



Law as a Means of Serving Justice in Nigeria

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Abstrak

Sejak zaman dahulu, hubungan antara hukum dan keadilan secara terus-menerus tampaknya menjadi salah satu gagasan kontroversial yang paling menarik dalam kajian hukum. Penelitian ini akan membahas konsep dasar hukum dan keadilan dengan menilai ide-ide dari beberapa pemikir keadilan, beberapa teori kunci hukum dan keadilan, dan beberapa indikator kardinal hukum dan keadilan dengan contoh praktis dari Nigeria. Penelitian ini mengadopsi penelitian kualitatif yang terdiri dari metode doktrinal dan non-doktrinal. Penelitian ini menarik informasi dari sumber primer dan sekunder. Informasi yang diperoleh menjadi sasaran analisis konten. Hasil penelitian ini menemukan bahwa keadilan adalah komponen hukum yang melekat dan tidak terpisah atau berbeda darinya. Selain itu juga, ditemukan bahwa gagasan keadilan telah terjebak oleh ideologi politik, agama, intoleransi budaya, kemiskinan, deprivasi, diskriminasi gender, pelanggaran hak asasi manusia dan ketidaksetaraan di Nigeria. Dalam quintessence, penelitian menyimpulkan bahwa hukum adalah keadilan. Tulisan ini merekomendasikan bahwa pengadilan harus bersandar pada sisi keadilan dalam setiap kasus konflik antara hukum dan keadilan untuk administrasi peradilan yang efektif.

Abstract

Right from the ancient times, the relationship between law and justice constantly appears to be one of the most stimulating as well as penetrating controversial ideas. The paper will discuss the fundamental concept of law and justice by assessing the ideas of a few justice thinkers, some key theories of law and justice, and some cardinal indicators of law and justice with a practical example from Nigeria. The study adopted qualitative research which comprises doctrinal and non-doctrinal methods. The research draws information from primary and secondary sources. The information obtained was subjected to content analysis. The paper found that justice is an inherent component of the law and not separate or distinct from it. The paper also found that the idea of justice has been trapped by political ideologies, religions, cultural intolerance, poverty, deprivation, gender discrimination, violation of human rights and inequality in Nigeria. In quintessence, the paper concludes that law is justice. The paper recommends that the courts should lean on the side of justice in any case of conflict between law and justice for effective administration of justice.

1. Introduction

Legal and political theorists since the time of Plato have wrestled with the problem of whether justice is part of law or is simply a moral judgment about law (D'Amato, 2011). The relationship of law and justice has always provoked keen and enduring controversy. The paper seeks to examine the concept of law and justice. The paper will explore the different philosophical perspectives that have developed throughout the history of legal theory regarding what is meant by the term justice and its relationship with law, and will reflect on a modern interpretation of the relationship between the two. The paper will focus on the relationship between law and justice with practical example from Nigeria. To appreciate the connection between law and justice, it is apt to define law and justice. The definition of law is not free from controversy. The various scholars of jurisprudence define law differently.

The positivists define law as command backed by sanction. A leading exponent of this school, *Austin, J.* defines law as:

...a command set, either directly or circuitously, by a sovereign individual or body, to a member or members of some independent political society in which his authority is supreme. The sovereign punishes his subjects for violation of his law (Austin, 1995).

Aquinas, T opined that "Law is nothing else than a rational ordering of things which concern the common good; promulgated by whoever is charged with the care of the community" (Aquinas, 1988) According to Plato and Aristotle, "Law is the voice of reason." (D'Amato, 2011). The historical school as propounded by *Von Savigny* defines law as "the expression of the common consciousness of a people." As he puts it, law is formed by custom and popular faith, "by internal, silently operating powers, not by the arbitrary will of a law-giver." (Hmailton, 2011).

The sociological school, as expounded by *Von Ihering*, conceives of Law as "the sum of the conditions of social life as secured by

the power of the state through the means of external compulsion" (Daniel R., 1992:571-572).

According to the American Realist Movement, law consists of the rules recognized and acted upon by the courts of justice. In the words of *Holmes, O.W.*: "The rules which the courts will follow; the prophecies of what the courts will do in fact and nothing more pretentious are what I mean by law." (Holes, 1995) *Karl Marx* opined that "Law is a superstructure upon an economic base." (Mehring, 2003:75). It is an instrument at the disposal of the dominant class (the bourgeoisie) to protect their position and possessions at the expense of the oppressed and exploited masses (the proletariat).

The Black's Law Dictionary (Garner, 1999) defines law as the regime that orders human activities and relations through systematic application of force of politically organized society, or through social pressure, backed by force, in such a society. It consists in the aggregate of legislation, judicial precedents, accepted legal principles and customary law. The highest law of the land is the Constitution which, as an embodiment of the collective will and social contract of the people, governs all persons and institutions in the state. It is the supreme law which imparts validity to all other laws. Any law that is inconsistent with it is, to the extent of the inconsistency, null and void.

Arising from the above definitions, Law can be seen as the officially promulgated rules of conduct, backed by state-enforced penalties for their transgression as enshrined in the state's Constitution. Law is the State sovereign and the instrument at its disposal for the manifestation of its will and effectuation of its objectives.

Throughout history, mankind has tried to suppress deviant behaviors through taboos, norms, and finally laws. While social norms have a religious and social sanction, laws are written rules and regulations that try to maintain peace and order in the society by keeping individuals away from deviant behavior. While there are laws having universal appeal, there are also laws that have cultu-

ral influences. Laws are enacted by elected members of the legislative assembly of the place after much deliberation and passage. These legislations become laws after they get assent from the President.

Laws have traditionally been a tool in the hands of a government to ensure compliance from the members of the society. Laws have coercive powers as they are backed by the courts and police.

Laws are actually rules and guidelines that are set up by the social institutions to govern behavior. These laws are made by government officials that in some countries are elected by the public to represent their views. In simple terms, laws are basically things that a person can and cannot do. It is enforced by government officials such as police officers, agents and judges. Laws are ideas that must go through the process of checks, balances and votes in order for them to become a law. However, the enactment of a law varies based on the government. In an autocracy, the leader has the power to pass any law he wishes. In a democracy, the bill to enact a law must be voted on by the different parts of the government. Laws must be obeyed by all, including private citizens, groups and companies as well as public figures, organizations and institutions. Laws set out standards, procedures and principles that must be followed. A law is enforceable by the judicial system, i.e. those responsible for breaking them can be prosecuted in court. There are various types of laws framed like criminal laws, civil laws, and international laws. Breaking a law is a punishable crime and has drastic consequences such as hefty fines, jail time and community service time.

It is far from easy to define this elusive and somewhat nebulous concept (Anderson, 1978). The word justice is derived from the Latin word "iustus" means that which is "just", "right", "honest", "appropriate", [or] "correct". Justice has always endured the problem of conceptual disarrays and is still unfolding demands for conceptual clarities and interpretations (Bhandari, 2014:1-41). Justice is the legal or philosophical theory by which fairness is administered. Justice in

the perfect republic was explained by Plato (Kindle, 2011; Bhandari, 2011:1-41) as the constant performance, by each member of the State of their own particular function in the State. He perceived justice is a virtue establishing rational order, with each part performing its appropriate role and not interfering with the proper functioning of other parts. He described justice as reflexive of the conditions of well-being in place. Plato focus on how "virtues" in other words optimum and efficient standards could be legitimized through law (Bhandari, 2011:1-41). For Socrates "justice was virtue and wisdom, and injustice vice and ignorance"(Rachels, 2007) Aristotle defined justice in the wider and narrow sense. In the wider sense Justice denotes a "moral disposition which renders men apt to do just things and which causes them to act justly and to wish what is just." In the narrow sense, justice signifies "Equality", or, to be exact, a "fair mean."(Barners, 1995:16). Aristotle says justice consists in what is lawful and fair, with fairness involving equitable distributions and the correction of what is inequitable. Aristotle infers that justice is a kind of character reflected in just acts and injustice is the opposite of just act reflected in unjust deeds (Barners, 1995:16). He argued that all lawful and fair acts are just; all unlawful acts are unfair. The American legal philosopher John Rawls described fairness as a "fundamental idea in the concept of justice"(Rawls (1971). He opined that fairness is justice or justice is fairness (Rawless, 1958:223). He said that in a constitutional democracy, the public conception of justice should be independent of controversial and religious doctrines (Bhandari, 2014:1-41). John Rawls suggested that "the concept of justice applies whenever there is an allotment of something rationally regarded as advantageous or disadvantageous"(Rawls, 1971:8)

The conception of justice according to Rawls demands: (i) The maximisation of liberty, subject only to such constraints as are essential for the prosecution of liberty itself; (ii) Equality for all both in the basic in series of social life and also in distribution of all other forms of social goods, subject only to the exception that inequalities may be permitted

if they produce the greatest possible benefit for those least well off in a given scheme of inequality; and (iii) air equality of opportunity and the elimination of all inequalities of opportunity based on birth or wealth (Freeman, 2008:4).

Black Law Dictionary perceived justice to mean “protecting rights and punishing wrongs using fairness...” *Merriam Webster* (1971) defines justice as the maintenance or administration of what is just especially by the impartial adjustment of conflicting claims or the assignment of merited rewards or punishments. *Bierce, A.* described justice as “a commodity which is a more or less adulterated condition the State sells to the citizen as a reward for his allegiance, taxes and personal service”(Bierce (2015:116).

Osborne’s Concise Law Dictionary defined justice as “...the upholding of rights and the punishment of wrongs by Law”(Woodley, 2013).

The attributes of Justice are: aequitas, equitableness, equity, fair play, fair treatment, fairness, freedom from bias, impartiality, justice, justness, objectivity, probity, reason, reasonableness, rectitude, reparation, right, righteousness, rightfulness, and unrighteousness.

Justice is a concept that is based on equality, righteousness, ethics, morality, etc. This concept states that all individuals must be treated equal and the same. The term justice is a huge part of law and almost all aspects of law are based on this concept. The term as a part of law suggests that law must be right and equal for everyone; irrespective of caste, religion, ethnicity, creed, etc. Everyone must have the same rights as another.

The entire legal system that includes laws and all the paraphernalia including the lawyers and the courts is based upon the concept of justice. Justice is a word that derives from the word just that means fairness. Doing justice is being right and fair. Though justice is served using the courts and all the laws, in the eyes of the people justice is much more than a sentence from a court of law. The verdict has to be such that it appears to be fair and just and not just legally correct.

2. Method

This research used the secondary data, basically from court decisions and some scholars work, and the descriptive analyzes.

3. Result and Discussion

Relationship between Law and Justice

Law and justice are two words that often go hand-in-hand. These words are often confusing for many people who believe that these words are the same or refer to the same thing. However, this is not true. Law is basically a set of rules that define what is right and what is wrong, while justice also takes into consideration the circumstances that surround the right of wrong at that time. While law is a system, justice is a concept that is the basis of this particular system.

Law is what is in the statute books, or has been enacted or decreed by an accepted authority. Law will generally be enforced by some part of a society. Justice is a moral or ethical concept. Different people do not generally agree on what is just in a particular situation. People may consider that a particular law, or even an entire body of law, is unjust.

The law is a system of rules enforced by the government or some other group. Every law is designed to promote or discourage some kind of behavior. For example, laws against murder serve to discourage violence and encourage people to resolve their disputes in a more peaceful manner. Justice, on the other hand, is a moral/ethical concept that is synonymous with equality, fairness, righteousness, and integrity. To stick with the murder example above, some people believe that the laws providing the death penalty for murderers are just, while others believe that such punishment is unjust. Whether a law is just is in the eye of the beholder; slavery, for example, was at one time protected by the law, and was therefore perfectly legal, even though many people at the time (and just about everyone on earth today) would view such laws as unjust.

The relationship between law and justice is unbreakable and there is a direct relationship between the two. It is also highly be-

lieved that they are two faces of a coin. And many people consider the proper implementation of laws as a justice. However, all laws are not just laws and entitle rights to all human beings. Since every law has its own political, sociological, philosophical and historical background in a given society, it will definitely benefit and harm different groups in a society and cannot uniformly serve justice to all the society. It cannot also uniformly treat all human beings. For example, apartheid law was not a just law in the sense that it is enacted to entitle human rights to individuals based on their race and colour. Individuals having a race and colour out of what is indicated in the law are not allowed to enjoy the rights even though they are human beings. And the law maker has just used the law as means of fulfilling its desire and the law in such case is not using as a means of serving justice.

Laws are actually rules and guidelines that are set up by the social institutions to govern behavior. These laws are made by government officials. Laws must be obeyed by all. Laws set out standards, procedures and principles that must be followed. Justice is a concept that is based on equality, righteousness, ethics, morality, etc. This concept states that all individuals must be treated equal and the same. The term justice is a huge part of law and almost all aspects of law are based on this concept.

Kelsen, H., claim that justice should not be separated from law. He based his claim on three points: (a) law is determinate but justice is indeterminate; (b) whether or not a law is "just" is a consideration that is external to the legal system; and (c) justice under law simply means that a rule of law must be applied to all cases that come within the rule (Kelsen, 1945:198).

The blindfolded lady of justice has been an embodiment of the concept since ages. She has a sword that signifies the coercive powers of justice. She also has a scale in her hand that signifies the fact that everyone is equal in the eyes of the law. In fact, the image of a blindfolded lady holding a scale in her hand comes straight to our mind when we try to visualize the two concepts. Equal

justice under the law is a common phrase that assures people of fairness of the system of law and the deliverance of justice irrespective of class, caste, or creed.

Dudley v. Stephens (1884) presented a grave issue of justice. Thomas Dudley, Edward Stephens and Richard Parker, young boys of seventeen years of age, were on a lifeboat drifting on the ocean. They were finally rescued on the 24th day at the sea. For eleven days they subsisted on two small cans of turnips and a small turtle caught on the 4th day. For seven days they were without food and for five days without water. On the eighteenth day, Dudley proposed a lottery to decide who should be put to death in order to save the others. Finally, they rejected the idea of a lottery and decided to kill Parker, since they believed he was going to die of starvation soon. On the 20th day, they killed the boy, fed on his flesh, and drank his blood. Upon being rescued, they were prosecuted for murder. They had argued that the act of killing was compelled by necessity to save their lives; otherwise, they would also die of starvation. The trial court by majority judgment found the accused guilty of murder and passed the sentence of death. However, on appeal, the Crown commuted their sentence to six months.

The relationship between law and justice can be sum up as follows:

1. Law is a tool to serve justice
2. Justice is a concept that stands for everything fair and right
3. Justice has a moral backing while the law has a legal backing
4. Laws are enacted, repealed and modified while justice is a universal value
5. Justice is abstract while the law is concrete
6. Sometimes justice and the law can be seen in contradiction to each other
7. Justice is sometimes seen as divine while the law is always according to rules and regulations.

The Nigerian Experience

In interpreting Statute or Constitution words are to be construed as dictated by the

law. It is an accepted canon of interpretation that a statute must be construed *ut res magis valeat quam pareat* ("It is better for a thing to have effect than to be made void" Earl Jowiff – The Dictionary of English Law 1959 at p. 1819), so that the intention of the legislature may not be treated as if in vain or left to operate in the air (Odger. Construction of Deeds and Statutes (5th ed.) 297, Udoh v. OHMB (1993) 7NWLR (pt. 304) 139 at 147, African Newspapers v. Federal Republic of Nigeria (1985)2 NWLR (pt. 6), Okumagba v. Egbe (1965) ALL NLR 62, Nafiu Rabiu v. State (1980)5-11 SC 130 at 148, Atuyeye v. Ashamu (1987) SC 58, Gonkow v. Ugochu (1993) 6SCNJ 263 at 274, Obomhense v. Ehanon (1993) 7SCNJ 473 at 497, Ejelikwe v. State (1993) 9 SCNJ 152 at 170.). However where such interpretation will result into absurdity, the court are advised to apply the justice of the case in interpreting such words.

In *Abioye v. Yakubu* ((1991) 6 SCNJ p. 69), the Supreme Court while interpreting the provision of Section 36 of the Land Use Act, 1978 on the customary tenants vis-à-vis customary owners, was of the view that although customary tenant has right to obtain a certificate of occupancy over land in which he is in possession and need for agricultural purposes but such right does not divest the customary owner of his ownership of the land or extinguishes same. The provision of Section 36 of the Act was strictly construed to preserve the right of the customary owner.

In *Bello v. Diocesan Synod of Lagos* (1973, 1 ALL NLR 176), the Supreme Court declared as oppressive the action of the Respondent a statutory body in abuse of compulsive powers for taking over the property of the Appellant.

The object of the principle is that where there is any ambiguity in the construction of a statute, that construction which preserves the individual's right to his property is to be preferred. Another implication of this approach to construction of statutes is the presumption that a person's right to his property will not be taken away without provision being made for adequate compensation.

The principle in *Abioye v. Yakubu* (sup-

ra) would not be applicable in a situation where the law enabling a compulsory forfeiture of a citizen's property also provides for certain methods or formalities for the forfeiture, the prescribed formalities must be complied with (*Westminster Bank Ltd. v. Bverley Borough Council* (1968) 3 WLR).

In *Adegbenro v. Akintola* ((1991) 6 SCNJ p. 69, see also *Bello v. The Diocesan Synod of Lagos* (1973) 1 ALL NLR (pt. 1) 247, *Penok Investment Ltd. v. Hotel Presidential* (1982) NSCC 477, *Din v. Federal Attorney-General* (1988) 4 NWLR 147), the provision of Section 33 (10) of the Constitution of the then Western Nigeria which empowered the Governor to remove the Premier if '*it appears to him that the Premier no longer commands the support of a majority of the House of Assembly*' was interpreted by the court as vesting an absolute discretion in the Governor in the determination of whether or not the Premier still enjoyed majority support of the House of Assembly. It is submitted that such a decision ought to have been confirmed or determined on the floor of the House. In this case it was not.

In *Okumagba v. Egbe*, the court was to decide whether there had been a breach of Regulation 60b of the 1960 Parliamentary Regulations which read:

Every person who before or during an election knowingly or recklessly publishes any false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate shall be guilty of an offence ((1965) 1 ALL NLR 62).

The appellant, having been rejected as a candidate, changed his symbol to that of N, another candidate, and falsely told his supporters that N had withdrawn his candidature, with the aim of inducing them to vote for N's symbol thereby swelling N's votes. The use of the phrase *another candidate* did not implicate the appellant. But the Magistrate felt that the appellant should not be allowed to evade the law by such an ingenious machination. In order to bring him within the ambit of the law, therefore, the phrase *anot-*

her candidate was interpreted to mean any candidate. On appeal to the Supreme Court, it was decided that the regulation contemplated lying to help a different candidate win. Since it did not cover the appellant's trickery, the inconvenience and apparent loophole would not justify derogation from the literal and grammatical interpretation of that phrase. In the words of Bairamian, JSC,

It may be unfortunate that the draftsman used the words "another candidate", but they are the words which the legislature enacted, and admitted in view of those words the regulation contemplates the case of a lie that a candidate had withdrawn his name being published to help a different candidate to win ... Feeling that the appellant deserved to be punished, the Chief Magistrate replaced the words "another candidate" by the words "any candidate" and thus enabled himself to punish the appellant. In effect, he amended the regulation; but amendment is the function of the legislature, and the courts cannot fill a gap which comes to light by altering the words of a regulation to make it read in the way they think it should have been enacted (1965) 1 ALL NLR 62.

Also in *R. v. Bangaza* ((1960) 5 FSC 1) the Federal Supreme Court attempted to interpret Section 319 (2) of the Criminal Code (Cap 42 Laws of the Federation and Lagos, 1958) which ran thus. 'where an offender who in the opinion of the court has not attained the age of seventeen years has been found guilty of murder, such offender shall not be sentenced to death but shall be ordered to be detained ... Applying the literal rule, the court decided that the relevant period was the time of conviction. The effect of this was to punish a person for an offence committed when he was a juvenile, that is, retroactively. The provision was later amended by the Criminal Justice (Miscellaneous Provisions) Decree (Decree No. 84 of 1966).

Assuming A and B both 15 years old, committed murder and their trial commenced when they were both 16 years old. If A's trial was concluded before he attained the age of 17 and B's was prolonged until after he had attained 17, the chances are that, going

by this interpretation, B could be sentenced to death while A might not, being under 17 at the time of conviction. The conviction or sentence could have been delayed with the intention of denying the juvenile the benefit of that section, leaving room for abuses by prosecuting officials. This anomalous situation was only rectified by a subsequent amending statute reiterating that the relevant age is the age at the time the offence was committed and not at the time of the conviction (See The Criminal Justice (Miscellaneous Provisions) Act 1966, Attorney-General of Ondo State v. Attorney-General of the Federation (1983) 2 SCNLR 269, Lawal v. Ollivant (1972) 3 SC 124, Animashaun v. Osuma (1973) ALL NLR 363, Teriola v. Williams (1982) INCLR 263 at 257 – 261, Isagbe v. Alagbe (1981) 2 NCLR 424 at pp. 427 – 428, Ogbuyiya v. Okudo (1979) 6 – 9 SC 53 at 74, Aya v. Henshaw (1972) 5 SC 87).

Since words in themselves have no 'proper' meaning, it is logical to look into the context in which they have been used by the legislature. After all, a word is known by the company it keeps. A contextual approach to the interpretation of statutes is, therefore, necessary. An otherwise ambiguous section may be clearer when read in the context of the whole statute. But besides this, no extraneous matter should be introduced to a statute unless justified by the perceived intention of the legislature (See Attorney – General v. Prince Ernest Augustus of Hanoter (1957) A. C. 436, Krucblack v. Kruchlak (1958) 2 Q.B. 32).

The plain meaning approach cannot survive modern hermeneutic understandings of how we read texts. No words are simply "plain in themselves". The words are just scratches on a page. They are said to be plain only because the interpreter is deciding to treat them as such and giving a particular connotation to them, a connotation that the judge claims to be the connotation intended by the legislator. The judge in dividing up the words into plain categories or ambiguous categories is really doing so by supplying a context and assigning a connotation, even unconsciously, for the words.

Justice Chukwudifu Oputa once counselled judicial officers to ensure that they leaned on the side of justice in any case of conflict between law and justice. In his immortal words:

The judge should appreciate that in the final analysis the end of law is justice. He should therefore endeavour to see that the law and the justice of the individual case he is trying go hand in hand... To this end he should be advised that the spirit of justice does not reside in formalities, not in words, nor is the triumph of the administration of justice to be found in successfully picking a way between pitfalls of technicalities. He should know that all said and done, the law is, or ought to be, but a handmaid of justice, and inflexibility which is the most becoming robe of law often serves to render justice grotesque. In any 'fight' between law and justice the judge should ensure that justice prevails – that was the very reason for the emergence of equity in the administration of justice. The judge should always ask himself if his decision, though legally impeccable in the end achieved a fair result. 'That may be law but definitely not justice' is a sad commentary on any decision.

4. Conclusion

Nearly every writer on the subject has either concluded that justice is only a judgment about law or has offered no reason to support a conclusion that justice is somehow part of law. This paper attempts to reason toward such a conclusion, arguing that justice is an inherent component of the law and not separate or distinct from it. Thus, law and justice are seen to be merely two different aspects of the same thing. The concepts of justice and law are so intertwined that it is hard to imagine one without the other. Plato believed that law should provide inner harmony and justice in the state, and that law and justice could be used as moral educators. Any persuasive theory of justice, should logically engage in an explanation, which would spring from the legitimate, valid, and enforceable standard of law. To be precise, "law is justice" or better put "what is meant by just-

ce, is law" (Bhandari, 2014:1-41).

Where liberal interpretation of a word or words used in an enactment will result in an absurdity or injustice, it will be the duty of the court to consider the enactment as a whole with a view to ascertain whether the language of the enactment is capable of any other fair interpretation, or whether it may not be desirable to put a secondary meaning on such language, or even to adopt a construction which is not quite strictly grammatical (Craies On Statute Law, 7th Edition). The principles of justice require that where something is not expressly provided for in an enactment, the court, in interpreting such enactment, will take into consideration the spirit and meaning of the enactment as a whole and construe it accordingly.

The duty to interpret laws, imposed on Nigerian judges, does not presuppose a blind-black-letter interpretation of the law while wearing a predetermined judicial garb that is not alive to the society in which the judge lives. Therefore, there is a clarion call on the judges in Nigeria to wake up and adopt an interpretation approach, that is, proactive, that will bring to light the purpose or policy goals for which the law is enacted.

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