



EDO UNIVERSITY IYAMHO

DEPARTMENT OF POLITICAL SCIENCE & PUBLIC ADMINISTRATION

COURSE: POL 413 POLITIC AND L AW IN AFRICA

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COURSE: POL 413: Politics and Law in Africa

COURSE CREDIT UNIT: 3 Credits

DAY & TIME OF LECTURE: Mondays, 11 am -12 noon, Thursdays, 10 am -12 noon

CLASS VENUE: LC6, FAMASS

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1. INTRODUCTION AND LEARNING OUTCOMES

Under this section, you shall learn:

- i) Mindset for study of Africa**
- ii) Conceptual definitions**
- iii) Link between politics and Law**

1: Right Mindset for study of Africa

Africa for purpose of analysis in this course refers to the region south of the Sahara Desert – usually called “sub-Saharan Africa.” It is a region of great cultural and geographic diversity. But with a few exceptions, like Botswana, Mauritius, and South Africa, countries in the region share the common fate of being among the poorest in the world. In the context of the current global

economy, they are marginal. Various explanations have been provided for this miserable state of affairs: colonialism, traditional values, lack of capital – human as well as financial – and so on.

In order to have a proper grasp of this course, it is pertinent that certain long held notions about politics, law and their place in governance in Africa are deconstructed. For example, many Westerners, when it comes to African politics, simply see cause and effect as the same thing. Why is there a civil war in the Democratic Republic of Congo? Why was there genocide in Rwanda? Why has the Somali state collapsed? All these questions are satisfactorily dealt with in people's minds by the answer 'because these countries are in Africa': these things happen 'naturally' on the continent; it is an inherently unstable region. This is the central myth that this course "Politics and Law in Africa" and the other sister course "Introduction to African Politics" wishes to destroy.

Africans are innately no more violent, no more corrupt, no greedier, and no more stupid than any other human beings that populate the planet. They are no less capable of governing themselves. Not to believe this is to revive the racism that underpinned the ethos of slavery and colonialism. In this sense, African political structures are as rational as any other systems of government. If there have been more military coups in Africa than in the United States, then there has to be a reason for this. An explanation also exists for why the continent's political systems are more susceptible to corruption than those of the United Kingdom. By applying reason, the worst excesses of African politics (the dictators and the civil wars) can be accounted for, as can the more common, more mundane, day-to-day features of conflict resolution on the continent.

A second preliminary advice is that Africa should not be viewed as being homogeneous. It is an extensive landmass, home to many different cultures and societies. There is no such thing as a typical African polity. There are 53 separate independent states. Each is unique, and each has its own system of politics. The Gambia is a tiny country of just 11,000 square kilometers, while the Sudan's territory is 250 times larger than this; Nigeria has a population approaching 200 million, while Lesotho has just two million inhabitants; Botswana is largely an arid state, but Congo-Kinshasa is lush in vegetation; Ethiopia is racially homogeneous, while South Africa is home to several 'races'. The north of the continent is predominantly Muslim and the south Christian, not to mention the mixture of indigenous spiritual traditions found throughout. No single political system would be capable of serving all these states, as local demands necessarily produce

different and individual polities. To cope with this diversity, there is certainly no substitute for studying every African country on its own terms. Each state deserves to be examined in as much detail as possible. A vast literature on the politics of the continent exists in an attempt to do just this.

1:2 Conceptual Clarifications-

Concept of Politics

The Varied Views of politics

Politics is a loaded term, one that evokes strong emotional responses from both critics and champions. Still greater contempt is often reserved for those who practise politics for a living. Politicians are often the butt of jokes and subjects of derision. Even Henry Kissinger, himself a political figure loathed by many, had little to say in defence of his profession when he opined that ‘Ninety per cent of the politicians give the other ten per cent a bad reputation.’ For writer Ernest Benn, ‘politics is the art of looking for trouble, finding it whether it exists or not, diagnosing it incorrectly and applying the wrong remedy’ (cited in Rodman, 1946). This view of politics is certainly not uncommon. It is probably representative of how many of us have, at one time or another, felt about politics. Economist Milton Friedman’s remark, ‘If you put the federal government in charge of the Sahara Desert, in five years there’d be a shortage of sand.’ Duronio, (2012) expresses a similar sentiment: leave it to politicians, and they will find a way to empty the desert of sand.

Definition of Politics

Under this heading, we invite you to consider a number of distinct definitions of politics that arises from the question “What is politics”? To this deceptively simple question there is actually no simple answer. Throughout the history of the discipline, political theorists and practitioners have offered multiple, at times contradictory, at times overlapping definitions of what politics involves. It is therefore difficult (if not impossible) to provide a single definition of politics that everyone can agree on. The best we can do is to explore some of the more salient definitions of politics, and see how they relate to law. Also, it is useful to conceptualise the definitions by various sources as existing along a spectrum, from narrow to broad understandings of politics.

Thus politics has been defined from diver's perspectives such as power, government, and social and public activity. We will stick with those definitions of politics that explain the nexus between politics and law. To this end, we stick with definitions from the perspectives of power, and government.

Politics as power

Aristotle (384-322 BC) can be regarded as the first to introduce the word 'politics' through his observations about human politics that he called *zoon politikon*. With the term he wanted to clarify that the nature of political and social life is the interaction between two or more people would certainly involve political relations. Aristotle saw politics as a natural tendency of human beings and cannot be avoided, for example when he tries to determine his position in society, when he tried to achieve personal well-being, and when he attempted to persuade others to accept his view. Aristotle concluded that the ability of individuals and businesses to achieve higher forms of social life is through political interaction with other people. Interactions that occur within an institution that is designed to solve social conflicts and establish state goals. Thus the word indicates an aspect of political life, political life is commonly understood as life aspects relating to the elements of power: the state (state), power (power), decision making (decision making), policy (policy, a regulation), and division (distribution) or allocation (allocation).

Harold D. Lasswell and A. Kaplan in the book *Power and Society* state that "Political Science is the study of the formation and sharing of power." And in the book *who gets What, When and How*, Lasswell asserted that "politics is the issue of who, gets what, when and how." To David Easton, politics is the authoritative allocation of values for society.

Politics as that which concerns the state

Among the narrower definitions of politics is that which defined politics as that which concerns the state. If we keep moving from the narrow towards the broad side of the spectrum, the political scientist Andrew Heywood offers a somewhat broader definition of politics. He defines politics as the 'activity through which people make, preserve and amend the general rules under which they live.'

Politics is the interaction between decision makers, interested parties and the public, the process of obtaining agreement or making decisions after negotiation and debate. In politics, the interests of groups and individuals are considered and weighed against other interests.

One respondent conceptualized law and politics thus-- Law in the U.S. has been established by elected representatives of the people and is enforced by a government sworn to do so. The respondent further said that politics is a form of human discourse, thus any time you have two or more people in a room there is a certain level of politics. From this definition, the respondent classified the concept of politics into two: good and bad politics. Accordingly, good politics mean "Seeking to influence others with ideas that further the interests and success of an organization while bad politics on the other hand is "seeking to influence others with ideas that further the interests and success of the individual."

Arising from the classification and in the context of politics in Africa, good politicians can be said to be those political actors who ensure proper implementation of public policies and programmes while bad politicians are those who subvert public policies and programmes.

Concept of Law

Law is the system of rules which a particular country or community recognizes as regulating the actions of its members and which it may enforce by the imposition of penalties. Law is any system of regulations to govern the conduct of the people of a community, society or nation.

Origin of the Idea of Law

Custom or conduct governed by the force of the local king were replaced by laws almost as soon as man learned to write. The earliest law book was written about 2100 B.C. for Ur-Nammu, king of Ur, a middle-eastern city-state. Within three centuries Hammurabi, king of Babylonia, had enumerated laws of private conduct, business and legal precedents of which 282 articles have survived. The term "eye for an eye" (or the equivalent value) is found there, as is drowning as punishment for adultery by a wife (while a husband could have slave concubines), and unequal treatment of the rich and the poor was codified here first. It took another thousand years before written law codes developed among the Greek city states (particularly Athens) and Israel. China developed similar rules of conduct, as did Egypt.

The first law system which has a direct influence on the American legal system was the codification of all classic law ordered by the Roman Emperor Justinian in 528 and completed by 534, becoming the law of the Roman Empire. This is known as the *Justinian Code* upon which much of the legal systems of most European nations are based to this day. The principal source of American law is the English Common Law which had its roots about the same time as Justinian, among Angles, Britons and later Saxons in Britain. William the Conqueror arrived in 1066 and combined the best of this Anglo-Saxon law with Norman law, which resulted in the English Common Law, much of which was by custom and precedent rather than by written code.

The American colonies followed the English Common Law with minor variations, and the four-volume Commentaries on the Laws of England by Sir William Blackstone (completed in 1769) was the legal "bible" for all American frontier lawyers and influenced the development of state codes of law. To a great extent Common Law has been replaced by written statutes, and a gigantic body of such statutes have been enacted by federal and state legislatures supposedly in response to the greater complexity of modern life. "The law" is the governmental response to society's need for both regularity, consistency and justice based upon collective human experience.

A statute, is an ordinance, or regulation enacted by the legislative branch of a government and signed into law, or in some nations created by decree without any democratic process. This is distinguished from "natural law" which is not based on statute, but on alleged common understanding of what is right and proper (often based on moral and religious precepts as well as common understanding of fairness and justice). A generic term for body of regulations for conduct, including specialized rules (for example, military law), moral conduct under various religions, and for organizations, are usually called "by-laws."

Relationship between Politics and Law –

It is being persuasively argued that there is a fundamental linkage between politics and law because both are in the twin business of creating and maintaining public peace, order, good governance and justices for an enabling environment for the people. The significance of this interplay between law and politics is further captured by Thomas Hobbes in his description

sovereignty as the soul of the Leviathan-State of Nature, provided hints about the nexus between politics and law. According to Hobbs, The "natural condition of mankind" is what would exist if there were no government, no civilization, no laws, and no common power to restrain human nature. ... Life in the state of nature is "nasty, brutish and short."

Further to Hobbs observation, we recall how Robinson Crusoe had his island all to himself until Man Friday landed on the same island. Man Friday's arrival made imperative the need to define the terms of their living in the jungle island. The terms revolved around politics and law.

Thus, we say law and politics are deeply intertwined. For example, where war-tears a society or a revolution occurs, state instability is rife, all these occurrences often alleged to be caused by politics, then courts itself may not be able to sit to adjudicate until the crises is eliminated.

Law is an essential tool of government action, an instrument with which government tries to influence society. Law is also the means by which government itself is structured, regulated and controlled. It is no surprise, then, that law is an important prize in the political struggle and that law shapes how politics is conducted. Law is what a government requires of its citizens and will punish if violated. Law determines rights and responsibilities from existing statutes, treaties, regulations, publications, court rules, court decisions and constitutions.

In all societies, whether democratic or totalitarian, law is superior to politics. In a democratic society, natural law, defined by rules and regulations acceptable to the people, in a written or unwritten constitution constitute the laws of the society and they are superior to politics. In a totalitarian society, positive law, defined by the wishes of the king or the strong ruler constitute the laws of the society and they are superior to politics. Both Natural Law and Positive Law are okay, depending upon the arrangement and the agreement of the members of the society or the country. No King or a strong ruler in a democratic society can elevate politics above law in pursuit of his personal desires.

Examples of Practical interplay of Politics and Law (Nigeria)

To John Austin, law is the command of the sovereign to those under his jurisdiction with sanction or penalty available for non-compliance. Its immaterial whether the command is right or

wrong. Its of no essence whether the law is just or unjust. Rulers in most cases resort to unjust laws out of political exigencies. This makes the allegation that most crises in a polity are instigated by politics. There are many instances of this in Nigeria's fourth republic. (See generally, Akpotor, 2011, p 3-5)

Look at inter-tribal wars between the Itsekiri Urhobo, Modakeke and Ife the aftermath of politics of local council creation /headquarters shift; the change of nomenclature of traditional ruler/paramount. The introduction of the sharia legal system and its handling by the federal government. The acceptance of Enwerem impeachment as senate president when it was clear that legal rule and stages were jumped, prompting his going to court; the illegal impeachment of governor Ladoja (oyo), Joshua Dariye (Plateau) Peter Obi(Anambra). We are however happy to note that the Supreme Court voided them. Or what about the setting aside of the verdicts of the local government elections tribunals and the Appeal tribunal until the transitional implementation committee Ad-hoc body come out with it findings? (Against the electoral decree).

The law played a role in the disintegration and fall of the first Republic where justice Sowemimo in trial of chief Awolowo and other said that his hands were tied. The refusal on chief Awolowo to bring a foreign council Mr. Gratuen to defend him which was allowed other politicians, late chief Adegoke Adelabu and Okotie- Eboh was high politics. The law planted the seed in the collapse of the 2nd republic in the Awolowo vs Shagari (1982)², NCLR, 399 where its literal interpretation of the $\frac{1}{4}$ of the vote in $\frac{2}{3}$ of 19 states was naked politics; or what was the effect of the annulled june 12 1993 presidential elections where M.K.O. Abiola was widely acclaimed to be the winner?

How do we explain the illegal abduction of the elected governor of Anambra state, Dr. Chris Ngige and his purported resignation (forced) on July 2003 on the allegation that he refuse to honor the political agreement to pay a financial outlay to his political godfather, Chris Uba (which was not justifiable in law court). That the abductors, which included the Nigerian police force, could not be tried and obey legal orders tells much. Forceful removal from office is a treasonable felony offense under section 88 of the Anambra state criminal code that this same matter led to an Enugu High Court outside Anambra state to order the removal of the governor and consequent withdrawal of the governor's constitutional security forces in the throes of a

politician enforcing his fundamental rights. That this scenario got the blessing of the federal government. PDP and Nigerian police force, show the destruction extent of political calculation (who succeeds Ngige, in 2007) over legal niceties. We are happy to note that appeal Court dismissed the Enugu High Court order.

There are some sample of the rule of men over rule of law in Nigeria. The PDP as a massive governing party in Nigeria from 1999 had displayed more of this, where it has shown utmost disregard for the Nigerian constitution, that they have the right to re-write the laws of the county at will; that they chose which judicial pronouncements to obey and which to ignore; that they have even taken time out at public for a to rail at judicial pronouncements if not at the learned judges themselves (for example, it vilified the judiciary over the minority judgment in the presidential election tribunal of 2003, which questioned the electoral figures in Ogun state where President Obasanjo scored more votes than number of registered voters. But it was able to praise endless the final verdict of the Supreme Court which gave victory to the president.

President Obasanjo personal has along record of “selective obedience” of court orders and judgments e.g. NLC victories, Lagos council fund. He interprets judgment as it suits him. In concert, the PDP one time National Chairman, Colonel Ahmadu Alli has said, “court judgments cannot reverse a decision taken by the party” Assuming we excuse the duo above because of the military background. What of Ojo Madueke, then secretary of the party, who asserted that nothing could stop the party from discontinuing the impeachment of then Deputy governor of Akwa Ibom State- Ekpeyong by the state House of Assembly even though the constitution is clear that House has the final say in the matter. The Party board of Trustees turned itself to an illegal Appeal court to review the impeachment. But the PDP allowed illegal impeachment of Alamiyesiegha and Ladoja of Bayelsa and Oyo State respectively

While the PDP supported the Governor of Oyo State Chief Alao Akala to dissolve local government elected councils conducted by Rashidi Ladoja, the same PDP was against Dr Mimiko dissolution of same in Ondo State. Dr. Mimiko’s action was based on an injunction granted by the judiciary against the election previously, and at the determination of the substantive suit later Mimiko’s actions was upheld.

We recall with nostalgia, presidential declaration of state of emergency in Plateau state, when more tendentious riots in other parts of the North has been treated as “family affairs,” the attempt was to humiliate Governor Dariye hence his process of coming back were halfhazard handled.

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