

RESEARCH ARTICLE

# IMPACT OF ADMINISTRATIVE LAW ON THE FUNCTIONING OF REGULATORY AGENCIES: CASES AND MATERIALS FROM A THIRD WORLD COUNTRY

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## Abstract

This paper examines the utility and challenges that administrative law poses to the functioning of regulatory agencies, citing cases and materials from Nigeria as a Third World country. It notes that because regulatory policies allocate rewards to some individuals and groups while meting out punishment to others, regulatory agencies almost always encounter opposition from several stakeholders. It argues that in order to achieve results by implementing policies effectively and securing expected changes, regulatory agencies need clear objectives and procedures that should be spelt out in administrative law. This is so for several reasons, including the fact that very often, administrative law is free from the drudgery of mainstream bureaucracy. However, it notes that in some political settings such as are common in Third World countries, administrative law may not set out agency functions clearly; cause overlaps in the functions of agencies whose jurisdictions overlap or complement each other; or fail to define unequivocally, inter-agency relationships. This has the capacity to obfuscate agency efficiency and effectiveness, as demonstrated in the relationships of SON and NAFDAC with several stakeholders in their concerns. Also, there are fears that regulatory agencies may become very powerful, over-ambitious and thus, overbearing or high-handed in their relationships with regulated interests, thereby affecting agency effectiveness negatively. On this, the paper notes the existence of the courts and the ombudsman institutions as arbiters between agencies and members of the public. As a means of reducing the tension that administrative law may cause in the policy implementation process, the paper makes a case for parsimony in the work of different regulatory agencies, and the development of collaborative policymaking between regulators and the regulated, as strategies to make regulatory policymaking and implementation less acrimonious. These, the paper believes, have the capacity to strengthen the position and relevance of administrative law to regulatory policymaking and implementation in many political and administrative systems in the Third World.

**Keywords:** Administrative law; Regulatory Policies; Regulatory agencies; Policy Implementation.

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## **Introduction: The Concept of Public Regulation**

In the modern state, governance entails a lot of responsibilities. This is because, with the advancement of civilization, technology and development, the needs of the citizenry have increased and the roles of government in social organization have increased correspondingly. The above implies that the duties of government have gone beyond the traditional 'night-watchman' functions of maintaining law and order to the larger concerns of citizen welfare and their physical, social, economic and legal protection.

Ordinarily, the legislature is saddled with the constitutional responsibility of making laws and regulations for the good governance of the state. For various reasons, however, modern legislatures have not always made all laws for society, but have had to delegate substantial portions of their powers and responsibilities, including law-making and other oversight functions, to other institutions of state. Some of those reasons are practical, including time and knowledge of the technical issues involved in a proposed legislation, particularly where the details of implementation are concerned.

In this way, certain law-making and implementation powers are delegated to autonomous and semi-autonomous governmental bodies called agencies, commissions, bureaus, authorities or boards, etc. This reality is part of what Bell[1] attempted to capture with his concept of the 'post-industrial state'. Since then, other scholars have sought to describe the gradual but steady incursion of public regulatory institutions into areas of citizens' lives that were hitherto shielded from state control. It has been argued, for instance, that:

*Government has increased its involvement in our lives. Bit by bit, issue-by-issue, policy-area by policy-area, governmental regulatory institutions ... commonly known as agencies, boards, or commissions ... have been created to smooth out the conflict between private aspirations and the public good. Although such wrinkles may have been the unexpected glitches of industrialization, government responses through regulation have been purposeful and intentional [2].*

Indeed, society has come to depend on government for protection from a variety of threats. Among these are the consumption of potentially dangerous foods and drugs, toxic waste, the threat of pollution, an unsafe civil aviation sector, risky building designs, and a risky banking system, among others. Governments have responded to these and other threats through the creation of various institutions like regulatory agencies, boards and commissions to make and implement rules and regulations that are meant to protect citizens from such threats.

Therefore, scholars view public regulation in modern society not as a departure from the traditional mandate of government but rather, as another way of fulfilling it. For instance, whereas Davidson and Oleszek[3] view public regulation as a way of protecting the public from various kinds of abuse, Meidinger argues it is a way of bringing orderliness into public life. For such authors, administrative regulation as an aspect of governmental activity in the modern era, includes many domains of social life that run the gamut from food and drug consumption to pollution production; from toy safety to building design; from commodities trading to ship safety and so on 'ad infinitum. Therefore, it is "a major institutional mechanism for defining and implementing social order in ... most... modern societies"[4].

There are two major kinds of public regulation. The first is economic or competitive regulation while the second is social or protective regulation[5]. According to Eatwell, Milgate and Nenan, economic or competitive regulation derives from the theory of public utilities according to which the operation of natural monopolies eventually call for the establishment of institutions that operate as legal monopolies[6]. Such government-constituted monopolies characteristically operate through standard rules and procedures that can guarantee quality service delivery at affordable costs. This is common with the money and financial markets and an example of institutions involved is the stock exchange.

Social or protective regulation, on the other hand, occasionally involves services but deals predominantly with a larger set of product regulation that stipulates how various kinds of goods are to be produced and delivered. Social regulation involves directives that prohibit unacceptable and stipulate acceptable standards for the manufacture, circulation, sale, use or consumption of certain materials that can be potentially harmful to the consumer if not properly regulated. Examples in social or protective regulation in Nigeria are the regulatory activities of the National Environmental Standards Regulatory Agency (NESREA), the Standards Organization of Nigeria (SON), the National Agency for Food and Drug Administration and Control (NAFDAC) and the National Drug Law Enforcement Agency (NDLEA), among others.

This is the trend in many developed and developing countries where industrialization and the need to balance the quest for development with enduring social, economic and environmental concerns have necessitated greater government intervention in the affairs of the society. Although social regulation has stretched the regulative capacity of governments in definite ways, it is nevertheless considered to be a necessity. Administrative law is one of the tools that have helped governments not only to cope with increasing demands of modern society, it has also assisted governments to define old boundaries better and to establish new frontiers of state-citizen relations.

### **The Idea of Administrative Law**

Administrative law is the body of rules that stipulate the powers and procedures of administrative agencies, including the law governing judicial review of administrative action [7]. For Professor H.W.R. Wade[8], cited in Malemi [9]:

Administrative law...is the law relating to the control of governmental powers...There is no such thing as absolute or unfettered administrative power. It is always possible for any power to be abused...The primary purpose of administrative law, therefore, is to keep the powers of government within legal bounds, so as to protect the citizen against their abuse. The powerful engines of authority must be prevented from running amok. As well as power there is also duty. It is also the concern of administrative law to see that public authorities can be compelled to perform their duties if they make default...Administrative law may be said to be the body of general principles which govern the exercise of powers and duties by public authorities.

Administrative law consists of components such as constitutional law, statutory law, common law and agency-made law, which together, are used to control the machinery of government and its agencies, boards,

commissions, etc. in carrying out public programmes. Administrative law stipulates the powers of administrative agencies, spells out the principles governing the exercise of those powers, and in cases of breach of citizens' rights, redresses wrongs perpetrated through administrative action or inaction.

Therefore, administrative law fulfills an important role in facilitating and bringing about the ends of government and administration. It does this by providing guidance to bureaucrats and political heads of agencies or bureaux; clarifications for street-level implementers of policy on existing laws, rules and orders; and insight for members of the public on the powers, functions and limits of agency power and privileges. As Lane [5] posits, "administrative law holds a strong position within public administration because it regulates how cases are to be handled in state and local government. Constitutional and administrative law are important ingredients in neo-institutionalism"

Although the practice and later, the study of administrative law in the modern period began in France after the revolution of 1789, it did not become firmly established until the establishment of the United States Interstate Commerce Commission (ICC) in 1887 and the Food and Drug Administration (FDA) in 1931[2].

From then, the growth and popularity of administrative law received a boost with the widespread use by governments of specialized boards, commissions and professional agencies rather than the legislative and judicial arms of government to make and implement public policies on issues that bother on the welfare of the citizenry. So important is the role of regulatory agencies today that they are present in almost every country. Also, transnational regulatory agencies are becoming common even in Africa, Asia and Latin America[10,11 and 12].

In spite of the above, however, it has been suggested that the problem of power exercised by regulatory agencies focuses mostly on administrative law[4]. Such problems typically include the extent of power possessed by agencies, the problems of delegation, the power of regulators and the capture problem, the power of regulatory beneficiaries and the veto problem[4]. The usual argument against the granting of wide discretionary powers to agencies to make and implement administrative law centres around the fear that regulatory agencies may become too powerful to be of advantage to the public in whose interests they are supposed to act.

Due to the above, it is appropriate to inquire whether indeed; administrative law is relevant to the running of regulatory agencies, and whether it has made or is capable of making positive contributions to the management and efficiency of regulatory agencies.

## **The Relevance of Administrative Law to Regulatory Agencies**

Regulatory agencies fulfill their mandates through certain methods which, taken together, are known as 'the administrative process'. The complexity, scope and span of the issues with which regulatory agencies deal often require that their activities be controlled through rules and regulations. Therefore, administrative law is important in the control of regulatory institutions for several reasons.

First, administrative law is a means of securing public order. In the modern state, much of the responsibility for public order rests with regulatory agencies. As Mariano-Ceullar[13] argues, regulatory agencies write ten to

twenty times more rules a year than the number of public laws passed by the legislature. Through such rules, they make an overwhelming quantity of legal and public policy decisions. Clearly, therefore, administrative law is a means of supporting and equipping the regulators to perform effectively such onerous duties without which social life would be without order and therefore, anarchical.

Second, administrative law is important to the functioning of regulatory agencies in that they help to define the behaviours of regulatory agencies. Since the public sector consists mainly of the exercise of public powers or competencies in particular areas of jurisdiction by various agencies or representatives of the state, it is necessary to ensure that such powers are exercised legally, within legal limits and that the rule of law prevails in the dealings of such bodies and their representatives with members of the public.

Lane[5] argues that the strong entrenchment of institutions in the public sector is the safeguard against abuse of power and the misuse of public office and funds. Administrative law specifies procedures that are to be followed in the enforcement of public laws or the implementation of public policy. In this way, administrative law helps to secure and strengthen the rights, duties and competencies that are involved in public sector activities.

Third, administrative law promotes openness in relation to procedures in the public sector. Public sector institutions operate in the full glare of the public, almost like a goldfish that has no hiding place. Openness is a requirement for responsibility and anticipation in the public sector. Again, Lane [5] argues, “with minor exceptions, the materials about a case in the public sector are available to citizens, should they wish to enquire into how a decision has been made and implemented”. This is the critical question of access as a distinguishing factor between public and private sector institutions[14], cited in [15]. Administrative law helps to promote both openness and access in the affairs of regulatory agencies.

Fourth, administrative law ensures predictability in the way regulatory agencies operate. Predictability in agency operations refers to the capacity of the citizenry to form reasonably stable expectations about how their matters will be treated or resolved. Predictability enhances the confidence that the citizenry have in an agency’s operations and perhaps, the support that they are ready to give to it. All institutions of administrative law are capable of enhancing predictability concerning an agency’s operations. These institutions include delegated legislation, decision-making processes, legal and administrative remedies, legal control and the ombudsman institution, among others.

In many cases, regulatory agencies possess unique mandates that cause them to operate outside the bureaucratic norms of the regular civil service. Thus, the reasons for the creation of such agencies often determine their mandates and operational procedures. This explains why many regulatory agencies operate under the law either as autonomous or semi-autonomous bodies, subject mainly to the control or supervision of such boards or government ministries as are deemed relevant to their mandates and operational procedures.

Many of the issues and problems that regulatory agencies deal with are either special or urgent, and very often are those which common law has grappled with rather unsuccessfully. In connection with this, James Anderson informs that:

*Agency enforcement activity depends not only on the attitudes and motives of agency officials as well as forces external to the agency. Opponents unable to block the legislative enactment of a law may seek to blunt its impact by handicapping its enforcement [16].*

Due to the above reasons, regulatory agencies require expert, professional advice and strategies that may not conform entirely to bureaucratic ideals but which would reduce the strength of opposition groups and assist the agencies to achieve their objectives. The adoption of properly crafted administrative law could be of immense advantage in such circumstances although the effectiveness of any law depends not only on its crafting but also on the implementers and the implementation strategies adopted.

The incidence of fake, adulterated and substandard products in the Nigerian market reached such a dangerous and embarrassing level in the past that government decided action must be taken against it outside the regular bureaucratic, civil service setting in order to successfully confront and eradicate the menace. The establishment of SON and NAFDAC were steps taken by government to bring that decision into effect in the materials, pharmaceutical and allied sectors of the Nigerian economy.

## **Administrative Law and Product Regulation by Agencies**

### **(i) Standards Organization of Nigeria (SON)**

Documents that establish administrative agencies, whether they are called 'enabling laws', 'statutes', 'decrees' or other titles, are aspects of administrative law. Often, they describe the legal nature of such agencies. Thus, they explain the rationale for the establishment of such agencies, spell out their powers and duties, and define their boundaries or relationships with other organizations. The Standards Organization of Nigeria (SON) was established by Decree No. 56 of 1971, as amended by Standards Organization of Nigeria Act Cap S9 Laws of the Federation of Nigeria 2004. In broad terms, the agency has the mandate to set and elaborate on standards for products and methods thereof. In 1990, Section 10 (e) of the Enabling Act came into existence by virtue of Decree No 18 of 1990, and it empowers the Director-General to enforce standards set and elaborated by the organization. Section 4 of the Enabling Act stipulates the core functions of the agency to include the following:

- to advise the Federal Government generally on the national policy on standards specifications, quality control and metrology;
- to designate, establish and approve standards in respect of metrology, materials, commodities, structures and processes for the certification of products in commerce and industry throughout Nigeria; and
- to provide the necessary measures for quality control of raw materials and products in conformity with the standard specification [17].

In line with its mandate to ensure the quality and safety of products that enter into the Nigerian market both from local and international manufacturers, SON established standards for the manufacture of such products. They include the Standards Organization of Nigeria (SON) and International Standards Organization (ISO) certifications as well as Standards Organization of Nigeria's Compliance Assessment Programme (SONCAP) which was

introduced in 2005. Its objective is to ensure that[18]:

*Manufacturers of foreign goods that are meant for the Nigerian market are expected to submit such goods for tests in laboratories approved by SON in various countries around the world, and obtain from SON's liaison offices in those countries certificates of compliance with its standards. The importers of such goods will then present the certificates at the nation's ports before they are cleared.*

The SON and ISO are local and international standards that manufacturers of industrial products must meet concerning safety, quality and durability of their products prior to approval for the Nigerian market. Such products must therefore carry the SON and ISO certification numbers.

The above are efforts to reverse the trend of collusion between product manufacturers and importers to push into the Nigerian market, unsafe and low-quality products that constitute physical dangers, health risks or those that aggravate adverse health conditions in users of such products. For instance, since it has been proved that asbestos can be carcinogenic (capable of causing cancer) in humans, SON has stopped manufacturers of roofing and ceiling slates from using this harmful substance in the manufacture of their products. Roofing and ceiling slates that enter into the Nigerian market now carry the "ASBESTOS FREE" label on them.

Owing to the regulatory mandate of SON and its powers to make and enforce administrative law in the pursuance of its mandate, it is able to implement the above regulations through its enforcement unit. This has made it difficult for importers of low-quality and substandard generators to operate through the nation's ports [18]. Also, pirates of musical, artistic and literary works have been having it tough in Nigeria through SON's active collaboration with agencies involved in the implementation of the copyright and anti-piracy laws. The efforts mentioned above would most probably have been hindered through lobbying by disinterested groups if SON lacked wide administrative powers to make and enforce law within its jurisdiction but had to operate through the normal bureaucratic procedures of the civil service.

#### **(ii) The National Agency for Food and Drug Administration and Control (NAFDAC)**

The National Agency for Food and Drug Administration and Control (NAFDAC), on the other hand, was established by Decree No 15 of 1993 (as amended) to control and regulate the manufacture, importation, exportation, distribution, advertisement, sale and use of food, drugs, cosmetics, chemicals/detergents, medical devices and all drinks including pure water[19]. Although the NAFDAC story actually began with the establishment of a regulatory process backed by the Food and Drug Decree No. 35 of 1974, the agency's administrative powers became consummated after two-and-a-half decades in 1999 with the repeal and replacement of earlier decrees by Decree No. 25 of 1999[20]. That decree added "Unwholesome Processed Foods", to the list of items regulated by NAFDAC.

The agency interprets its mandate in very broad terms, as the safeguard of the health of Nigerians from the dangers of uncontrolled manufacture, importation, exportation, advertisement, sale and use of food and drug products, a noble endeavour for government in seeking to protect the health of members of the public. The establishment of NAFDAC was:

*to give a frontal attack to the health problems arising from food, chemicals, drugs, medicines and similar regulated products without the inhibitions of the civil service setting [20].*

In fulfilling its mandate over the years, NAFDAC has had to engage in a series of programmes, relying much on its wide administrative powers to make and enforce administrative law. Some of these programmes include the review of laws and regulations which had become obsolete in view of technological advancement and the expansion of the food and drug markets. They include product registration and enforcement, Good Manufacturing Practice (GMP), Hazard Analysis and Critical Control Points (HACCP), Pharmacovigilance, closure of major drug markets around the country, arrest of offenders and destruction of spurious products, among others.

Enforcing the above-mentioned regulations and standards has translated to a more efficient enforcement of administrative law regarding pharmaceutical products. It has enabled the agency to make a great impact in recent years through its prosecution and conviction of offenders, particularly from 1994. But this has not always been so. In the two decades between 1974 (when the Food and Drug Decree No. 35 was enacted) and 1994 (when NAFDAC was established as a semi-autonomous agency with wide administrative powers), the agency could not prosecute any food or drug law offender. This was despite the incidents in Ibadan and Jos in 1989, when over 150 children reportedly died after a drug with formulation errors was administered on them[19].

### **Administrative Law and Functional Overlaps between and amongst Agencies**

Functional or jurisdictional overlaps in the work of agencies define those functions, jurisdictions or issue areas that are common to more than one organization. They could be mandates that are common to several institutions either because they operate similar or related laws or regulations; because they deal with different aspects of the same problem; or because their mandates, functions or duties are complimentary in nature such that no single agency can do the job completely or achieve the purpose without inputs from the other institutions, units or agencies.

Several reasons can be advanced for the existence of functional overlaps amongst administrative and regulatory agencies. First is the desire by government to ensure that no area of the citizen's life requiring regulation and control is left unattended. This may prompt the establishment of several administrative units or systems to deal with particular problems or groups of problems. This problem may become aggravated in federal states where both state and federal (or central) governments each make laws on the same items and, in spite of applicable constitutional provisions, state governments do not wish to bow to federal laws chiefly because of the desire to generate revenues. In such situations, the citizens are often at the receiving end of regulation by multiple agencies or powers with selfish motives.

Second is the frequent change of government without proper planning in many third world countries, particularly where military rule is common. Several agencies were established in Nigeria by military regimes, and this included SON and NAFDAC. Under circumstances where leaders emerged without proper planning, it is not a surprise that many regulatory agencies had overlapping jurisdictions.

A third factor that is responsible for the existence of overlaps in the jurisdiction and functions of regulatory



agencies in third world states, Nigeria inclusive, is the lack of attention for details in governmental planning, coupled with the re-inforcing and sweeping effect of administrative and regulatory ineffectiveness. There is often a motivation to establish new agencies or administrative units to handle functions which existing agencies have failed to implement effectively. This inevitably leads to the burgeoning of administrative and regulatory institutions, many of which fail to perform.

Sometimes, overlaps are first observed in the laws or regulations which different agencies are expected to implement. In many cases, however, functional overlaps become noticeable at the point of implementation, that is, at the street-level. In Nigeria for instance, there are overlaps in the jurisdiction and functions of several agencies with related or complimentary mandates.

An example such jurisdictional overlaps in the transportation sector is the replication of the duty of vehicle and vehicle particulars inspection in Nigeria amongst the Nigeria Police, the Federal Road Safety Commission (FRSC), authorities of state government-run Vehicle Inspection Offices (VIOs) which, in Lagos State, operates under the control of the Ministry of Transport (MOT). Often, such practices subject vehicle owners and drivers to multiple checks and multiple payment of fines in cases of contravention of relevant regulations. An attempt to correct this was the institution of new harmonized driver's licence which, unlike in the past, had to be approved jointly by the authorities of the FRSC and the VIOs/MOT, as the case may be.

Other areas where jurisdictional overlaps are manifest amongst administrative agencies in Nigeria are materials, chemicals, agricultural, environmental and pharmaceutical sectors of the Nigerian economy. For instance, there are overlaps in the core statutory functions of NAFDAC with the following government organizations. These organizations are:

- (a) Standards Organization of Nigeria (SON);
- (b) Pharmacy Council of Nigeria (PCN);
- (c) Advertising Council of Nigeria;
- (d) Federal Environmental Protection Agency (FEPA) (later operating under the Federal Ministry of Environment);
- (e) Federal Ministry of Agriculture;
- (f) Institute of Public Analysts of Nigeria; and
- (g) Consumer Protection Council of Nigeria[17].

Another agency whose functions overlap with those of NAFDAC and SON is the recently-created National Environmental Standards Regulation Agency (NESREA). Other local and international organizations which NAFDAC and SON have had to co-operate with are the National Agency for Drug Law Enforcement Agency (NDLEA), the United States Food and Drug Administration (USFDA), the Bureau for International Narcotics and Law Enforcement Affairs (INLEA), the International Narcotics Control Board (INCB) and the Pharmaceutical Society of Nigeria (PSN), among others. Such collaborations have been made possible through enhanced

administrative capacity to make and enforce administrative laws and regulations, and to enter into bilateral and multilateral agreements with local and international bodies without the inhibitions of civil service bureaucracy.

Jurisdictional overlaps in administrative law may either promote or hinder the work of an agency, depending on how the agency handles it and the issues and relationships that such overlaps bring to the fore. Ejiofor has observed that:

overlaps if well managed could be complementary and healthy, while conflict of functions may breed friction and chaos in the public domain, with its attendant consequences[17].

Through their wider use of administrative law and the powers they confer, NAFDAC and SON have been able to enlist the cooperation of, build lasting relationships and strengthen their collaboration with relevant national and international stakeholders within their regulatory jurisdictions in the pursuit of their mandates. Although such relationships have not been without periods of misunderstanding or face-offs, the two agencies have managed to fulfill their mandates and improve their performances by applying tact in the enforcement of administrative law and regulations. This includes managerial wisdom to smoothen the rough edges of agency relationships with other stakeholders such as regulated interests, other regulatory institutions, the legislature, executive and other parties who have sufficient interest in the outcomes of regulation to want to impact on the regulatory process.

Although an agency may not win all its battles hands-down through a strict application of administrative law, the law nevertheless represents standards without which regulation would be impossible. With time, agencies come to learn also that no agency can regulate successfully without the collaboration of important stakeholders, which may include other local, national and international regulatory institutions. Agencies eventually learn this lesson as they struggle for survival and longevity while fulfilling their mandates.

## **Recommendations and Conclusion**

Regulatory agencies often possess unique mandates to control and regulate particular aspects of public life within their areas of jurisdiction. Often, the fact that such activities are deliberately removed from the regular civil service bureaucracy suggests either that such matters are so important or urgent they cannot be left to the drudgery and red-tape of the civil service, since they may be inhibited by civil service bureaucracy. Alternatively, such matters may require expert or professional handling and collaboration with other stakeholders which are best guaranteed by an agency operating under with an air of independence, using special administrative laws or regulations. Also, the implementation of regulatory policies by agencies is often conflictual in nature because it allocates rewards and punishments[21].

Regulatory agencies therefore require wide administrative powers and discretion to control or manage such matters successfully. Administrative law is the means through which regulatory agencies can acquire such special powers and independence that are required to make visible impacts on such special issues or problems. The above is not to suggest that regulatory agencies do not accede to bureaucratic norms in their internal operations. On the

contrary, the idea is that bureaucratic problems can be easily overcome once it exists only within the agency, which is smaller than the general public bureaucracy.

Our review of the impacts of administrative law on the regulatory activities of the Standards Organization of Nigeria (SON) and the National Agency for Food and Drug Administration and Control (NAFDAC), has revealed that, in spite of the fear that regulatory agencies with wide administrative, law-making and implementation powers may develop octopoidal tendencies in the pursuit of their mandates, they nonetheless require the powers to make and enact administrative laws if they are to make the desired impacts in their regulatory spheres. The use of such powers only needs to be brought under proper control to ensure that such agencies act only within the ambit of the law.

There are fears that regulatory agencies may become burdensome and uncontrollable owing to their enjoyment of wide administrative and discretionary powers. It is noteworthy that regulatory agencies need wide administrative powers to deal adequately with many problems they are saddled with. This is because regulatory policies are likely to encounter opposition because they allocate rewards and punishment. Without such powers, they may be unable to make noticeable changes to the status-quo.

However, the chances that an agency will misuse such powers are narrow because they are subject to supervision and control by relevant arms of government. Such supervision is carried out by mainstream ministries, the office of the political chief executive or other bodies as may be so designated. For example, while NAFDAC is supervised by the Federal Ministry of Health and Human Services in Nigeria, the United States Food and Drug Administration (USFDA), her counterpart in the United States of America, is under the direct supervision of the office of the President.

Also, the ombudsman institution exists to protect the interests and liberties of the citizenry, if an agency tramples on these. Citizens have access to the institution to lodge complaints, seek clarifications and redress in cases of breach of their liberties and rights. They can also resort to the courts of law if they feel sufficiently aggrieved by actions of regulatory agencies. This view is supported by many scholars. For example, Richard Henry Seamon posits that:

Every action by an administrative agency must rest on a valid grant of power and must obey all limits on, and requirements for exercising, that power. Lawyers solve most administrative law problems by identifying and analyzing the laws granting and limiting an agency's power to take some action; and marshalling facts to persuade the agency to exercise its power favorably to the client. When an agency has failed to act within its powers— or failed to obey limits on, or requirements for exercising, those powers— the administrative lawyer must determine what court has power to remedy the agency's failure. The courts' power has special importance because it includes authority to review agency action for abuses of power in the many, many matters as to which agencies have discretion. Besides invoking judicial power, the lawyer may usefully tap other sources of power to control agency action: namely, the executive and legislative branches, and last but not least, the People, who are of course the ultimate source of all this power and the ultimate source of its control[22].

In light of new experiences in the public arena, it is possible for regulation to benefit immensely from an embrace of deliberative policymaking and implementation processes, such that regulators and the regulated can, at least, agree on a policy agenda prior to and possibly during implementation. This constitutes the object of discussion in Reich[23] as well as in Hajer and Wagenaar[24]. Experimentation with new and unconventional regulatory

processes that can encourage joint agenda-setting by parties in the regulatory game should, therefore, be emphasized. It can be in form of making joint inputs into policy proposals, such as acceptable standards, or what was styled 'self regulation' by pharmaceutical products dealers at the Onitsha Bridgehead Open Drug Market in their relationships with NAFDAC prior to regulatory policy implementation[25].

This helped to reduce regular confrontations between NAFDAC and the operators of the illegal open drug markets in Nigeria to a manageable level such that sudden and indefinite closure of such markets became irregular[26]. This helps to avoid the regular instances of confrontation that characterize agency-client relationships. This will create room for popular inputs into the ways in which regulatory agencies carry out their duties in order to make them more responsive to popular local wishes and initiatives. This approach has the prospects of reducing the acrimony that is often associated with the implementation of regulatory policies.

Finally, in canvassing such deliberative agenda, care should be taken to strike a balance, however delicate, between administrative law and the mutual compromise positions between the regulator and the client. This is important as a way of avoiding the phenomenon of regulatory capture.

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