58 governs exercise of Federal legislative powers generally and section 59 relates to the mode of exercising federal legislative power with reference to money bills.¹⁵

Therefore, a bill, whether a money bill or ordinary bill, does not and cannot become a law made by the National assembly unless and until it has been passed by the Senate, the House of Representatives - and except where section 58 (5) applies - assented to by the president. An Act of the National Assembly commences as a bill and may be introduced in the senate or House of Representatives. A bill may either be a private bill, introduced by a private member of any of the legislative bodies and intended to benefit the limited interest of a section of the society, or it may be public bill affecting the interest of the public at large. The chairman of the appropriate standing committee or an ordinary member of the House as a private member may introduce a bill.¹⁶

A bill passes through three stages before it is passed into law. At the first stage the bill is read formally, the primary objective at this point being merely to introduce the subject of the bill to the House. The second reading and debate follows. It is at this second stage that the content and purpose of the bill are clearly defined and the merits and demerits are extensively debated and urged on the House. Necessary amendments are introduced at this stage. Thereafter, and if need be, the bill is referred to a committee which serves to tie the loose ends and incorporate all suggested amendments. The committee reports back to the House for any new insertions or amendments to be deliberated upon. This is followed by the third and final reading of an agreed version of the bill and no further amendments may be entertained at this stage.

For a bill to become law, it must be passed by a simple majority of the members present and voting in the House where it originated after which it is sent to the other House to go through a similar procedure. After that other House has passed the bill and agreement is reached between the two Houses on any suggested amendments, the adopted bill is then presented to the president for his assent. The President must within thirty days of the presentation signify that he assents or that he withholds assent,¹⁷ Should he withholds his assent and two-third majority of each House again passes the bill, then it becomes law and the assent of the President shall not be required. The procedure for passing of a state law in the state House of Assembly is similar to what obtains in the National Assembly except that there is only

¹⁵ It should be state that the mode of exercising legislative power of a state is contained in section 100 in similar terms.

¹⁶ J.O. Asein, *Introduction to Nigerian Legal System*, 2nd edition, Lagos: Ababa Press Ltd., 2005. p.33.

¹⁷ Section 58 (a) CFRN, 1999 (as amended).

one House, instead of two. In *National Assembly v The President*,¹⁸ the Electoral Bill 2003 was sent to the President after it has been passed by each House of the National Assembly. The President withholds his assent where upon each House, by a two-thirds majority, passed a motion to override the President's veto. The Independent National Electoral Commission then brought the validly Appeal, the issue was whether the Act was validly passed by two-thirds majority of numbers present as against two-thirds of members present as against two-thirds of all the members and by passing the bill a process of motion. Declaring that the Electoral Act had not been validly passed, the count of Appeal held that under section 58 (5) of the constitution, to override the president's veto, each- of the Houses of the National Assembly has to pass the bill again passed by each House', that is, the bill has to go through the same process it had previously gone through when it was first passed. The passing of a mere 'motion for veto override' did not satisfy the requirement of the section. The court further held that two-thirds majority of each House meant two-thirds majority of its membership and this had no relationship with the ordinary quorum of a House.

Under section 59 of the Constitution,¹⁹ special procedure is provided for money bill²⁰. Ordinarily, a money bill goes through the same process as any ordinary bill. However, where a money bill is passed by one of the Houses of the National Assembly but is not passed by the other House within the period of two month from the commencement of a financial year, the President of the Senate shall within fourteen days thereafter arrange for and convene a meeting of the joint finance committee to examine the bill with a view to resolving the differences between the two houses. Where the joint committee fails to resolve the differences, then the bill shall be presented to the National Assembly sitting at a joint meeting. If the bill is then passed at such joint meeting, it is presented to the president for assent. On the authority of *Attorney-General of Bendel State v Attorney-General of the Federation and others*,²¹ even where the joint committee arrives at a compromise, their resolution is still subject to the approval of each House before the bill is finally presented to the President for his assent. The same rules governing the treatment of a President's veto of an ordinary bill also apply to money bills. It needs however be mentioned that no separate provision is made for the state as far as money bills are concerned.

2.6. Authentication

The Act Authentication Act²² contains procedure for the Authentication and recovering of Bills and Acts as well as the classification, numbering and printing of Act of the National Assembly. The clerk of the National Assembly is required, after enactment of a Bill, to authenticate the Bill for assent. This he does by preparing a copy of the Bill as passed by

¹⁸ (2003) 41 W.R.N. 94 (CA)

¹⁹ CFRN, 1999 (amended)

²⁰ See section 59, CFRN 1999 (as amended) for the definition of a money bill.

²¹ (1981) 10 Sc. 1.

²² Cap. A2, law of the Federation of Nigeria, 2004. the Act applies as to all laws passed by the National Assembly

both Houses of the National Assembly embodying any amendments that may have been agreed to. He is to endorse on the Bill and sign a certificate that the copy has been prepared as prescribed and is a true copy of the bill²³. The clerk is also required to prepare a schedule of bill passed during a session of the National assembly and intended for assent and certify that it is a true and correct record.²⁴ Such a schedule is required to set forth the long title of the bill, summary of its contents and the date on which it was passed by each House of the Assembly. A certification by the clerk of the National Assembly is conclusive for all purposes.

In the event of a veto by the President under section 58(5) and 59(4) of the constitution, the schedule must in addition be endorsed with the prescribed certificate of the president of the senate in respect of the bill.²⁵ The procedure for the presentation of bills for Presidential assent is also provided for. The schedule and copies of the Bills are presented to the President in duplicate and where the President is satisfied, he shall cause the schedule to be passed under the public seal of the Federation after affixing his signature to the schedule. Unless otherwise prescribed, an Act comes into operation on the date when the schedule is assented to by the President. A duplicate of the schedule, after it has been signed, is returned to the clerk of the National Assembly who shall cause a copy to be published in the Federal Gazette containing the schedule as published is conclusive evidence for all purpose. The clerk is also required, in each year, to sign separate numbers consecutively to those Act that apply throughout the Federation and those that apply only to the Federal Capital Territory. Each series in a year is to start with the number one with the date of commencement or any section stipulating a deferred date inserted.

Every Act when numbered must immediately be set up in fair and legible type by the Government printer and contain an endorsement at the back that it is published by authority. Triplicate copies of the Act as printed on vellum or on a paper of enduring quality must be produced. The clerk retains one copy for his records and one copy each is delivered to the president and the Chief Justice of Nigeria to be enrolled in the Supreme Court. All other copies of the Act are required to be impression from the same from.²⁶ Every Act which purports to be published by authority and bears a number and reference year and a date of commencement or reference to a section shall be received in all courts and by all persons as sufficient evidence that it has been assented to in the President's name.²⁷

²³ *Ibidem*, section 2(1).

²⁴ *Ibidem*, section 2(2).

²⁵ *Ibidem*, section 2(3)

²⁶ *Ibidem*, section 5.

²⁷ *Ibidem*, section 6.

2.7 Other Functions of the Legislature: Power and Control over Public Funds and Power of General Supervision

Both the National Assembly and the State House of Assembly can wield enormous powers and control over public funds under their respective jurisdictions.²⁸ To reinforce the power given to the legislature over the purse, the constitution specifically creates the position of an Auditor-General for the federation and each of the states. The officer so appointed is to all intents and purposes, independent. He is appointed by the president or the Governor on the recommendation of the Civil Service Commission of either the federation or the state subject to the confirmation of the senate or the State House of Assembly. He is secured because the executive arm of government cannot relieve him of his duties. His removal from office can only be effected by the legislative arm in the manner prescribed by the constitution.²⁹ To sustain democracy and safeguard the interests of the nation or the state against subversion, the constitution provides certain checks and balances mostly placed in the hands of the legislature. There appears to be three areas of supervision of the Executives by the legislature. Broadly, these are (a) power to conduct investigation,³⁰ (b) power to confirm certain appointment made by the President or the Governor,³¹ and (c) power to establish committees of the legislature.³²

3. Legislative Process in the United States of America

The American Constitution vests legislative power in the congress: ‘All legislative powers herein granted shall be vested in as congress of the United States, which shall consist of a senate and House of Representatives.’³³ Thus, like Nigeria, the American Congress is bi-cameral.³⁴ The institutional structure of Congress is the key factor that helps to shape the legislative process. A second and equally important set of factors are the rules of congressional procedures.

Law-making begins with a bill being introduced by a senator or a senate and referred to the appropriate committee for deliberation. No floor action on any bill can take place until the committee with jurisdiction over it has taken all the time it needs to deliberate. The committee typically refers the bill to one of its subcommittees, which may hold hearings, listen to expert testimony, and amend the proposed legislation before referring it to the full committee for its consideration. The full committee may accept the recommendation of the subcommittee or hold its own hearings and prepare its own amendments.

²⁸ See sections 80-81, CFRN, 1999 (as amended) for the consolidated Revenue Fund of the Federation and section 120-121 for the consolidated Revenue Fund of the state

²⁹ See sections 85,86 and 8.7 in the case of the federation; sections 125, 126, 127 in the case of the state.

³⁰ See generally section 88, CFRN, 1999 (as amended).

³¹ See generally section 19, 20, 21, CFRN,1999 (as amended).

³² See generally section 6, CFRN, 1999 (as amended).

³³ Article 1, section 1, the US Constitution.

³⁴ Article 1, section 1, section 2 and Article 1, section 3 provides for the composition of the House of Representatives and Senate respectively.

Once the bills assigned committee or committees in the House of Representatives have acted affirmatively, the whole bill or various part of it are transferred to the rules committee, which determines the specific rules under which the legislation will be considered by the full House. Here, the speaker influences when debate will be in order, and in what order they will be considered. The speaker also rules on all procedural points of order and points of information raised during the debate. Thus, the outcome of the Rules committee is deliberation can be extremely important, and the committee's hearing can be an occasion for sharp conflicts. Once a bill is debated on the floor of the House and the senate, the reader schedule it for a vote on the floor of each chamber.

3.1 Conference Committee

Getting a bill out of committee and through one of the houses of congress is no guarantee that a bill will be enacted into law. Where a bill is passed by one chamber but undergoes substantial revision in the other chamber, then, there is need for a conference committee composed of the senior members of the committees or subcommittees that initiated the bills to iron out difference between the two pieces of legislation. When a bill comes out of conference, it faces one more handle. Before a bill can be sent to the president for signing, the House-Senate conference report must be approved on the floor of each chamber. Usually such approval is given quickly.

3.2, Presidential Action

Once accepted by the House and senate, a bill goes to the president, who may choose to sign the bill into law or veto. The veto is the president's constitutional power to reject a piece of legislation. To veto a bill, the president returns it within ten days to the House of congress in which it originated along with his objection to the bill. If congress adjourns during the ten day period and the president has taken no action, the bill is also considered to be vetoed. This latter method is known as the pocket veto. A presidential veto may be overridden by a two-thirds vote in both the House and Senate. A veto override says much about the support that a president can expect from congress, and it can deliver a stinging between to the executive branch. President will often back down from a veto threat if they believe that congress will override the veto.³⁵

4. Conclusion and Recommendations

This paper has devoted its content to the analysis of legislative process in Nigeria and the United States of America. This writer recommends that there should be harmony between the two arms of government so that each can get on with it. But harmony should not be allowed to generate into Executive complacency. To allow the system to work, rules and customs and accepted norms must be obeyed.

³⁵ T.J. Lowi *et al.* American Government (8th edition, New York, 2004), p.197.