

PHILOSOPHICAL REFLECTIONS ON PUBLIC POLICY AND CONSTITUTIONALISM IN NIGERIA

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Abstract

The work focuses on public policy issues and the role of constitutionalism in Nigeria. Many policies have been made in Nigeria on different issues but we discovered that many hardly see the light of the day. The heroine effects of policy failure in Nigeria have always been on the toiling masses. The point of my argument is that Nigeria has at different times made and promulgates many constitutions right from independent in 1960. The 1999 Constitution of Federal Republic of Nigeria to some extent may be regarded as constitution with constitutionalism, if this is the case then; an adherence to the dictate of the constitution can solved the problem of fail public policy in Nigeria. The country is not bereaved of public policies: the problem is most of them 'ended in fiasco'. In fact, some scholars linked policy failure in Nigeria to the inability of the government to identify the needs of its citizens before initiating the policies. A close look at the statement indicates that the inability of any government to successfully manage its policy process, encounters grave challenges of development. While conceptual analysis was used to clarify key concepts like constitution and public policy, the reconstructive method was used to establish constitutionalism and it attendant advantage as a way of enhancing the coherent and effective implementation of public policy in Nigeria.

Keywords: Constitution, Constitutionalism, Federal, Nigeria, Public Policy, Republic.

INTRODUCTION

Public policy has been defined by different scholars at different times. Richard Rose [1] claimed that, public policy may be considered as 'a long series of more-or-less related activities and their consequences for those concerned rather than a discrete decision'. To Rose, policy is a course, or pattern of activity and not simply a decision to do something. Another scholar, Anderson [2] defined public policy as a purposive course of action followed by an actor or set of actors in dealing with problem or matter of concern. Anderson definition focuses on concluded action and not an intended action. Ikelegbe [3] defined public policy as all that goes on from the moment the need for a policy was muted and articulated to its

formations, enactment, implementation and performance or impact. It involves a complex web of activities, interactions, techniques and strategies involving several persons, groups and agencies. According to Dror [4], public policy is a major guideline for action. According to him, public policy in most cases, lays down general directives, rather than detailed instructions on the main lines of action to be followed. If a government chooses to do something, there must be a goal, objective or purpose. Policy involves what government actually do, not just what they intend to do or what they say they are going to do. Robert and Clark [5] also considered public policy from 'goal attainment' and power configuration point of view.

According to them, public policy making process refers to: Series of steps taken by a government to solve problems, make decisions, allocate resources or values, implement policies and in general to do the things expected of them by their constituencies. In a democratic environment, the role played by the political class in agenda setting in most cases does lead to public policy. On that premise, public policy can be seen as a set of interrelated decisions by a political actor or group of actors concerning the selection of goals and the means of achieving them within a specified situation where those decisions should in principle be within the power of those actors to achieve [6]. Lennon [7] opined that policy is recognized as a plan or course of action by a government, political party or business designed to influence and determine decisions, actions and other matters. Virtually all aspects of societal enterprise are now the object of policy, a dynamic and value-laden process through which a political system handles a public problem [9]. As Adam and Balfour [10] argued the whole essence of public policy as typified in the contemporary decision making situation is largely 'to identify, develop, and implement solutions to an array of discrete social problems'. According to them, the reflection that public policy is a problem solving mechanism is gaining the necessary momentum against the backdrop that governance situation now presents 'rather uncommon instances' that require that 'the technology for addressing the problem is known and a political consensus exists on the goals of the policy [11]. It would therefore appear that the platform for ensuring public policy formulation must be concrete, available for easy interpretation, and largely predictable in its minimum sense by ordinary citizens.

On the other hands, constitution; according to Appadorai [12], in general terms, is the body of rules which directly or indirectly affect the distributions or the exercise of the sovereign power in the state. The foregoing understanding of the constitution states that it is all about a body of rules that focuses on the exercise of governmental power within a state. Also, Jubril Bala Mohammed [13], defined constitution as, being the fundamental system of the law in any sovereign state, ... provides definition for the citizenship an institution; prescribes rights, responsibilities, obligations and duties, distributes, secures and limits authority and powers, aggregates and articulates aspirations and interests and; outlines procedures for actions, and interactions and; sanctions default. A constitution is a charter of government deriving its whole authority from the governed and sets out the form of government. It specifies the purpose of the government, the power of each department of the government, the state-society relationship, the relationship between various governmental institutions, and the limits of the government. The constitution is premised on the principle that the people are the real rulers and that certain rights are inalienable such as liberty of thought and expression, freedom from

government's invasion of privacy, freedom from arbitrary confiscation of property, freedom from arrest without warrant, freedom of association and assembly. In short, these rights would give rise to a society with a free press, wherein, every person's home is respected and trials are fair, where all the citizens enjoy their equal rights. To achieve the above mentioned, there is the need for a basic document where the aims, aspirations, objectives and goals are documented along with an institutional structure. The constitution, thus, is the fundamental law with superiority over all the institutions it creates (be it Legislative, Executive or Judiciary). The institutions or organs cannot go beyond the powers vested in them by the constitution. The constitution, therefore, enshrines the Bill of Rights to protect the individual and provides for the separation of powers between the different arms of the state in order to prevent the concentration of power in a single individual or in a structure. It also enables the provision of checks and balances between the structures of state power. The basic aim, here, is to ensure that those who govern are restrained by observing the laid down rules and regulations so as not to use their powers excessively.

Every political system has a constitution whether it is a constitutional system or not. In this sense, the constitution is no more than a description of the makeup or composition of a political system. It portrays the way a polity is constituted, that is, how its foundation is set forth, its first principles articulated, its character shaped, and its government organized and operated. The fact that a political system has such a constitution even if it is a formally written document does not mean it meets the standard of constitutionalism. Under the standard of constitutionalism, governments must themselves be bound by rules. To implement this standard, a constitution that reflects the principles of the constitutionalism will serve as a higher law. This higher law establishes and limits government in order to protect individual rights as well as to promote the common good [14]. Constitutionalism is a form of political thought and action that seeks to prevent tyranny and guarantees the liberty and rights of individuals on which free society depends [15]. It is based on the idea that government can and should be limited in its powers, and that its authority depends on enforcing these limitations. This work will examine the reason for policy failure in Nigeria. The country is not bereaved of public policies: the problem is most of them, as Omotosho[16] pointed out 'ended in fiasco'. There are many studies explaining the failure of policy process in Nigeria, some of which include Omotosho[16], Olaiya[17], Olaiya [18], Oyelaran-Oyeyinka[19], Ekuehare[20], Ikpeze et al [21], Soleye[22], Egbon [23], Adamolekun[24], to mention a few. Ebiensa [25] argued, paradoxically, that the crisis is not only failure of existing public policy in Nigeria but also that there is no policy on public policy. In fact, some scholars linked policy failure in Nigeria to the inability of the government to identify the needs of its citizens before initiating the correct policies. A close look at the statement indicates that the inability of any government to successfully manage its policy process, encounters grave challenges of development. The present work therefore will examine the possibility of exploring the concept of constitutionalism and its attendant advantage as a way of enhancing the coherent and effective implementation of public policy in Nigeria.

PUBLIC POLICY IN NIGERIA

Many public policies have been made in Nigeria between October 1st 1960 at independence till date, both under the civilian and military regime. Iluyomade and Eka[26] wrote that in one

single Gazette in 1976, a number of public policies were initiated leading to the establishment of 'no fewer than twenty-five public agencies'. These included at least 10 River Basin Development Authorities (RBDA), the Nigerian Security Organization (NSO), the News Agency of Nigeria (NAN), the Nigerian Export Promotion Council (NEPC), the Nigerian Airport Authority (NAA), the Nigerian Atomic Energy Commission (NAEC), the National Emergency Relief Agencies (NERA), etc. Of paramount importance were those initiated by President Olusegun Obasanjo administration. These laudable policies intended to salvage the ailing economy and governance in terms of growth and development. Some of these policies include, the Monetization Policy; National Economic Empowerment Development Strategies (NEEDS); Economic and Financial Crimes Commission (EFCC); Independent Corrupt Practices and Other Related Offences Commission (ICPC); Banking Reforms; Revitalization of the National Food and Drug Administration (NAFDAC); Constitutional Conference; Policy Towards Poverty Reduction/ Alleviation – SMEDAN, PAP, SMSE etc; Privatisation Policy; Emphasis on Infrastructural Development. As rightly averred, no sooner had the policies formulated than 'most of them; as Omotosho [16] pointed out 'ended in fiasco'. The consequences is that, it deepening the frustration and impoverishes the citizens.

PUBLIC POLICY FAILURE IN NIGERIA

The most fundamental issues in Nigeria is that nothing work here, no matter how beautiful the policy may be once it get here it won't work. Because, there is a missing-link between the government and the public that explain why policies grossly fail in Nigeria. Nigeria's problem is not policy formulation but that of accurate implementation. There should be a very strong connecting link between the elites who are the policy makers and the mass – public. According to Higley [26], elite are —persons who, by virtue of their strategic locations in large or otherwise pivotal organizations and movements, are able to affect political outcomes regularly and substantially”. This theory was popularized by Gaetano Mosca (1858-1941), Vilfredo Pareto (1848-1923), and Robert Michels (1876-1936). This theory explains the power dynamics and social relations surrounding the acquisition and preservation of state power within the democratic framework. It reveals the fundamental characters and realities of representative democracy, where the country was structure into powerless majority and powerful minority. The powerful minority are the elite that control the state power while the powerless majorities are govern by the elites.

In every societies elites are consider to have the capacity to possessed organizational competence and verse political knowledge necessary for steering the political statecraft in a democratic dispensation but they represents a negation of the key democratic principle of mass ownership of the governance process. There is disconnect in policy formulation and implementation in Nigeria and this has caused us a very serious problem that policy miscarriage or abortion is always reoccurring. This has caused untold hardship on the citizenry since service delivery has been in the shape of comatose. The stratum nature of the society has also worsened the situation because of differential in class struggle among the elites themselves. Today in Nigeria, the differential is hinged on inter and intra-party rivalry, ethnicity, religion, regionalism among others. There has been a missing-link between the elites who are policy makers and the masses that are at the receiving end of any poorly formulated and implemented policy. Things can only work when there is a link between the elite who are the powerful minority and powerless majority, if that is done, it will reduce the

tendency of imposed policies from the top.

Furthermore, Makinde [27], attempts to cage failure in public policies in Nigeria as a product of disjointed and fragmented nature of policy follow-up. He claimed that most of the policy formulated often beautiful in nature but at the point of implementation no provision for follow up. Ademisokun-Turton [28] agreed to this claim, according to him; Nigeria's industrial policies, objectives and strategies are often subject to either modifications, or neglect or even total abandonment. In other words, industrial policies and practices are pursued on an ad-hoc basis and in a most uncoordinated manner. This deficiency gave the ruling elite the opportunity to site those few industries in major cities like Lagos, Kano, Ibadan, and Port Harcourt, the centers of their political powers. This partly explains why industrial location is not solely a function of reasoned entrepreneurial planning and decisions, since political considerations are often given undue weight.

Another noticeable cause is poverty. Abject poverty among people which have made them easy prey, poverty has remained Nigeria problems. The effect is so devastating to the extent that nearly half of the Nigerian's population lives below \$1 per day. The existences of high level of abject poverty have made it practically impossible for the country to progress. In an attempt to get rid of poverty, Nigerian elite have discovered that accessibility to governance will open a leeway to economic and material acquisition. Thus what we are talking about here is having to do with political economy, the intending policy is based on acquisition legally or illegally the material and economic aspect of the society. Abbas [29], observed that; dialectical materialism is premised on the issue of man's inherent motivations of economic pursuits and needs. Therefore, the relations between people in the production processes are symbolically connected with the direction of the political struggles to capture political power in order to determine economic factors. So man inordinate ambition to hold political power is necessitated by economic acquisition and Nigerian elite can do anything to see that power is not let out. The nature and practice of dirty politics by political parties in Nigeria is worrisome, people see political parties as an instrument for fighting their political opponent and those criticizing the parties for their inability not to perform their expected roles [30]. That has been the reason why any attempt to stand on their way by anybody would be sent to early grave. Any policy that will prevent them from achieving their goal will not see the light of the day. For example, policy formulation like EFCC remain dormant, their active and inactive is being dictated by the government in power. Today corrupt individuals secure a hidden place by declaring their support for the government of the day. EFCC remain a weapon being in use by the government to garner support for their party.

Corruption and misappropriation of public funds remain a factors derailing policy implementation. Corruption has eaten deep to the cankerworm of Nigerians to the extent that Nigeria has being consistently ranks among the most corrupt countries in the world, according to Transparency International. With the Economic and Financial Crimes Commission recently estimating that US\$500 billion was stolen or lost between 1960 and 2007 in Nigeria, this reputation is not undeserved (Achebe [31], Diamond [32], Smith [33], Ezekwesili [34], Olagunju [35], Olarenwaju [36]). Corruption is one of the major threat to policy implementation in Nigeria. It has adversely affected infrastructure, funding and every sectors of society in general. Corruption penetrates the implementation process, which has mutated

public policies and made the desired goals unachievable. Most public policies are being formulated with funds appropriated for their implementation, but corruption has continued to disrupt the implementation process—it is a social malaise that has permeated every policy. Due to corruption, Nigerians are still affected by poverty, despite efforts being made to alleviate it. The resources appropriated for the implementation of public policies are criminally diverted to private ends, hence frustrating the implementation process. Paki and Inokoba [38]; Onuoha [39] and Olagunju [35] affirmed that most Nigerian public policies only exist as avenues through which corrupt politicians drain state resources.

It is necessary to note the poor performance of the educational sector in Nigeria. Okoroma's [40] blamed this dismay performance on distortions in the education system on ineffective implementation, which was engendered primarily by a lack of political will, lack of continuity of programs and corruption. The situation has hindered national development and, until urgent action is taken to review Nigeria's educational system, its national aspirations will continue to be compromised. Makinde [27] stressed that there are various problems facing developing nations in terms of implementing policies. He cited the Better Life Programme and Family Support Programme embarked on by Nigeria's successive governments since independence. Some implementation problems identified in his study included corruption, lack of continuity in government policies, and inadequate human and material resources, all of which often led to an implementation gap—that is, a widening distance between the stated policy goals and the recognition of such planned goals. To Makinde [27], it is apparent that policies are regularly created in developing nations; but, most of the time; they do not achieve the desired results.

Aminu, Tella and Mbaya [41] recognized that in Nigeria the term 'bureaucracy' is most frequently used to refer to organizations. This is because public bureaucracies are entrusted with public property, and charged with responsibilities for the specific method of allocating resources within a large organization. Bureaucrats are also referred to as 'civil servants' that primarily operate to help formulate and implement the government's policies. Understanding bureaucracy in the Nigerian context refers to all the organisations that exist as part of the government mechanism to implement policy decisions and deliver services that are valuable to citizens. Okotoni [42] recognized the role of the federal bureaucracy as coordinating federal ministries, advising political officials, formulating and implementing government policies, gathering and supplying data for policymakers, and ensuring continuity of public relations services. All these roles are so crucial to the smooth running of any administration that one may conclude that bureaucracy is indispensable in policy formulation and implementation. Bureaucratic structure is expected to track the performance of all relevant stakeholders, ministries, departments and agencies in order to implement the basic public policy. Despite the important role of the civil servant in Nigeria in achieving many of the government's policies and programmes, few of these policies and programmes are fully or successfully implemented or achieved. In numerous instances, many have been marred by poor implementation strategies (that is, bureaucratic procedures and political influence). This has occurred because the civil service has a way of placing obstacles in the way of policies that are being formulated by political officials, especially for policies about which they hold divergent opinions or that are not of direct benefit to them. This has been responsible for policy failure in

Nigeria.

It is also necessary to note the negative implications of political will. Numerous mismanagements were observed, especially in the area of funds allocated to the implementation of programme. Instances of diverting the funds meant for a particular project to personal use remained a constant habit among public officials in Nigeria [9]. Some public offices would delay or even deny access to services if the person concern refused to offer gratification. Projects' files could be declared missing, but resurfaced after they had tipped the officer in charge [9]. This corrupt attitude of office holders often discouraged and created unnecessary bottlenecks and hindrances to successful implementation of policy.

THE CONSEQUENCES OF POLICY FAILURE

The consequences of policy failure in Nigeria are alarming. The economic and social implications have been the collapse of government parastatals or public utilities, massive retrenchment of workers and consequently mass unemployment of people mostly in the urban centers in Nigeria. Policy failure most especially those that are having to do with education often have serious impact on the students both at the primary, secondary and tertiary institutions. The constant strike has remained the emblem of higher institutions in Nigeria thus affect the quality of their products. In Nigeria women are usually worse-hit from failed government policies. This is so because they occupy the lowest rung of the social ladder and are usually the least educated though not the least intelligent. A look at policy like Structural Adjustment Program (SAP) has a disastrous consequence on our women. Although the adverse effect of SAP is not intended to affect women consciously, the fact is that because they dominate the informal business sector of the market, they are usually the first target. When for example, a state liberalizes its financial market and trade; it means that such state will open up her boarders for foreign goods and services. No trade restriction whatsoever. This implies that such restriction will mean that the state will be made to open door for good and services the state does not need at that point in time. Even when those goods and services are needed, there is the possibility of the local goods going out of existence because of the problem of price war. This is possible because some of the goods from the foreign markets, especially agricultural goods, are heavily subsidized.

When this happens, we are bound to have some social problems. These problems will arise when local industries fold up because of their inability to compete with their foreign counterparts. The effect of this will lead to massive disappearance of manufacturing activities and consequently to a rapid increase in unemployment and crime. This unemployment will not only lead to increase in crime and civil unrest as we find in many parts of Nigeria today. It will also mean that many women will be laid-off since they dominated the lowest cadre of the work force. But how does this affect directly women in the informal sector of the market? Let us categories women here into two. These are those who originally have enjoyed paid employment and get retrenched as a result of the failure of government economic policy. This group, on retrenchment, eventually goes into either buying and selling or street vending with the little resources at their disposal because they must survive with their families. Secondly, those who are already in the informal sector and are affected by the crises in the economy. By and large, both parties suffer because the dislocation of the nation's economy and the eventual

retrenchment of the work force meant decrease in purchasing power of the populace. Here, we find market women. In spite of their spited effort to make ends meet and could hardly put —bread on the table . These invariable makes women vulnerable to so many social vices like crime and prostitution.

CONSTITUTIONALISM TO RESQUE

According to Rosenfeld [43], constitutionalism is a concept that can be described from three dimensions, which are imposition of limits on governmental powers, strict observance of rule of law, and the protection of the social rights of the citizens. McIlwain [44] argued that Constitutionalism abhors arbitrary rule, despotism in governance, and advocates the government predicated on rule of law rather of whimsical disposition of rulers. According to Babalola[45] that constitutionalism is rather a concept still evolving. He described constitutionalism as an institutional phenomenon that links law and politics without completely accommodating the differences between both. According to him, a central element in constitutionalism is that political power is recognized in such a way that politics and public administrations became subjected to the rules they had made, with the court plying the role of umpire. The whole essence here is to view constitutionalism as the process by which the collective wills of the people is transformed into and reflected in the public policies of the society. This process translates into the general law of the state that in turn ensures that the collegiate interest of the people are not only recognized but also enforced appropriately.

When constitutionalism is defined as a commitment to limitations on political powers, it means that constitutionalism is in the blood and culture of the people concern and at the same time, those people have a keen sense of their own identity. These sets of people are identified by stories and moral traditions stretching back in history. These stories and traditions constitute the commitment to limitations on political power. The cumulative effect of the commitment to what is on ground creates a polity marked by limited government and the rule of law. Therefore, adhering to the imperatives of constitutionalism and the ethos of the constitution will help establish the conditions for public policy formulation and implementation in Nigeria. All laws, executive actions, public policies and judicial decisions must conform to the Constitution, as it is the creator of the powers exercised by the departments of government and other bodies within the polity. Constitutions are indispensable for administration of a state. Apart from its empowerment of the state; establishing values and ideas of democracy, freedom or liberty, peoples' welfare, equality and justice; and lends legitimacy to the territorial integrity of a nation, a fundamental significance of constitution is that it serves as the linkage between the citizens and the state by the provisions of inalienable rights and duty-bound obligation in reciprocity. Thus, there is no gainsaying the fact that constitutions must be well grounded to guide all policies emanating from all and sundry and societies that make up a state, as much as possible.

The constitution also states that every action of the institutions and persons within the country must conform to the provisions of the constitution, as a matter of necessity, or be rendered void to the extent of its inconsistency. In Nigeria sense, the law includes specific legislation, case laws, received English laws, the Statutes of General Application and more broadly defined provisions of international law. In all spheres of governance, local, state, federal, and

international government organizations all craft and implement public policy to protect and benefit their populations. Such responsibility, arguably, cannot be fostered in vacuum; there must be a constitution backing. There has to be a pedestal upon which the tenors will rest for optimum delivery. Once this is done, the role of government will then shift to guiding and influencing the inertia of public policies, rather than making them [46]. Public policy should be embodied in the constitutions, legislative acts, and judicial decisions in order to guarantee its stability and potency. The law, comprising constitutional provisions, legislations, case laws, and the native law and customs, however provides the structure on which public policy derive its support. The position of law to public policy appears superior as the former constitutes the stability upon which the latter's social fabric is built.

CONCLUSION

To this end, and bearing in mind the need to formulate enduring public policies and effective implementation, constitutionalism should be seen as the backbones of policies on economic and social rights not only to ensure consistency but also to foster continuity; (b) there is also the need to be more constitutional in all aspects of the formulation of social right policies to prevent abuse in the highest possible regards and, most importantly, to ensure popularity of the policies as the constitution is the mother law that a good number of members of the society are familiar with.

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