

POL 103-ORGANISATION OF GOVERNMENT

Course Content

- **Nature and functions of government**
 - **Organs of government**
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Course Content continues

- Forms of government
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Nature and Functions of Government

- Government is the agency through which the purpose and cardinal objectives of a state are achieved. The government whose organization could be seen either through the territorial structure or by functionality carries out the day-to-day activities of the state.

Government is a creation of a state and could be geographically structured at three-tier such as the federal, states, and local government councils with distinct organ and other functionaries.

There are three broad dimensions of government. These include:

- Government as a process of governing
- Government as an institution of the state
- Government as a field of study

Government as a Process of Governing

This refers to how a particular state is being governed. It also means the entire processes, operations and activities that are involved in the governing of a state.

In the process of governing a state, government is divided into different organs, which include the legislature, executive and judiciary.

The legislative arm is responsible for lawmaking. The executive performs the activity of implementation of these laws while the judiciary interprets the laws.

Government as an institution of the state

This refers to the mechanism that guides the control and direction of a state. These are the institutions, Ministries, parastatals and Agencies (MDAs) of state responsible for the administration of the state.

The institutions are broadly categorised into formal and informal institutions.

The formal institutions are the legislature, executive and judiciary; while the informal institutions comprise of the pressure groups, political parties and trade unions.

Government as a field of study

Government is seen as a branch of human endeavour that studies agencies, institutions and the forces that operate in the state.

Government as an academic field of study also has sub-disciplines or fields such as Political Theory, Political Economy, Comparative Government, International Relations, Public Administration, Public Policy, Local Government

Functions of Government

- defence and security functions;
- regulation of social life;
- maintenance of unity in society;
- provision of infrastructures;
- political, economic and social functions

- Mobilization of human and material resources;
- Promotion of the welfare of the citizens; and
- Distribution of resources fairly to its members;

Theories of the Origin of Government

Evolutionary Theory: The theory posits that government originates from a family or clan-bound structure. This explains the formation of the world's first political structures. These earliest and very loosely formed governments were the result of a shift from hunter-gatherer societies to more settled agricultural societies.

Leaders emerged out of the need to address issues such water rights for crop irrigation and the distribution of other resources. They also provided an increased sense of safety and security for the society.

Force theory

The theory originates from taking control of the state by force and is often found in a dictatorship— a type of government characterised by one-person or one-party authoritarian rule.

This occurs when a more dominant people or state takes control of the political system of a less powerful people or state, imposing its governmental system on that group.

New governments can also be formed by force during revolutions or coups within a country.

A coup is the overthrow of an established government, and the resulting leader or dictator is most often a military figure.

An example of the force theory occurred in Cuba in 1959 when revolutionary Fidel Castro and a small force of guerrilla soldiers defeated the national army and took control of the government.

Divine Right Theory

In this case, government originates with power vested in a Monarch.

Monarchs, and other rulers asserted that their authority came directly from God and thus could not be challenged.

Social Contract theory

Government is a kind of contract in which those in power have responsibilities toward those they govern and the governed respect the power of the governing individuals.

Government is an agreement between those who govern and those who are governed. This theory was developed in the 17th and 18th centuries by philosophers such as Thomas Hobbes, John Locke and Jean Jacques Rousseau.

Monarchy

This is the oldest type of government in which a King or Queen exercises 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.

In a 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 of government.

Aristocracy

This is a form of government in which a few wealthy, gifted or the noble rule.

Rousseau literally describes aristocracy as 'government by the best citizens.

In an aristocratic government, a few persons distinguished by their superiority, ability and merit exercises power.

Theocracy

This is a form of government in which a religious or spiritual leader is the Head of State or Head of Government or both.

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.

Oligarchy

This is a form of government in which power structure effectively rests with a small number of people, distinguished by such attributes as royalty, wealth, family ties, corporate and military control, among others. Most oligarchies have been tyrannical, relying on public servitude to exist.

Iron Law of Oligarchy

This is a political theory, first developed by the German Sociologist, Robert Michels in his book, *Political Parties* (1911). Michels posited that all forms of organization, regardless of how democratic or autocratic they may be at the start, will eventually develop into oligarchies.

The reasons for this process include:

- The indispensability of leadership; and
- The tendency of all groups, including the organisation leadership, to defend their interests.

Dictatorship

This is a form of government where one person or political party has the power to do whatever they want. The ruler is called a dictator.

In a dictatorship, the individual's rights are suppressed. 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.

Fascism

This is an extreme form of dictatorship. It is characterized by dictatorial power, forcible suppression of opposition, and strong regimentation of society and of the economy.

Fascism came to prominence in early 20th-century in Italy under Benito Mussolini, in Germany under Adolf Hitler, and in Spain under General Francisco.

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 he dies in office or he is forced to step down. A dictator has enormous power and he brooks no opposition to his authority.

Democracy

This is a government where the will of the majority in the society prevails. The concept has its origin far back to the development of Greek city-state where all members of the society often gathered together to take decisions of issues affecting the society by physical presence

Democracy may be defined as a form of government where the society acquires and enjoys all attributes of a democratic form of rule manifested in an increase in the quantity and quality of people's right and freedom, particularly the right to participate in taking decisions that govern their lives.

There are two kinds of democracy

- Direct democracy; and
- Indirect democracy.

Direct democracy: This is where the decisions relating to government policies, laws and other issues, are taken by the people.

Indirect democracy: This is when the people choose their representatives to take decisions relating to government policies, laws and other issues on their behalf.

Conditions for Effective Operation of Democracy

- **Regular and Periodic Multi-Party Elections based on Equality of Electors:** Free, fair and credible elections conducted periodically, say, every three or four years in which all adults of voting age not only participate to elect their leaders, but also have freedom of choice in doing so, and the result of such election should reflect the wishes of the people

➤ **An Independent Judiciary:** The courts 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.

➤ **A 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.

➤ **A Virile Civil Society:** This is made up of independent association and groups capable of putting those who exercise political power under check. This is required for the effective operation of democracy.

Organs of Government

There are three organs or arms of government. These are:

- The Legislature
- The Executive
- The Judiciary

The Legislature

- This is the institution that enacts or makes laws in the country. It is called National Assembly in Nigeria, Parliament in Britain, and Congress in America.

- There are two types of legislature.
 - The Unicameral legislature
 - The Bicameral legislature

Unicameral Legislature

This refers to a legislature which consists of one chamber or house. This implies that there is one house of law-making body. Countries with unicameral governments include Armenia, Bulgaria, Turkey, Sweden, among others.

Countries like Greece, New Zealand, and Peru, changed from a bicameral to a unicameral system.

Merits of Unicameral Legislature

- **It is less expensive to operate:** 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.

➤ The passage of bill can also be done without delays. Therefore, government business becomes easier, less cumbersome as well as making the response of the government to challenges quicker, especially in situations of emergency.

➤ Internal rivalry and conflict that are associated with a bicameral structure is prevented. 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

Demerits of Unicameral Legislature

- 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.

➤ It denied the state 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.

➤ It is not suitable for large and heterogeneous federal states like the United States of America and Nigeria, where the second chamber is usually designed to allay the fears of the minorities and promote their interests.

Bicameral Legislature

- A bicameral legislature is a reference to a government with two legislative houses or chambers. Countries with the bicameral legislature include the United States (U.S.), Britain, Nigeria etc

- In Nigeria, the two legislative houses are: the Senate and the House of Representatives.
- The Senate consists of 109 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 are also 360 members in the nation's House of Representatives elected based on population.

Merits of Bicameral Legislature

- It has wider representation, including those of minorities and special interests.
- It helps in checking hasty legislation since bills emanating from the first chamber can always go to the second for fresh considerations.
- It serves as a guarantee of liberty and safeguard against legislative tyranny of a single house

Demerits of Bicameral Legislature

- It is very expensive to operate.
- It is a duplication of effort, and a waste of material, financial and human resources.
- It can also create conditions for avoidable conflict between the two chambers.

Functions of the Legislature

- **Law-Making:** The 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 state. Such laws are made in accordance with the state's constitution.

- **Representative Function:** Legislature as a body composed of elected representatives of the people. Individual members of the legislature in a democracy are elected to represent their constituencies.

- **Deliberative Function:** It deliberates on a wide range of issues bordering on welfare, economy, security, among others.
- **Approval of Annual Budgets:** The executive cannot legally make any spending without the approval 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 consideration,

- **Confirmation of Nominations made by the Executive:** Nominees are screened and confirmed by the legislature. They can be deemed to have been validly appointed only after the approval of the legislature.

- **Oversight Functions:** It is the responsibility of the legislature (usually through a standing committee) to conduct investigations into the activities of government ministries, departments and agencies to overseeing, monitor and if need be, scrutinize the accounts and documents of government agencies in relation to the enabling legislation.

- **Impeachment of the Executive:** The legislature reserves the power to impeach the President or vice-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.

- **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.

- **Constitutional Amendments:** It has the power to amend the nation's constitution. It may modify sections of the constitution or replace it in its entirety.

The Law Making Process

The Process of Law-Making in a Parliament

- A bill normally passes through many stages before it becomes an act or law.
- In a democratic system of government, the stages of law making includes:
 - First Reading
 - Second Reading
 - Committee Stage
 - Report Stage

- Third Reading
- Joint Session
- Presidential Assent or Veto

❖ **First Reading:** A printed copy of the proposed bill is presented to the House through the clerk. The Clerk reads the short-title of the bill to let lawmakers know it was received. This stage involves the introduction of the bill with a title and no discussion on it.

❖ Members are given copies of the document to enable them to begin private or party discussion. The Rules and Business Committee will then fix a convenient date for the second reading.

❖ **Second Reading:** The sponsor of the bill will introduce and explain the bill, and move a motion that the bill is read the second time. This must be duly seconded. Members of the legislature are allowed to debate the bill at plenary.

The presiding officer, either the President of the Senate in the Upper House or the Speaker of the House of Representatives will call for a vote on whether the bill should be read. If it succeeds, that is if the majority of the members supports the bill, it is then read for the second time and referred to a committee of the House responsible for the subject matter of the bill for further consideration.

❖ **Committee Stage:** There are two types of committees i.e. **a standing committee and a committee of the whole house.**

A Standing Committee: This is the committee that handles bills of technical or specialised nature. Such technical subjects like aviation, education, foreign affairs etc. and members are often assigned into committees where they have specialities.

A committee of the whole house: The whole house will sit to consider a bill of special significance. In this case, the mace, which is the symbol of authority of the house, is lowered or placed under the table.

The bulk of work on a bill is done at this stage when it is considered clause by clause.

- The job of the committee in the law-making process is to examine the bill in detail, hold a public hearing, receive and consider memoranda from the public and propose amendments, if and where necessary.

❖ **Report Stage:** The Standing Committee then report back to the House the outcome of its deliberations. The bill, as amended at the committee stage, will be circulated to all members and then thoroughly debated upon by the House. If necessary, there may be further modifications of the committee's recommendation. A motion will be raised for the adoption of the bill and thereafter it is ready for third reading.

- ❖ **Third Reading:** The third reading is a formality because it is minor changes in the wording that is allowed, and the substance (bill) cannot be amended again. Any amendment is usually of a formal nature.
- ❖ After the third reading, a copy of the bill endorsed by the Speaker is forwarded to the Second House. If the bill is passed without amendments, the originating house is accordingly informed, but if amendments are proposed, the bill together with such amendments are sent back to the First House.

- ❖ **Joint Session:** A Joint Session of the two houses will be convened to debate and reconcile the differences if any, between the two legislative houses in a bicameral legislature such as the United States of America or Nigeria.
- ❖ The harmonised version is then re-presented to the chambers for their respective adoption before the bill is sent to the President in Nigeria for assent.

❖ **Presidential Assent or Veto:** If both houses accept the report, a clean copy, signed by the clerks of the two houses and endorsed by the Speaker of the House of Representatives and the President of the Senate, is submitted to the President for his assent.

THE EXECUTIVE

This is the organ of government responsible for the governance of a state. It enforces the law as written by the legislature and interpreted by the judiciary. It encompasses all agencies and officials of the government that get involved in the day-to-day running of the business of government.

The executive is composed of the president/head of state or head of government; vice president; ministers; civil servants; police and the armed forces.

Structure of the Executive

It is divided into two:

1. Members of the cabinet and other political office holders who hold temporary or tenure appointments; and
2. Career civil or public servants who hold permanent and pensionable positions.
 - The members of the cabinet initiates government policies, or deciding the direction of the government of the day.
 - The career civil or public servants implement policies of government.

Types of the Executive Organ

Parliamentary Executive

- In a parliamentary executive, the cabinet is responsible to the legislature. This system is practised in England, Belgium and Holland, among others.

- in a presidential executive, the President has real executive powers and is not responsible to the Parliament. He is elected for a fixed term and can only be removed through impeachment.
- Presidential executive operates in the United States of America, Nigeria, Brazil, among others.

Functions of the Executive Organ

Policy Making and Implementation: The primary function of the executive is to:

➤ **formulate and decide the policy direction for the state.** such policies are usually derived from the manifesto presented to the citizens during the elections.

Administrative Functions

- The Head of the State and the Council of Ministers are responsible for law enforcement, and the maintenance of law and order.
- The Head of the State, on the recommendation of the Council of Ministers, makes many important political appointments.
- The administrators are generally recruited based on competitive examinations. They are promoted, demoted and dismissed under the Civil Service Rules.

- **Legislative Functions**

The executive prepares bills and introduces them in the legislature. In parliamentary government, the leader of the majority party becomes the Prime Minister.

- **Foreign Relations**

The executive establishes political relations with foreign countries. The President appoints diplomatic representatives in other countries and receives those of foreign countries.

The Judiciary

This is the arm of government that is vested with the judicial power - The judiciary is a mechanism for the resolution of disputes and balancing of conflict of interests. It is the court system of a country.

The Hierarchy of Courts in Nigeria

Section 6 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides for the Nigerian judicial system as follows:

- (i) The Supreme Court (the highest court in Nigeria).
- (ii) The Court of Appeal, having as at present 17 Divisions in some states of the Federation.
- (ii) Federal High Court; High Court of the Federal Capital Territory, Abuja; National Industrial Court, Customary Court of Appeal and Sharia Court of Appeal of the Federal Capital Territory, Abuja; High Court of a State; Customary Court of Appeal and Sharia Court of Appeal of a State.

- Federal High Court; High Court of the Federal Capital Territory, Abuja;
- National Industrial Court,
- Customary Court of Appeal and Sharia Court of Appeal of the Federal Capital Territory, Abuja;
- High Court of a State;
- Customary Court of Appeal and Sharia Court of Appeal of a State.

Below these courts are
the Magistrates' Courts and District Courts.

- The lowest courts are Customary and Area Courts.
- There are also special courts like Courts-martial, Tribunals of Inquiry,
- Rent Tribunals, Coroners' Courts, Juvenile Courts, etc. whose
- jurisdiction, rules, and operation are specially regulated by the laws establishing them.

Functions of the Judiciary

Adjudication

- The judiciary adjudicates on disputes between states, between the state and individuals, between individuals and corporations or corporate entities, among others.

Interpretation of the Constitution

- It determines the extent and scope of the power conferred on each branch of government, the limits on the exercise of such power under the constitution. The judiciary acts as the custodian of the constitution and the democratic process.

Judicial Review

- Judiciary acts as checks on both the executive and legislative arms of government in their actions/inactions of government or laws that are not consistent with the constitution to be declared as null and void.

Independence of Judiciary

This means that the court and judges must be free from the influence of both the government and individuals in the discharge of their functions if justice is to be obtained.

Conditions for Independence of Judiciary

Security of Job

A secured and fixed tenure is 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 a permanent basis after meeting certain requirements

Mode of Appointment

Judicial officers are appointed by the president/governors on the recommendation of National Judicial Council, and subject to ratification by the legislature.

Better Salaries/Emoluments

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 practices. In addition to this, salaries of the judiciary are to be charged on the first line i.e. consolidated fund, which no other arm of government could selfishly manipulate.

Separation of Powers

Separation of powers is the division of government responsibilities into distinct organs to limit any of the organs from usurping and exercising the core functions of another organ.

The purpose is to prevent the concentration of power and provide for checks and balances.

The theory simply enjoys that the same body or person should not be in control of more than one arm of government.

The concentration of the legislative, executive and judicial functions in

the same person or body of persons would be dangerous and would cause authoritarianism and despotism. Hence, the need to separate these powers to provide a system of checks and balances to ensure that no one power became too strong and thus absorb the functions of the other.

There is no democratic system where the separation of powers is absolute or completely absent. In practice, governmental powers and responsibilities, rather than neat compartmentalisation, intentionally overlap. Therefore, there is an inherent measure of competition and conflict among the organs of government.

The doctrine of separation of powers is more pronounced in a presidential democracy than in a parliamentary democracy, where there is 'fusion of powers'.

Applications of Separation of Powers

Separation of Powers in the United States of America

The constitution of the United States divides the Congress into two bodies: the Senate and the House of Representatives; and the two legislative chambers are 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, the needed flexibility is introduced into the operations of separation of powers in the United States.

The fusion of Powers in Britain

The British constitution does not provide for the principle of separation of powers but 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.

For example, the Prime Minister, who is the head of the executive and his ministers who 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, and House of Lords, and the Queen as a monarch is the head of state in Britain, which makes 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.

Doctrine of Checks and Balances

The doctrine of checks and balances is associated with the separation of powers because it deals with the process whereby the organs of government control the affairs and activities of one another to ensure that government functions are properly performed.

The doctrine of checks and balances recognizes that for the effective operation of government, powers must not only coordinate, they must also overlap. Thus, 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.

The American system of government presents a perfect example of the separation of powers. The 1787 American constitution specifically provides for the principle of division of power and checks and balances.