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The Implications of Hubert Hart's Concept of Political Obligation for the Nigeria Public Service

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Abstract

This paper argues that the responsibilities of the public service involve the observation of strict neutrality while ensuring the continuity of policies based on overall national interest, the implementation of policies and the initiation of economic, social and educational objectives of both the Federal and State Governments. It points out that the problem of the public service in Nigeria is rooted in the problem of moral decadence. Finally, drawing from Hart's concept of political obligation, it suggests that for an improved public

service, there is need for genuine commitment towards responsibilities, which also require that the members of any society learn not only to identify with their society but also to be committed to their work as their individual contributions for the general good.

Key words: public service, political obligation, morality, commitment.

Introduction

This paper arose as a result of the researcher's interest in the concept of political obligation generally, vis-a-vis its analysis by Hubert L.A. Hart. It has been motivated by a couple of realizations:

1. The sense of obligation determines the attitude, orientation and level of contribution of the members of any society;
2. Hart's presentation of political obligation and his idea of fairness as reciprocation, if appreciated, can positively affect the disposition of the members of the Nigerian society to learn not only to identify with Nigeria but also to be committed in their work as their individual contributions for the good of all.

It should therefore not be surprising, that the researchers shall be using H.L.A Hart's concept of political obligation to deal with the imperative of the intelligibility of moral change in the Nigerian public service. But first, we shall set the agenda for this discourse by first knowing who Hart was and understanding the concepts – public service and political obligation.

The man Herbert Lionel Adolphus Hart

Herbert Lionel Adolphus Hart (1907-1992) was an influential British Jewish legal philosopher of the twentieth century. He authored *The Concept of Law* and was Professor of Jurisprudence at Oxford University. Hart developed a sophisticated theory of legal positivism within the framework of analytic philosophy. Hart also made major contributions to political philosophy. He revolutionized the methods of jurisprudence and the philosophy of law in the English-speaking world. He was influenced by J. L. Austin and Ludwig Wittgenstein. Hart brought the tools of analytic, and especially linguistic, philosophy to bear on the central problems of legal theory. His method combined the careful analysis of twentieth-century analytic philosophy with the jurisprudential tradition of Jeremy Bentham, the great English legal, political, and moral philosopher.

Public service and political obligation

Public service: public service, broadly speaking, can be seen either from the point of view of services being rendered, or a sector. In the case of the first, it refers to “services provided by government to its citizens either directly (that is through the public sector) or by financing private provision of services. Public service is here associated with a social consensus that certain services should be available to all regardless of income” (Wikipedia, 2011). From the point of view of a sector, it refers to the “branch of governmental services in which individuals are hired on the basis of merit which is proven by the use of competitive examinations” (Wikipedia, 2011). It may also refer to a body of employees in any government agency, except the military, although civilian officials may work at a defense ministry headquarters. Collectively then, all these government employees (civil servants) form a government civil or public service as a sector.

Political obligation: the term ‘obligation’ originates from the Latin word ‘*obligare*’ which means something that binds people together to an engagement or performing what is enjoined (Johari, 1987). Political obligation has various connotations. In the realm of ethics, it informs a people to fulfill or discharge a duty enjoined on them and acceptable to their rational understanding. In the field of jurisprudence it requires a man to obey the law (Baker, 1967). In the world of politics, it takes the form of a bond between the human as a citizen and the authority under which he or she lives to perform an act (Benn and Peters, 1975).

Political obligation has also been understood as the moral and legal duty of a citizen to obey the laws of the state. Political obligation exists only within a political context. This is because we must know ‘whom’, before ‘why’ to obey. To be a citizen means belonging to a state, it means living and acting according to its rules (Raphael, 1976). The question still remains ‘why does the citizen have a duty to obey the laws of the state?’ The citizen is obliged to obey the laws of the state because the state has sovereign authority, the state has the right to issue orders to its citizens and the right to receive obedience from them and the citizens are obliged to obey the orders.

Besides, it is because the citizen acknowledges the claim from fear or dislike of the consequence of not doing or abiding by a rule. For instance, ‘I ought in my interest to obey, I had better do so, or else it will be worse for me’. This is

referred to as a prudential obligation because it is consequential (Raphael, 1976).

Establishing the nexus between political obligation and public service

The link between political obligation and public service lies here - while public servants owe their organizations both efficient performance and compliance with the law, they also owe a great deal more because they are “public” employees. ‘Publicness’ carries higher obligations than those entailed by private employment. To be of the public service is to accept moral obligations, sometimes it involves taking oath of office, the basis of public accountability. Some of the specifics of these obligations include: to encourage civic autonomy; to govern by persuasion; to transcend the corruptions of power, and to become civic exemplar (Hart, 2011). Some of these specifics are further articulated in the *Public Sector Ethics Act 1994*. Here, the ethics of the public servant is described as revolving around the following: respect for the law and the system of government, respect for persons, integrity, diligence, economy and efficiency (Hart, 2011).

The use of ethics in the above needs to be qualified: the ethical code for any area of human relationship goes beyond the law that regulates such a human relationship. For example, in business ethics, while what the law does as law is simply to determine how business is to be conducted between the entrepreneur and the customers in such a manner that the entrepreneur will maximize profit neatly, ethical code goes beyond the law. In fact, law is to ethical code what justice is to charity. Hence, ethics in business goes further to link relationships of business goals and a technique to specifically human ends (Eboh, 2006). The question of obligation in the public service links with ethics in the public service. This is how the functioning of the public service connects with human ends and not just the ends of the system. It is for this reason that a society must first be a society of justice before it can be a society of compassion and wellness. If you ranked the good life higher than justice you might achieve neither (Namtvedt, 2010). As such, for the sake of justice that gives the whole state machinery its legitimacy, it is quite necessary that the administrators of this machinery be in the right attitudinal and moral frame for the task they intend to prosecute. This therefore, places before us the necessity and urgency of the role of obligation in the public service. Since Hart is our measure for political obligation, we shall now try to delineate very clearly his conception of political obligation.

Hart's concept of political obligation

In Hart, the case for obligation is based on fairness. Fairness for him means “treating like cases alike” .Political obligation in Hart’s view is a combination of both moral and legal obligations, and pertains to duties to the political community. Hart in this regard has also tried to distinguish between when “I have an obligation” and “when I am obliged”. For Hart, to say one is obliged has to do with the beliefs and motives with which an action is carried out. It is also referred to as duty for the sake of purpose. When we say a person was obliged to hand over his money (as in the case of a gunman demanding for money) it becomes the case that such a person believes that some harm or other unpleasant consequences would befall him, if he did not comply (Hart, 1958). But to have an obligation provokes a different scenario altogether, it is done out of conviction and some anticipation of fulfillment. Obligation here is referred to as ‘duty for duty sake’. It needs to be noted that the facts about the beliefs and motives for the action are not necessary for the truth of a statement that a person had an obligation to do something (Hart, 1958). Thus, in the case of being obliged, the beliefs and motives of the person obliged are sufficient for him or her to do what was demanded but it is not sufficient for him or her to claim an obligation for such an action.

Going by the general definition of political obligation and its exposition by Hart, it should be reaffirmed that political obligation exists only in a political context. How then does Hart create this political context which grounds this obligation? Here we assert that obligation for Hart is grounded in the rules of recognition. These rules of recognition are secondary rules grounded on the primary rules of obligation. The foundation for this primary rule is in the pre-legal community. Thus, we see that Hart creates a hypothetical legal state of nature out of which he would create his actual legal system. What are prevalent in this pre-legal state are the primary rules of obligation which suffer from such deficiencies as: uncertainty, being static in nature, and inefficiency. To remedy these deficiencies, Hart introduces the secondary rules of recognition, change and adjudication. Of these three, that of recognition possesses the unique qualities of being supreme and ultimate. To this rule of recognition, reference for authority and validity is made. Thus, the acknowledgement of authority in Hart is not based on a habit of obedience, but on a special kind of relationship between the legislator and the person who accepts his or her words as law. Thus, we can say that besides the ground of fairness, Hart also grounds his political obligation on reference to

the law (rules of recognition). Obligation for him comes from the rule of law. The rule of recognition legitimizes power and places before the citizen the reasons for obligation (Hart, 1961).

On another note, Hart's argument from fairness presents another ground for political obligation in Hart. Thus the creation of the legal system which grants the primary ground for obligation via the rules of recognition is followed by a co-operative contribution of all to the pool of goods, in order that we might be able to take from such a pool of goods. Thus, in Hart, the rule of recognition and the fact of fairness grounds political obligation (Hart, 1957).

Furthermore, we cannot conclude our sketchy exposition of Hart without looking at the question of whether in Hart's views, there are generic or specific *prima facie* obligations to obey the law. The distinction in the discourse on political obligation was made by M.B. Smith in his essay, "Is there a *prima facie* obligation to obey the law?" To this question, Smith answers that of course there is a *prima facie* obligation to obey the law. But the problem is whether this *prima facie* obligation is generic or specific? In Hart's opinion, obligation is specific. This is because validity is to be found within the context of the particular legal system (Hart, 1958). And it is within the operative conditions of the system that obligations and duties exist. To this end, Hart restricts our evaluation of the reason for action and rule-based action to conventional standards. The speaker's words are judged as valid or invalid; that is whether what the speaker said and the means used are within the criteria established by convention, not reducible simply to a natural description (Njoku, 2007). Let us now see the Nigerian public service and the problems of obligation.

Nigeria public service and the problem of obligation

The public service in Nigeria is a measure in the initiation of economic, social and educational objectives of both the Federal and State Governments. Specifically, they provide the main machinery and data needed for the formulation of the various national development plans in Nigeria. The continuity of policy in some cases under a parliamentary system of government and transfer of knowledge of past governmental decisions and procedures are the onus of the public service. The public service plays several educative, investigatory and regulatory functions (Ezeani, 2006).

There is an interesting question on how true the Nigerian Public Service is to its functions. In response to this question, some scholars opine that there are structural roots to the problem. This has to do with not just the takeover of inexperienced hands in the public service, but also the uneven political landscape in this sector at the time. Thus, an uneven socio-political landscape is a breeding ground for corruption. The colonial adventure introduced such a system of unbalanced socio-political landscape, placing public officers over the communities and reducing the powers of the people to exercise a meaningful pressure on their public figures or calling them to order. The warrant chieftaincy which was introduced by the British in the South Eastern Nigeria as an administrative apparatus is an example of how colonialism fundamentally altered the perception of public office in an African community.

The Nigerian public service has been transformed into the theatre for sharing the national cake among the major ethnic and sub-ethnic groups, a factor responsible for the unending fragmentation of governmental structure (units of ministries, divisions of major departments etc), despite the difficulties in maintaining the old ones (Agbakoba, 2010). The Conflict in relationships between politicians and administrators is unhealthy to the sector. In Nigeria today, recruitment to the service as well as training and promotion of workers are sometimes influenced by ethnic, tribal and religious sentiments. This is to the total abandonment of merit which is the core value upon which entry into the service should depend.

In summing up the various perspectives from which we have anchored our discourse on the rise of decadence in the Nigerian public service, we will want to draw inspiration from the reflections of some prominent African philosophers in this regard. This is because it is our conviction that the ontological and cultural perspective they put forth sum up the unique philosophical dimension of the problems of the Nigerian public service. Taking off from Kwame Gyekye's Golden Jubilee Lecture "Our Values and Orientation", the case is made that the Nigerian public service has continued to be seen and done as the white man's job. This is because of the colonial experience during which the government was *they* and had nothing to do with *me*. It was an alien institution and the people's business was to get as much from it as they could without getting into trouble. As such the Nigerian public service was characterized by what is called '*identification without commitment*' (Agbakoba, 2010). The consequence was that fundamentally,

there was the problem of obligation within the system. And obviously, because of this lack of obligation in the system, all the above problems enumerated crept up

There is a much more cultural and ontological dimension to this problem of lack of obligation in the Nigerian Public service. This can be considered from two dimensions: the first is voluntarism in African traditional thought. To this vital force as an ontological category in African metaphysics results to the fact that things are identified and classified according to the force and power they display. And since conscious beings should be expected to will full display of the power of their being, this expression of their vital force leads to voluntarism. To this end voluntarism in the case of human beings will focus on self-preservation in this world and the perfection of the self (ego) in the struggle for domination as the highest good. Vitalism and voluntarism account for the absence of traditional values in Africa, that is, values that are held over and above life in this world (Agbakoba, 2010). Thus, in the case of the clash of values between life and any other transcendental value (like truth or justice), these transcendental values would give way. This culminates in the rule of personality rather than law. For African voluntarism is rooted in and derived from African vitalism; and it gives rise to what we may regard as a voluntaristic personality; a personality that is based on the perception of reality and social reality as the creation of a will that is not governed by objectivity or an objective order. Because there are no transcendental values apart from self-preservation and the projection of the ego, the voluntaristic personality tends to personalize social relations; it thus tends towards the rule of personality and impunity as against the rule of law” (Asouzu, 1998).

The second is particularistic and communitarian. However worth noting is that there is the problem of imbalance between ontologism and objectivity in African ethics. The imbalance of this relationship in African ethics culminates in the mentality that whatever I have done for my village or clan, justifies my obligation to my nation. It thus assumes an undifferentiated transition from my primary ultimate community to my causal community. Sometimes one could remain on the level of the intimate community at the exclusion of a larger community in the practice of brotherhood (Asouzu, 1998). The failure to reconcile the dichotomy between ontologism and relativism is very inherent in African traditional ethics.

The truth of the above comes to the fore when we understand the fact that, for something to be ontological does not mean it is objective, ontology and objectivity are not synonymous. As evidence of this particularistic, subjective and communitarian feature of African traditional ethics, Nigeria failed in the first republic because we talked more of the tribe and less of nation (Idike, 1998). With this particularism and communitarianism we see that our situation is not that of non-obligation, but that of a conditioned obligation, an obligation that focuses on ourselves because of our fundamental ontological and cultural outlook.

Implications of Hart's concept of political obligation for the Nigerian public service

As we struggle for the continuous rebirth of the public service in Nigeria, there are things which we can take from Hart's concept of political obligation. The first element is the idea of fairness. With regard to this, we need to understand that Hart belongs to the liberal democratic tradition and two fundamental elements are central to this tradition. These are the understanding that the human person is essentially free, and that the focus is on the individual. Thus, these two basic ontological categories colour his postulations as regards obligation.

From these ontological and metaphysical roots, it will be difficult for the African predicament to be transformed by this dimension of Hart's political thought. This is because the African orientation is both ontological and communitarian. With regard to the idea of fairness in Hart, as it relates to community goods, to which we should contribute and out of which we can take based on the contributions we have made to it, we can draw lessons for the African predicament.

In the first place, the four major problems for lack of genuine political obligation in the Nigerian public service is basically lack of morality, the case of insensitivity and carelessness to duties, and lack of proper remuneration. What most public servants take home as pay cannot take care of them as individuals, let alone cater for the needs of the family. As such, using Hart's fairness principle of obligation, we will understand that the goods of the community need to be distributed fairly so that each person is able to get according to his or her ability, need and merit. This will help to remedy the obvious contradiction in the situation where a school drop-out, just because he or she has gotten a political office, receives more pay than a

worthy university professor who has laboured all his or her life to contribute to the pool of intellectual goods in the society. It will help us to understand that as we demolish the land, water and air of the Niger delta in search for oil, we need to give the people as much as we have taken from them. But will this just end the problem of obligation in the Nigerian public service? Will giving more pay to civil servants solve the problem?

An example will suffice here. Recently the pay of the police was improved, but it has not really stopped the problem of corruption. They still exploit people on Nigerian roads. Even political appointees, who have huge funds at their disposal still inflate contracts, etc. As such, more money in our pockets does not mean good bye to bribery and corruption. For the Nigerian work ethics to improve, first and foremost, Nigerian must begin to see human labour as a duty and as a right. If this fact is taken seriously, Nigerian workers would seek not just immediate monetary gain but also seek self-fulfillment in human labour (Eboh, 2006).

This, therefore, brings us to the second point in our discussion. In essence, we affirm that Hart's conception of fairness in political obligation will help us to understand that, as long as we do not give our best into the public service, we have no right to expect the best from the public service. It will help us to understand that as long as services in the public service are dispatched based on religion, tribe, region etc, rather than merit, we will enthrone a culture of nepotism, tribalism and mediocrity for ourselves and our community. For fairness, as it were, is all about a balance in giving and taking, and once the equilibrium is disrupted, the balance is disrupted and the aim of the whole process is defeated. As such Hart's fairness principle helps us to understand that for us to get the best from the Nigerian Public service; we need not just identify with the system, but get committed by giving our best to it.

Another point we can glean from Hart with regard to his concept of political obligation is his contractarian base for obligation. This centres on the motion from the pre-legal to the legal community. Based on this, we therefore contend that the role of the public service should not just be limited to policy implementation, but should be expanded to include policy formulation as well. For as long as the role of the public servant is limited just to implementing policies made by the representatives, the problem of alienation in the public service will persist. Consequently, policies will be seen as *their thing* and not *our thing*, and will inevitably culminate in nonchalant attitudes

to their works. For, since we do not participate in the formulation of the policies, we will not have any genuine reason to comply with such policies. This is because what we make for ourselves we cannot violate without indicting our capacity for objective evaluation and action.

All of these must be done according to the rule of recognition (rule of law). It is obvious that rules have been spelt out regarding how things should be done in the service. As such Hart's emphasis on the primacy and supremacy of the rule of recognition shows that the rule of personality which characterizes our public service is part of its problems. This is because this neglect of the rule of law and the enthronement of the rule of personality culminates in the privatization of the public service, where there scarcely exists any demarcation between the office and office holders (Mazuri, 1986). This obviously means that there are already, rules for checks and balances in the system, but that these rules are not respected. Hart emphasizes that the rules of recognition be given primacy and ultimacy. It means the rules that guide proper conduct in the public service should be given primacy for the good of the system.

Conclusion

It is clear that there are three salient points in Hart's concept of political obligation, namely: fairness, contract and the rule of law. With regard to fairness, this discourse presented Hart's case that to take or benefit from the pool of goods one must have contributed to the pool of such goods. Obligation consists in contributing because we are benefiting from the pool of goods which others have contributed. Contract, of these three points, is located in the movement from the pre-legal to the legal community where rules are clearly spelt out. With this primacy of the rule of law in Hart, we have been able to establish the value of the rule of law in public service sustainability in Africa where the rule of personality is common.

The place of recognition as stated above is such that it validates authority. This is because if the rules of recognition do not validate authority, then there can be no obligation. This discourse submits that, Hart's concept of rules of recognition ensures both a better participation of citizens in the making of policy and the sense of obligation and such obligation can make it possible for public servants in Nigeria to carry out their social responsibilities in a manner that leaves no one in doubt that they are both identified with and committed to their duties.

Finally, this piece submits that, Nigeria is in dire need of quality public services. Good quality public services delivered in cost-effective ways are integral to social and economic development. They have the potential to enhance democratic processes by promoting fairness, civic responsibility and social cohesion. They add public value to a country in terms of its attractiveness as a place to live, work and invest.

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