

SOURCES OF LAW, VOLUNTARY OBEDIENCE AND HUMAN INTERACTIONS: AN ANALYSIS

Abstract

Over the years, the history of the development of law has seen the emergence of various sources. Some sources have proven to be more resilient than others and have not only stood the test of time, but have completely or partially overshadowed some jurisdictions. Over time, these laws evolved significantly, but the difference may be only in substance, technique and form. This paper finds that laws backed by sanctions compel immediate obedience for fear of fines, imprisonment and other threats to human wellbeing. This paper examines ways in which the various sources of law can be modified in such a way that laws, through the legal system promote reciprocal social development, peace and improved human relationship as a result of voluntary obedience to the law. It is recommended that for better human interaction, validity of the law should be encapsulated in its inherent acceptance within the milieu it is meant for as a result of the overriding perception of the justice it metes out, and not merely by recourse to constituted authority. The methodology employed is doctrinal analysis of relevant web materials, textbooks and esteemed journals.

Key words: Legislations, validity, reciprocal obedience, human interactions, institutions.

1. Introduction

According to Savigny, ‘Law grows with the growth, and strengthens with the strength of the people, and finally dies away as the nation loses its nationality.’¹ The origins or the sources of law have been influenced by many considerations. While we have the natural law lawyer who dwell much on speculative ideas and myths, later writers attribute law to more concrete terms. They sought to place the need for law in society to objective and more realistic mediums. For Hagerstrom,² ‘legal science had to be emancipated from mythology, theology and metaphysics.’¹ There was the need to expose the shams inherent in legal thinking. He postulated instead that law should be built on conceptual, historical and psychological analysis. Besides, while it is of utmost importance that one keeps abreast of the law and recent legal issues, the knowledge of the law in its original sources becomes relevant in understanding the present law, and its manner of application. Obedience to the law and relevance as a means of societal interaction can only be understood by a foreknowledge of its various roots and origins. It is very important that the law has validity. In modern times, the validity of the law is often traced to the constitution of the country or the laws passed by the legislative arm of government. However in the earliest times, for a law to have validity, it had to be traceable to, and have acceptance in the community or social milieu where it is to be in operation. In the same vein, primary sources of law, must be couched and have relevance in so far as they emanate from historical bases.

2. An Outline of the Various Early and Modern Prominent Sources of Law

‘Legal systems are there to determine what will happen when people have disputes. Legal rules are also there so people can order their lives in such a way as to avoid such disputes.’³ Though there might be wide disparity in the evolution of various sources of laws, ‘a mastery of the sources of law of a given society also enhances the historical factors that have influenced the evolution of the laws to such a direction as it has taken.’⁴

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¹ F.K. Von Savigny ‘System of Modern Roman Law’ (in M.D.A. Freeman, *Llyods Introduction to Jurisprudence* (5th Ed., London: Stevens and Sons Ltd) p 799

² Axel Hagerstrom ‘Inquiries into the nature of law and Morals’ in M.D.A. Freeman, *ibid*.

³ Rebecca Huxley-Binns and Jacqueline Martin, *Unlocking the English Legal System* (2nd Edn.UK: Hodder Education, 2008)

⁴ Olivecrona., *Scandinavian Studies in Law* [1959] 3, and *Law as Facts* 2nd Edn. pp.174 -177, 227 -233

Natural Law

Natural law may be said to be ‘the ideals which guide legal development and administration; a basic moral quality in law which prevents a total separation of the ‘is’ from the ‘ought’; the method of discerning perfect law.’⁵ It highlights the conditions necessary for the existence of law. In this regard, natural law is a predominant source of law. Though Kelsen has advocated that a theory of law should be uniform⁶ this is not always possible as it is practically impossible that law be free from ethics, politics, sociology and history. Law cannot but reflect the social cultural views and dominant lifestyles of the society it is meant for. Natural law is regarded as a source of law because in the 17th and 18th century natural law concerned itself with devising how just rules could be promulgated to meet ever changing human circumstances. More so, it attempted to deduce bodies of rules from principles and this gave rise to movements such as the assertion of natural rights. The validity of the law lay not in metaphysical postulations, but in adapting to the needs and ethos of given societies.⁷ Professor Rawls posits in relation to the pervasive contribution of natural law as a source of law that. New ideas and rules about the law must be constantly introduced.⁸ But a critical analysis may reveal that they are simply a redistribution of prevailing natural law tenets couched either as legislation or other international and municipal law conventions. It is based mainly on canon law.⁹

Legal Positivism

The legal positivists such as Hart are important on their insistence on the need to distinguish firmly and with maximum clarity law as it is from law as it ought to be.¹⁰ Fuller stated that ‘law, considered merely as order, contains then, its own implicit morality. This morality of order must be respected if we are to create anything that can be called law, even bad law.’¹¹ In this regard, he agreed to an extent with Prof. Hart. As such the contribution of the positivists as a source of law lies in their painstaking analogy of the nature of law which brings us a step further from that of the natural law proponents and laid a foundation for future development of the law.

Socialist Laws: The Social Contract According to Rousseau

Socialist laws originated in the then Union of Soviet Socialist Republic (USSR). The Bolshevik Revolution took place on 7th November, 1917. (The Julian Calendar states 25th October.) The Bolshevik Party was resolute to build the communist party announced by Engels and Marx. We however need to note most communist countries, despite the similarities in ideology, had different legal tradition. Rousseau’s writings showed that they had profound belief in the collective will of the people.¹²

Roman Law and the German Historical Tradition

Roman law: The dominant legal system in continental Europe including the European Union is the Romano Germanic legal system. This tradition is the origin of civil law.¹³ Roman law has been regarded as the foundation of the civil law of contemporary Europe. Savigny maintains that though the law as we know it seems to have originated from juristic activity, in the real sense, all law originated from custom. Savigny says that ‘in the earliest time to which authentic history extends, the law will be found to have already attained a fixed character, peculiar to the people, like their language, manners and constitution.’¹⁴

⁵ R.W.M. Dias, *Jurisprudence* (London: Butterworths and Co. Publishers Ltd 1985), p. 470

⁶ Hans Kelsen, ‘Pure theory of law’ in R.W.M Dias., *ibid* p.356

⁷ Hans Kelson (n.6) pp. 476 – 480

⁸ Rawls, ‘A theory of Justice’ in Dias, (n.5), 482

⁹ H.P.Glenn, *Legal Traditions of the World*. (2nd Ed., U.K: Oxford University Press, 2004), Chapter 14.

¹⁰ Prof. H.L.A. Hart. ‘The Separation of Law from Morals’ [1958] *Harvard Law Review* 594

¹¹ L. L. Fuller, ‘Positivism and Fidelity to Law’ – a Reply to Professor Hart. From [1958] 71 *Harvard Law Review* 630 – 672, in M.D.A. Freeman, (n.1) p.449

¹² J. Miller, *Rousseau: ‘Dreams of Democracy’* (1984) in M.D.A. Freeman, *ibid*. p. 783

¹³ Rebecca Huxley-Binns and Jacqueline Martin, (n. 3), p.5

¹⁴ C.F Atkinson *The Decline of the West* [1923] (transl. C.F Atkinson. 1928)

The German Law: Volksgeist - The National Spirit: The Germans were opposed to the enlightenment period, which they felt was all about intellectual clarity¹⁵ According to Herder, there was the need for each nation to develop its own free or national spirit, which is known as 'Volksgeist'. He believed that the cloak on reason as was expostulated by the natural law school was a hindrance to the emergence of such a spirit.¹⁶ Different societies and cultures according to Herder, developed at their own pace and evolved with reference to their roots and institutions. As such the quality of laws we may posit, depended on the values of the people whom it was binding on.¹⁷ Savigny, while not averse to natural law or the arbitrary whims of a ruler as postulated by the positivists school being the source of law, declared that the law was also to be found in the national spirit of the people or 'Volksgeist' which was their heritage. Thus it was not proper for French law to be applicable to Germany, and he moved for the codification of German law.¹⁸ Hegel believed that individuals and groups should be free to express themselves as part of a state. Despite this he maintained that the state was bigger than the individual, and there was a necessity to steer the state in the right direction.¹⁹

3. Received English Law: The Common Law and Equity

The English legal system is a combination of agencies, institutions and processes. It is said that the law is often not just about the substantive law, but also about procedure. The English legal system encompasses mainly England which may be referred to as U.K or Great Britain. The various study of the English Legal System includes the courts, Parliament, and more recently, the E.U. (European Union). In order to understand the working of the modern English Legal System, it is important to understand the sources of law from which it emanates.²⁰ The most important source of law of the English Legal System is the Common Law. The courts and judges derive most of their authority from the historical school of the common law system. The term common law may be seen as that law which is common to the whole country. Then there is the body of laws known as equity. Common law is different from equity even though historically, it arose about the same time as equity. They are different from statute or legislations made by parliament. Today, when the discipline of equity is referred to, it means that arm of the English legal system which was built up and developed by the Lord Chancellor in the Court of Chancery²¹ The system of judicial precedent that is in use in our courts today has their origin from the common law. As such the measure of discretion often granted to judges is often narrow, to avoid personal idiosyncrasies and views being constantly imputed to cases.²² The Judicature Act of 1873 finally merged the administration of the court of Chancery and common law. The judicature Act still provided that 'Whenever there is conflict between the common law and equity, equity will prevail.'²³

Reception of English Law into Nigeria

The term common law countries are used to describe those legal systems that developed from the English Legal System; for example, England, Australia, Nigeria, and New Zealand. France has a civil law system, and developed from the Romano Germanic Legal system in most parts of continental Europe.²⁴ Nigeria is a common law country. '...it means the law developed by the old common law courts of England, namely The King's Bench, The Court of Common Pleas, and the Court of Exchequer.'²⁵ Common law covers criminal law as well as civil law. Except for the common law on contempt of court, the common law of crime of England is not part of Nigerian Criminal law.²⁶ The

¹⁵ E. Heller, 'The Ironic German' in M.D.A Freeman (n.1) p.783

¹⁶ Montesquieu. *The Spirit of the Law*:(1748)

¹⁷ Berlin I., *Vico and Herder* [1976]

¹⁸ Stone: *Social Dimensions of Law and Justice* [[1966]] pp.86 – 89, 101 – 111

¹⁹ S. Avineri, *Hegel's Theory of the Modern State* [1972] p.101

²⁰ Rebecca Huxley-Binns and Jacqueline Martin, (note 3), pp. 2-24

²¹ J.W.Salmond, 'The Names and Nature of the Law' (1899) 15 *L.Q.R.* 367, 371, in M.I. Jegede., *Principles of Equity* (Benin City Nigeria: Ethiope Publishing Corporation, 1981), p.8

²² J.M. Elegido *Jurisprudence* (Ibadan: Spectrum Law Publishing 1994), pp.241 - 250

²³ Rebecca Huxley-Binns and Jacqueline Martin (n. 3) p. 7. This is the position in all English based legal systems of common law jurisdiction including Nigeria. (S.17 Supreme Court Act 2004, s. 24 Magistrate Courts law, Lagos State 2003; ss 13 & 15 High Court of Lagos State Law 2003).

²⁴ Ibid.

²⁵ A.O.Obilade, *The Nigerian Legal System* (Ibadan: Spectrum Books Limited), p. 10

²⁶ Ibid.

Rule of Equity has been received into Nigeria. These rules have also been applied freely in our courts. 'In cases where no express rule is applicable to any matter in controversy, the court shall be governed by the principles of justice, equity and good conscience.'²⁷

Validity of Local Customs as a Source of Law

When a large member of a populace acquire the habit of doing the same thing over and over again, then it becomes necessary to taken notice of such a practice. Having seen the manner in which William the Conqueror was able to formulate national laws for England from their customs and local practices, we may come to the conclusion that 'customs are undeniably a 'source' of law in the sense that they have provided materials for other law –constitutive agencies, such as legislation and precedent.'²⁸ Custom though has been plagued by the fact that nations have always sought an alternative to it, given its lack of a system of reprimand. However, if we go by John Austin's definition of law as the command of the sovereign backed by sanction, then customs cannot be said to be law since it is neither backed by sanctions nor expressed in the form of a statute.²⁹ Customs were resorted to by judges in the absence of other rules. As these customs became more and more incorporated to case law and statutes, it seemed as if customs had become redundant. What clearly happened was a conversion from one medium to another. As such judges continue to feel bound to case law developed from custom, then custom as a source of law is not questionable.

4. Traditional African Law

Africans and other Asian countries had their customary law systems. 'In primitive societies, the obligatory rules of human conduct usually consist solely of custom – rules of behaviour accepted by members of the community as binding among them. Ethnic customary law is indigenous and refers to a particular ethnic group. The term customary law refers to all systems of customarily law which is not Moslem, (also called sharia or Islamic) law. There are several systems of customary law scattered all over the states in Nigeria, as well as other African states. The tradition African law is similar to the English common law in the sense that it evolved from the traditions and customs of the people who were subject to it. But while the writ system is in written form and constituted a very important feature in early English common law, the African traditional law is mostly unwritten. Customs are usually unwritten. In a primitive society, there is no centralised system for the enforcement of rules; self – help is usually restored to. 'Notwithstanding, the obligatory rules constitute law.'³⁰ If we accept that law is a body of rules of human conduct, then African indigenous systems of social control constitute law. Although practical obedience to the law is secured by sanctions, in early African traditional society, the moral force of collective upholding of the norms of society compels obedience. Ancient African traditional legal families did not have a the well laid down substantive and procedural rules, together with the courts and law enforcement agencies as we notice in English or Laws of Romano Germanic origin. But while the rules of enforcement of African traditional law are not easily ascertainable, they were however known. African traditional societies had well laid down hierarchy of authority, usually with the chiefs, the Obas, Igwe, Asantenehe, and of other such persons in exalted office at the helm of affairs. They were assisted in their dispensation of justice by other notable elders, who may well have been family heads. While it is true that there were no express classification of offences and modes of enforcement of sanctions, there were inbuilt in traditional societies appropriate systems of sanctions governed the administration of justice. These include expulsion or excommunication from the society, the invocation of the powers of witchcraft on the offenders, seizure of property, swearing before the deities of the land, with appropriate repercussions for falsehood, and so on. As such, application of fine or punishment may differ from time to time.

5. Islamic Law

Islamic law is also a very important early source of law. It is also multifaceted with various versions. But the most important forms of division of the Moslem law are in four broad categories; 'the Holy

²⁷ Section 34 of the High Court Law of the Northern States.

²⁸ R.W.M. Dias, (n.5) p. 190 - 193

²⁹ J. Austin 'Lectures on Jurisprudence' in R.W.M. Dias, *ibid.*, p,190

³⁰ A.O. Obilade, (n.25) p.83

Koran and from the practice of the Prophet, (the Sunna), the consensus of scholars, and analogical deductions from the Holy Koran.³¹

6. Legislation and Statute

It has been suggested that legislation as a source of law, was not as developed as customary law or case law, even in the developed countries. But legislation had existed as a source of law from very early times. It seems clear though that as society develops, the ability to collect information improves. As such in any growing society, resort must be made to laws in order to determine the likely outcome or effects any given action. But by the eighteenth century through to the nineteenth century, the supremacy of the Crown in Parliament was a prevalent position. It was stated by Lord Campbell In *Edinburgh & Dalkeith Railway Co. v Wauchope* that:³²

...All that a court of justice can look to is the parliamentary roll; they can see an Act has passed both Houses of Parliament, and that it has received the royal assent, and no court of justice can inquire into the manner in which it was introduced into Parliament, what was done previously to its being introduced, or what passed in Parliament during the various stages of its progress through both Houses of Parliament....

Just like case law or judicial precedent, statutes other forms of legislation must have acceptance among the populace to be binding. Nigeria, like most common law countries make use of both statutory and constitutional provisions which while not entirely based on customs, must relate to culture in some form. Statutes operate side by side Constitutional provisions and summarily, statutes may be challenged where they differ in great margin from constitutional provisions.³³

7. Municipal Law and International Law

Nation states operate with various domestic law sources.³⁴ The role of the state in the modern world is a complex one. According to legal theory, each state is sovereign and equal.³⁵ 'In reality, with the phenomenal growth in communications and consciousness, and with the constant reminder of global rivalries, not even the most powerful of states can be entirely sovereign. Interdependence and the close-knit character of contemporary international commercial and political society ensures that virtually any action of a state could well have profound repercussions upon the system as a whole and the decisions under consideration by other states.'³⁶ Where a country has signed an international agreement but it has not been enacted into domestic law, the general rule is that the domestic law should nevertheless conform to the international obligations³⁷. Where a country is not party to the international convention that creates an international regime recognised by many countries: the general view is that such an international convention only serves as an aid to the interpretation and application of municipal law.³⁸

8. When Does the Duty to Obey the Law Arise?

In the modern era, society is seen as an interdependent set of elements of which law consists of one of the key elements.³⁹ Having examined prominent sources of law, it is necessary that these laws be articulated in such a way that they compel voluntary obedience. We have to realise that the duty to obey the law is not based only on morality as espoused by natural law thinkers. In order words, just because

³¹ *ibid.*

³² [1842] 1 Bell 252 at p. 279

³³ *A.G of Bendel State v A.G of the Federation* [1981] S.C. 1 at pp. 37, 62 and 93

³⁴ Malcolm N. Shaw. *International Law* (4th Ed. London: Cambridge University Press, 1997). p.100)

³⁵ See generally *Oppenheim's International Law* R.Y. Jennings and .D. Watts Eds. (9TH Edn.London, 1992, vol.1) p.90; H. Kelson, *Principles of International law* , (2nd Edn., 1966,) pp.290-4., in Malcolm Shaw., (n.34)

³⁶ Malcolm N. Shaw, *ibid.*, p.99

³⁷ *Attorney General v. British Broadcasting Corporation* [1981]AC [303]

³⁸ *Attorney General of Botswana v. Unity Dow* CA No. 4/91 July 3 [1992] 3334.

³⁹ David M. Trubek, 'Back To The Future: 'The Short Happy Life of the Law Society Movement' (1990) 18 *Florida State University Law Review* 1

a certain conduct is regarded as moral does not mean that people have to obey it. Obedience comes from the legitimacy that is given to law and the perception of its inherent justice and being reciprocal in meeting the needs of citizens. Without being adjudged as legitimate, legal precepts are unable to stand alone and compel obedience. This idea of society as a system has been challenged by authors. Scholars like Gordon⁴⁰ have questioned the functional necessity of existing structures of which the legal system is one. While they agree that societal institutions exist, they assert that these institutions develop out of mutual interest, and not by objective necessity.⁴¹ Feminists like Scales A.C.⁴² criticise the law, because it promotes male domination over females in the society. The law is structured in such a way that women are subordinated to and defined by men. Such a lopsided normative culture will be resisted by women, who will regard themselves as under no compulsion to obey laws which treat them as second class citizens.

Sceptics are of the opinion that generally, there is no moral duty to obey the Law.⁴³ On the contrary they hold that such a duty lies to obey ordinary moral norms. While many writers would agree that a moral obligation to obey the law exist, so many others such as Raz argue that one must not necessarily obey the law as no general moral obligation to obey the law exists.⁴⁴ Others like Simmons⁴⁵ opine that though laws create institutional obligations, those obligations do not necessarily create a moral obligation to obey the law. Raz also goes further to undertake that general obligation to obey the law may arise if the individual on his own voluntarily undertakes to obey the law.⁴⁶ Another fundamental reason which may locate a duty to obey the law is whether the law is affirmative and is working. And if the general view is that the system of law works, then the question will be 'works for whom?'⁴⁷ The workings of a legal or political or economic system perhaps benefit some people more than others. If certain groups in the society ascertain that the law does not adequately protect their interest, then their duty to obey the law will be suppressed. Citizens can only know that the law is working for them if they are partakers of benefits such as equitable distribution of economic resources, the powering of marginalised groups and evidence of better democratic practices.⁴⁸ Malinowski states in his doctrine of social reciprocity that society is formed on a basis of co-existence. People are more inclined to do good, show concern and help to others and obey social customs if they are sure that those favours will be returned by the state in form of services.⁴⁹ In this regard, the provision of social amenities like roads, electricity housing and healthcare through such agencies as Niger Delta Development Commission, (NDDC), National Poverty Eradication Programme (NAPEP), National Economic Empowerment Development Strategies (NEEDS), create social equilibrium and encourage patriotism. In order to truly appreciate the dynamics of the law, and the overriding duty to obey it, the assumption is that by applying common sense, citizens can easily understand the intricacies and workings of the law. But this is not always easy.⁵⁰ Most people under a duty to obey the law go further to apply an objective test to determine prevailing truths.⁵¹ If they conclude that a system is a sham, then the duty to obey laws emanating from such a system will not arise. On what grounds are citizens inclined to obey the law? In analysing the duty to obey the law, the question arises as to what interest the law really serves. When power is usurped, can the people be validly compelled to obey the law? If people in authority pervert the law to favour or cover up some wrong doing, will the people be justified from not obeying such

⁴⁰ Gordon, 'Critical Legal Histories' 36 *Stan. L. Rev.* 57, 70 -71 (1984) in David M. Trubek, *ibid.*

⁴¹ David M. Trubek, (n.39)

⁴² A.C. Scales., "The Emergence of Feminist Jurisprudence: An Essay (1986) *Yale Law Journal.*, Vol.95, 1373

⁴³ George C. Christie. 'Essay On the Moral Obligation to Obey the Law' *Duke Law Journal* Vol. 1990 pp.1311

⁴⁴ J. Raz, *The authority of law: Essays on law and morality* 233 -89 (1979) hereinafter J Raz authority, see also A. Simmons, *Moral Principles and Political Obligations* (1979)

⁴⁵ A. Simmons, *ibid.*

⁴⁶ J. Raz; A. Simmons, *ibid.*

⁴⁶ L.L. Fuller (n.11)

⁴⁷ J. Singer (1990) 63 *S. California L. Review.*1821, 1841

⁴⁸ Santos, 'The Post Modern Transition: Law and Politics' in A. Sarat and T. Kearns (eds.) *The Fate of Law* (1991), pp. 79 – 118

⁴⁹ Malinowski, 'Crime and Custom in Savage Society' in Dias (n.5), p.391

⁵⁰R. Rorty, *Consequences of Pragmatism* (1982) and S.D Smith (1990) in 100 *Yale L.J.* 490; C. West, *The American Evasion of Philosophy* (1989) in *Standord L. Re.* 787.

⁵¹ Morawetz, (1992) 141 *Univ. Pennsylvania L. Rev.* 371, 445

laws? Obviously, the duty to obey lies mainly in the fact that law compels obedience. Even then, people naturally will not be happy to obey unjust laws because it is against the tenets of natural justice. So Leo Strauss⁵² is of the opinion that the society must be conducive to man to enable him live there and obey the laws within the polity.

The legal system is often understood as inflicting pain and some form of violence on the individual. The sum total of law is seen as some individuals as a flowery language adopted to justify the outcome of court decisions such as imprisonment, loss of property, loss of children and possible execution⁵³. R. Cover reminds us that the main function of legal interpretation is to legitimise and trigger off acts of violence against the individual. The whole trial and adjudication system is simply an authorisation of series of demeaning events in the life of the person under trial.⁵⁴ Given this perception of the legal system as designed to inflict pain and suffering, most people have a fear for law and obey, only out of compulsion. The law has to be modified in such a way that this perception, though not completely erased, is minimised, by giving the law a human face.

More so for most people, justice has a price tag. If you are determined to have justice, then it is imperative to have means to sue and get reprieve in court. There is a perception that the bourgeoisies are above the law, because they can always get the best lawyers to get them out of any situation. Such well to do people break the law at whim, and oppress the less privileged. For the teeming masses, the law then is an agent that is in conspiracy with the wealthy and corporate elite to deprive them of the good of the land. The duty to obey the law is suppressed, and those who cannot afford to engage the machinery of the state opt for justice outside the purview of the legal system. The Legal Aid Council in Nigeria is working to eradicate this notion by assisting people in court with their cases.

There is also the doctrine of rights and obligations. This argument is of the opinion that a moral duty to obey the law exists. Man has no option but to live in organised society in order to achieve his full potentials. So the laws of the state impose conditions for man to live in such society. For every right he is entitled to, there is a corresponding obligation. The bait or duty to obey such laws then comes from the imposition of sanctions. Though sanctions imply a coercive force, Calhoun maintains that these rules are not arbitrarily imposed but are the outcome of various discussions especially in democratic societies, and do reflect the will of majority of the citizens.

9. Law Should Ensure Improved Human Interaction

The spectrum of what can be achieved through law is limitless. Professor Fuller is of the opinion that the different branches of law present opportunities for the law to intervene in meaningful way to further the social project, though some branches may be more apt than the other.⁵⁵ Law is primarily seen as a means of achieving control over the behaviour of people in society. Then again it may be seen as a means of facilitating the relations and interactions between people in society. When peace and stability is achieved, it smoothens the path for better interactions between members of society. How does social behaviour get the intervention of law? This is as a result of categorization. Before a social behaviour is categorised, it exists first as a problem such as stealing, sex work, and homelessness of citizens.⁵⁶

⁵² Leo Strauss (n.47)

⁵³ C. Douzinas and R. Warrington, *A well -Founded Fear of Justice: Law and Ethics in Postmodernity* (1991) *Law and Critique* Vol. 11p. 115; see also S. Fish, *Doing what comes naturally* (Cambridge, Cambridge University Press, 1990); C. Douzinas and R. Warrington (with S. McVeigh) , *Post Modern Jurisprudence: The Law of Text in the Text of Laws* (London, Routledge, 1991)

⁵⁴ R. Cover, "Violence and the world" (1986) 95 *Yale L.J.* 1601

⁵⁵ L. Fuller, Law as an instrument of social control and law as a facilitation of human interaction <<http://digitalcommons.law.byu.edu/cgiii>> accessed on 2 November 2016; Issue 1 Article 5, L. Fuller *BYU. Law Review* Vol. 1975. Being a paper presented by Prof Fuller, of Harvard law school to the International Association for Philosophy of Law and Social Philosophy in Madrid, September 1973, and has been published in *the Archives for Philosophy of law and Social Philosophy*

⁵⁶ *ibid.*

A social control perspective questions how a behaviour or activity comes to be constructed as a social problem or crime and seeks to throw light on the forces that shape attitudes and policy formation, shift in those forces., and their relationship with larger socio political processes and institutions.

It is only after categories have been created, people and behaviour must then be attributed to them to formulate the appropriate law. But it is noted that the same behaviour may be perceived differently in multiple cultures. Most behaviours that require legal intervention are often seen as ‘anti –social behaviour’ in the United Kingdom (UK). The Crime and Disorder Act (1998) declares that behaviour causing (or likely to cause) ‘.....harassment, alarm or distress to one or more persons....’ can be characterised legally as anti-social behaviour.⁵⁷ Law for instance exists to curb violence with its law on murder and other forms of social violence by clearly outlining the limits of acceptable behaviour.

According to Roscoe Pound, the chief aim of law is the general security of the state. Peace and order is paramount, and this will ensure public safety, health, protection of property, and transparency in legal transactions. Also there are recognised personal interests which the law has a duty to protect in society. These are in domestic relationships such as in marriage for example, which imply that a wife is entitled to provision from her husband. As such, the law provides that she can pledge his credit card at the supermarket, and this will function as though the husband pledged it.⁵⁸

Roscoe Pound views law as providing solutions to the everyday situations of society. One of the ‘tasks of the legal order is an engineering task of achieving practical result with a minimum of friction and waste.’ The needs of man in the context of living as part of a society are insatiable. The task of law is not to satisfy all of the demands of man in society.⁵⁹This may not be practically, especially as different individuals will present different demands. The needs of young people for example, differ from the needs of the elderly. The needs of women with regard to healthcare and maternity care differ drastically from that of other groups in society. Law, when properly modified can cater or the needs of diverse group, rather than having a blanket application. The law seeks to provide as much as can be humanely possible of the totality of man’s needs in civilised society, without sacrificing the urgent needs of other groups. It then becomes easier to compel voluntary obedience to such modified laws. However, in practical terms it is not always so easy to determine which needs or demands should prevail over another. In Nigeria for instance, there are practical demands relating to provision of electricity, power, healthcare, education, salary of civil servants, and provision of infrastructure, research goals, and housing. The approach of the government has always been to invest in all these sectors, though the budgetary allocations to them are not equal. This is where the minimization of waste and friction as postulated by Roscoe Pound is relevant. A sitting governor who duly over emphasises development of infrastructure, without paying the salary of civil servants as and when due will always be faced with industrial action and may fail woefully at his bid for a second term. Such implicit acts of disobedience are the way the citizens express their displeasure over actions and unpopular laws of the executive arm of government.

Laws are also promulgated by the legislature for the collective risk of individuals. These can be seen in social welfare legislation as well as other forms of insurance policies⁶⁰which are designed to cushion the effect of devastating loss such as fire, burglary, life, loss of goods in transit. However to be a participant, there is the form of premium paid to private insurance companies. But in natural disasters for example, the government bears the whole brunt. Such government agencies in Nigeria like National Emergency Management Agency (NERMA) are of immense help. The Federal Road Safety Corps (FRSC) has ambulances and emergency clinics for victims of road accident. All these measures are to encourage reciprocal behaviour from the citizen to obey government laws and legislations. Though

⁵⁷ *ibid.*

⁵⁸Roscoe pound, ‘Free Self Determination’ (1954) *Harvard L. Rev.* 1 at p. 19; Roscoe Pound ‘Philosophy of law’ (Revised Edn., Yale University press,1954) p.9

⁶⁰ Roscoe Pound *Social Control through law* (Yale University Press, 1942)

these kinds of laws are not really modified, but they are new forms and measures of ensuring better interaction and quality of life for citizens.

When properly applied and enforced, law improves the quality of life of citizens. This is because ‘the very essence of government is to curb the excesses of citizens in relation to using their property or influence to impact harm on others...’ as well as curb the ‘increasing wave of different crimes in the society such as stealing, robbery, assassination, rape, advance fee fraud (419), bribery, electoral offences, drug pushing, human trafficking etc..’⁶¹ In furtherance of its goal to improve human interactions with one another, and with the ruling structure, the law exerts pressure on institutions, especially where such institutions produce (or attempt to produce) conformity or regulate the individual and collective conduct of its members.⁶² As such, law acts as a means of regulating the behaviour of the individual in society....,

...in terms of its role in securing conformity with established norms by preventing, adjudicating, remedying and sanctioning non compliance. it focuses on intentional, planned and programmed responses by state authorities and corporations to activities, behaviour or status that are perceived to be criminal, problematic, undesirable, dangerous or troublesome. ‘The anchors of this form of control include the criminal justice system, and others authorities in the sectors of health, welfare system immigration and so on.

In India, law was a means of removing the class structure and opening up the economy into super structures of entrepreneurs, civil servants, and the agrarian peasant community. The law therefor acts as an agent of integration, of obliterating the class structures and making it possible for social benefits such as education, usually reserved for the wealthy to get to the middle class and other peasant class individuals. These changes, though gradual were the result of implementation of reform measures in terms of government services, schools, ceiling on land holdings, and increase in entrepreneurial spirit. People now accumulate savings, investments in land, houses, and livestock. The entrepreneurial class creates employment and adds to the stability of the middle class.⁶³ Thus when the guidelines and laws or Acts setting up institutions are modified, social benefits are increased, leading to better forms of human interaction as well as a release of allegiance and willingness to obey laws.

The impact of legislation on science, technology and manpower... is on the increase. Legislation has led to drastic innovative growth of managerial skill in all aspects of life to cope with such scientific breakthroughs. There are new and innovative practises, in the legal profession and other fields which exist side by side with traditional opinions. The legal order is still confronted with the challenge of making sure that scientific and other innovative growth extends to all facets of society in India.⁶⁴

10. Conclusion and Recommendations

In conclusion we may look at the list of Fuller as to what may compel obedience to the law,⁶⁵ and several conditions for the validity of law. From this list arises the duty to obey the law especially as the norms are expressed by all modern societies. ‘The law must be general.’ It is assumed that the law should see all citizens as being under the same duty to obey the law. The law must not be retroactive, or backdated in such a way that will cause suffering and pain. It must also be clear and free from contradiction. It should have a humane face and not command what is impossible to obey. For anything to be law it should have legitimacy, and as much as possible reflect the morals and religious tenets that are valued

⁶¹ Chigozie Nwagbara ‘The Efficacy of the Law as an instrument of social control in Nigeria.’ *International journal of Business and Law Research* Jan – Mar. (2015)3 (1):44 -52 , <www.seahipajorg > accessed on 14 December, 2016

⁶² ICHRP International Council on Human Rights Policy, ‘Modes and Patterns of Social Control : Implications for Human Rights Policy Social Control and Human Rights Policy’ 2010 Geneva Switzerland < www.ichrp.org/files/reports/61 > accessed on 14 December 2016

⁶³ Yogendra Singh ‘Law and social change in India: A sociological perspective’ <http://jspui/bitstream/1233456789/721/8>. accessed on 2 November 2016

⁶⁴ Ibid.

⁶⁵ L. Fuller, ‘Human Purpose and Natural Law in Action’ (1958) *American Journal of Jurisprudence*, Vol. 3

by its host society. Care however has been taken that no religion is promoted over the other. The ultimate outcome of all good laws is to promote justice. The state, being the supreme harbinger of laws must caution its officials so that they do not overreach their power and authority. The law must be congruence between official actions and the declared rule.⁶⁶ 'As a result of above modifications, the law has made it easier for people to relate together with the assurance of reciprocal behaviour of peace towards each other. Strangers can easily move to other tribes and nations and be welcomed, so long as they abide by the norms and legal rules of their host communities.'⁶⁷

It is noteworthy to remark that the law always has to be abreast of changing circumstances. The various sources of law treated in this essay expound to us how far the law has come from its days of meandering and seeking for justification and source of authority. Even today, planning and formulating the law is an on- going process. 'Society is never still. As it develops it moves away from the letter of law by evolving practices that may influence or simply by-pass existing rules. Such practices only acquire the label 'laws' when incorporated into statute or precedent, but they have immeasurably greater significance and operation apart from this.'⁶⁸ New legislations are being proposed on highly controversial issues such as same sex marriage, abortion, and euthanasia. It is only by reviewing the origins or early sources of law that a clear direction or compass can be attained for the adoption of appropriate laws. Several seminars and conferences are needed to redirect the focus of the law when it seems to be operating outside acceptable norms and indices of a given society. Thankfully, most African countries have moved away from military dictatorship and constant political *upheaval*, while still holding on strongly to our geo - political cultures and religious tenets. It is the mix of all these factors that ensures that the modern law will continue to evolve, by being in touch with the root sources of law for guidance and reference.

⁶⁶ Fuller, *ibid*.

⁶⁷ Fuller's article 1973 continues.

⁶⁸ Dias, (n. 5), p. 191