

THE **LAW** AS AN ENDANGERED SPECIE



BEING THE TEXT OF THE 2013
DR. AKINOLA AGUDA
MEMORIAL LECTURE

DELIVERED BY

CHIEF WOLE OLANIPEKUN, OFR, SAN, FCIArb, FCEI



AT THE NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES
UNIVERSITY OF LAGOS CAMPUS, LAGOS.



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1.0 INTRODUCTION

1.1 I feel highly honoured for the invitation extended to me by the Nigerian Institute of Advanced Legal Studies, through its very amiable and highly distinguished Director-General, Professor Epiphany Azinge, SAN vide his letter of 21- March, 2013 to deliver this year's Dr. Akinola Aguda Memorial Lecture. The annual lecture, according to the celebrated scholar and respected Silk, is "to honour Dr. Akinola Aguda, the first Director-General of the Institute and a legal icon, who throughout his career was known as a cerebral jurist and lawyer. He was by all standards, both an intimidating intellectual giant and a moral institution of monumental proportions".

1.2 One cannot agree less with the summary and conclusion of Professor Azinge on the persona and personality called and known to us as Dr. Akinola Aguda. He was a jurist of high intellectual excellence. Every lawyer in Nigeria still appreciates and cites him, almost on daily basis through his very voluminous forensic contributions to legal literature in Nigeria and diaspora. His writings were and still remain prolific, penetrating and illuminating. They cut across diverse areas of law and procedure, including but not limited to Evidence¹, Civil Procedure², Criminal law³ etc. Akinola Aguda in his lifetime undoubtedly belonged to the same class, generation and phylum with the likes of the indomitable Dr. Teslim Olawale Elias. He espoused the beauty and potency of law in his writings, lectures and judgments. As a High Court Judge, he feared no foes, powers and principalities, even including military dictators and overlords. Shortly after his

¹ See Law and Practice Relating to Evidence in Nigeria by Akinola Aguda

² See Practice and Procedure of the Supreme Court, Court of Appeal and High Courts of Nigeria by Akinola Aguda

³ See The Criminal Law and Procedure of the Six Southern States of Nigeria, Second Edition by C. O. Madarik and T. Akinola Aguda

appointment as a Judge of the then Western State High Court on Thursday, 2nd May, 1968, he was saddled with the herculean judicial responsibility of deciding the case of a popular Ibadan politician, Alhaji Mojeed Agbaje⁴ who was detained by the then Military Government under the Armed Forces and Police (Special Powers) Decree⁵. Arguments and counter-arguments for the release and setting aside of the order of detention were completed around 12noon on 18th June, 1969; he delivered his ruling at 2.00pm on the same day, holding that the detention orders of the subject were ultra-vires the Decree and, thus, ordering his release forthwith. This was to the consternation of the then Military Governor of Western State, Governor Adeyinka Adebayo, who, out of military ignorance orchestrated the removal of Akinola Aguda for daring to give judgment against the Military. But on 27th August, 1969, the then Western State Court of Appeal⁶ dismissed the appeal against the judgment and held thus:

“We note with great satisfaction and approval the expeditious and swift manner in which the matter was dealt with by the learned Judge, Aguda J., within six days he had heard and determined the matter. This is as it should be, for the LAW says so.”

- 1.3 Between 1971 and 1974, Akinola Aguda served as the Chief Justice of Botswana and he commendably endeared himself to all and sundry, within and without the Bar in that country. He was also briefly the Chief Justice of Western State between 1975 and 1976 and immediately Ondo State was created in 1976, he was appointed the first Chief Judge of the State.

⁴ Agbaje v. Commissioner of Police (1969) 1 NMLR 137 and Flashback by Akinola Aguda pages 34 - 37.

⁵ Decree No. 24 of 1967 - Section 3 thereof

⁶ (1969) 1 NMLR 176 at 185

Akinola Aguda lived ahead of his times. He was an upright man who, like Aristotle, lit his lantern in the noon, searching for a clean person. He hated a leviathan Government as can be seen in his judgment in *Hammed Apampa v. Yusufu Aminu Balogun*⁷. His tenure on the Bench was both successful in terms of his incisive judgments; but also turbulent and chequered because the then powers and principalities in Military uniform could not cope with his courage, determination, forthrightness, uprightness and defence of the Rule of Law. No wonder, shortly after his judgment in the celebrated cases of *Afe Babalola v. Federal Electoral Commission* and *Owolabi Afuye v. Federal Electoral Commission* and *Chief Adegborioye*⁸, where he convicted the then Ondo State Federal Electoral Commissioner for contempt, he voluntarily gave his notice of retirement on 27th December, 1977 when he knew that the then powers- that-be no longer wanted him. As stated in the letter inviting me to deliver this lecture and also known to all, this enigma called Akinola Aguda was the first or chartered Director-General of the Nigerian Institute of Advanced Legal Studies in 1979. Without any gainsaying, this Institute has positively shaped and restructured the Nigerian legal landscape since its inception. Successive Directors-General have ably improved on the solid foundation laid for the Institute by Akinola Aguda. Simply summarized, Akinola Aguda 'covered the field' in the Nigerian legal system and jurisprudence. It is in honour of such an iconic and titanic figure that someone like me has been invited to deliver a lecture. I feel humbled, as well as honoured.

⁷ Suit No. 1/211/65, Ruling delivered 20th October, 1970 as well as page 49 of Flashback.

⁸ Suit No. AK/79/77, Ruling delivered on 26th August, 1977.

2.0 THE THEME OF THE LECTURE

2.1 In the introductory part of this paper, I have, in a sketchy manner run through the judicial career of Dr. Akinola Aguda and one thing that stands out clearly is the accepted and undeniable fact that throughout his life and career, he stood out firmly in defence and exposition of the Rule of Law. Having been given the latitude to pick a topic of my choice by the Institute, it then dawned on me that the least anyone who is called upon to deliver a lecture in honour of this legal potentate can do is to zero the topic of his lecture or presentation within the ambits of law and the Rule of Law. Juxtaposing his life and times with what we have now, I settled for this topic - 'The Law as an Endangered Specie', for various and far-reaching reasons, some of which will be considered anon.

3.0 WHAT IS LAW?

3.1 Before delving into the definitions and postulations of some scholars, philosophers and jurists on law, permit me to approach it from a very simple and pragmatic angle, particularly relating to our gathering here this afternoon. Law is so central to humanity and I want to submit that upon the creation of man by God, Law became and still is the most fundamental instrument regulating his existence. We are here this afternoon on the invitation of the Nigerian Institute of Advanced Legal Studies, an Institute that was created or established by Law.⁹ The letter inviting me to come and deliver this lecture was signed by the Director-General of the Institute, a position also created by Law.¹⁰ Despite the atmosphere of pervading insecurity in our country, the Law and its enforcing

⁹ Nigerian Institute of Advanced Legal Studies Decree No. 18 of 1984.

¹⁰ Section 5 of Decree No. 18 of 1984

agents have been magnanimous enough to shelter us from the perils looming large in the environment, otherwise, we would not have been able to make it to Akoka today. We also believe and hope that that same Law and its agents or agencies would guide and regulate our return journey back home, otherwise our immediate future after leaving this hall will hang in a void and perilous uncertainty.

- 3.2 Unlike man that makes and enacts Law and also interprets and applies it as an arbiter or adjudicator, Law itself is never arbitrary, partial, whimsical, indolent, unintelligent or corrupt. It does not discriminate between the rich and the poor, the mighty and the lowly, the hero and the villain, the victim and the aggressor, the Government and the governed or even as between persons inter se. Although I will revisit this aspect later in this discourse, it is apt to draw our attention to the recent massacre of about 185 Nigerian citizens in Baga, Borno State - people who were suspected to be members of a terrorist group, but extra-judicially killed and wiped off (allegedly) by the Multinational Joint Task Force set up by the Government to combat terrorism in the northern parts of Nigeria.¹¹ Terrorism itself is an act which is globally frowned at and condemned. It is a plague which humanity is concertedly waging an unrelenting war against and pouring curses on. This notwithstanding, in the eyes of the law, any terrorist is presumed innocent until his guilt is established and the law accordingly deals with and punishes him. Thus, the law does not envisage or anticipate any theatre of the absurd whereby, any assumed terrorist would be shot at and killed without due recourse to law by Government or any agent or agency of Government. Arising from this universally accepted position of law in its purity and bonafide, there has

¹¹ See The Punch newspaper of Wednesday, April 24, 2013 at page 2, as well as other leading national dailies of the same and subsequent days.

been worldwide condemnation of the Baga extra-judicial killings.¹² In like manner, Law, in recognition of the inalienable rights of man and as also enshrined in our Constitution¹³ does not presume the guilt of any person charged for any criminal offence, be it felony, corruption, murder, assassination, terrorism, rape, stealing etc, until his guilt is established by due process. Thus, criminal proceedings in court should not be influenced by public opinion, whether as displayed or narrated in the market place or in the print and electronic media. Simply put, in law, two wrongs and even a thousand wrongs do not attract or make a right. These few examples resonate to one thing or lead to one destination, that is, the indispensable attributes of Law to man and mankind.

3.3 The law plays a pivotal role in the maintenance of peace and order in any given society. The law provides rules of conduct, measures to enforce those rules, and a means of settling disputes. Law has been of significant assistance in the development of the society, it has functioned as a means of attaining social equilibrium and stability amongst competing forces. It has also been effective in shaping, regulating and curbing excessive deviant behaviours. The law is fundamental to every society. The absence of law is an open invitation to chaos, insecurity and anarchy¹⁴. The primary purpose of law is to

¹² See The Nation newspaper of Wednesday, April 24, 2013 titled "Outrage over Bloodbath - US condemns Borno massacre - Sonate: It's unacceptable at pages 1 and 4" and "Thisday newspaper of Wednesday, April 24, 2013 titled "UN, US, others condemn killings - National Assembly seeks enquiry" at page 1.

¹³ Section 36 (5) of the 1999 Constitution (as amended)

¹⁴ Chief Wole Olanipekun, 'The Role of Law in the Society' in *The Voice of Law and Social Change Speeches and Thoughts of Wole Olanipekun*, SAN Vol.1 2011 p. 435; 'Generally speaking, the role played by law as a moderating influence in every society cannot be quantified. This is because the absence of law results in complete or virtual rule by brute force. Little wonder that it's often been said that where there is no law, there is no sin. Law has therefore, taken the place of anarchy, thus pushing it into insignificance or oblivion. Thus, the instrumentality of the law has been evolved to stabilize every society where and when there is a seeming or actual breakdown of orderliness and decorum

maintain peace and orderliness in the society¹⁵. This role is well captured by Hart as follows: "The rule must contain in some form, restrictions on the free use of violence, theft, and deception to which human beings are tempted but which they must in general, repress, if they are to co-exist in close proximity to each other."¹⁶

3.4 Law underpins good governance, probity, strong and virile institutions. However, the nature of law is not permissible of a simplistic approach to its effectiveness. For law to fulfill its purpose, certain prerequisites must be met. The Law does not function in isolation; the effectiveness of law is underpinned by other concepts such as rule of law, accountability, due process, separation of powers, checks and balances, credible elections and effective judicial system. In the pursuit of knowledge and jurisprudential understanding, scholars have from time immemorial examined and interrogated the nature of law, the purpose of law, the functions of law and the functions law ought to perform¹⁷. Stone, for example, postulated that:

"In the long history of legal and political philosophy, two schools of thought have emerged concerning the purpose and nature of law. One school of thought, represented by the seventeenth century philosopher Thomas Hobbes, has held that law is a necessary evil-an instrument of coercion by which the state maintains a secure, stable environment for its citizens. The other school of thought, represented by the Greek philosopher Aristotle, has held that whatever else it may be, law is an engine for

¹⁵ H.C. Brederneir, 'Law as Integrative Mechanism', Aubert V. (ed.) *Sociology of Law* (Penguin, 1968) p.52

¹⁶ Hart, HCA, *The Concept of Law* (Oxford University Press, 1979) p.21

¹⁷ J. Stone, *Legal System and Lawyers' Reasonings* (1964); J. Stone, *Human Law and Human Justice* (1965); J. Stone, *Social Dimensions of Law and Justice encompassing law and logic, law and justice, and law and society respectively.* (1966)

good-one of many devices at the State's disposal for directing citizens towards the Good Life"¹⁸.

3.5 Hobbes' view sets the minimum conditions for the attainment of a stable and secured society. This school focuses on the minimum essential conditions necessary to maintain peace and order in a given society. Whereas, Aristotle's view prescribes permissible standard of behaviours which all citizens should strive for.¹⁹ This school is more progressive because it lays emphasis on the promotion of human goodness and the attainment of a just and humane society.

3.6 Lon L. Fuller argues for a conception of law in which the morality of aspiration takes its rightful place alongside the morality of duty. The morality of aspiration, says Fuller, "is the morality of the Good Life, of excellence, of the fullest realization of human powers, while the morality of duty "lays down the basic rules without which an ordered society is impossible, or without which an ordered society directed towards certain specific goals must fail of its mark."²⁰

3.7 Law itself has given birth to another universally accepted, acclaimed and bandied concept, otherwise known as Rule of Law. One cannot talk of law or postulate on it without addressing the concept of the Rule of Law which is interwoven with law in any form and has become its Siamese partner. In a paper I delivered at Obafemi Awolowo University (OAU) in 2006,²¹ I opined thus on the Rule of Law:

¹⁸Keith Burgess-Jackson, 'Bad Samaritanism and The Pedagogical Function Of Law' 8 Crim. Just. J. 1 1985-1986

¹⁹ Ibid p.3

²⁰ Ibid p.4

²¹ Assault on the Rule of Law, A veritable Threat to Democracy at the First Annual Emeritus Professor David A. Ijalaiye Lecture, Faculty of Law, Obafemi Awolowo University, Ile-Ife.

“In our contemporary world, the Rule of law has virtually become the most popular phraseology, constantly oozing out from the rulers and the ruled, whether within a democratic set up or dispensation, monarchical enclave, military or dictatorial junta. In the modern world, this phrase is as popular as democracy, fundamental human rights or the natural rights of man. The phrase itself is anchored on the word ‘law’, meaning that man should be ruled or any country should be governed not by the rule of man or the rule of the mighty or that of the whims and caprices of leaders, but by the rule of law. Despite His omnipotence, omnipresence and omniscience, God chose to give to the Israelites, through His servant, Moses, the ‘Ten Commandments.’”²²

4.0 Terminology and Conceptual Analysis

4.1 I will like to commence by attempting to clarify the terminologies used in this discourse. Permit me to place them within the context of their respective usages. In one of the lectures I delivered, I opined that: ‘the legal profession, unlike many other disciplines, thrives on arguments. At present, there seem to be as many definitions of law as there are schools of jurisprudence’²³. I will, therefore, examine Law from the perspective of various jurisprudential schools:

5.0 Natural Law Theory

²² See Exodus, Chapter 20

²³ Chief Wole Olanipekun,

‘Law as an Instrument of Social Engineering’ in *The Voice of Law and Social Change Speeches and Thoughts of Wole Olanipekun*, SAN Vol. 1 2011 p. 471

- 5.1 The primary function of law is to secure justice; an unjust law is no law. For example, a law that promotes racism or gender inequality is not really law but a perversion of law or mere violence. This school of thought also believes that law is divinely ordained; that law is for the protection and for the common good of the community; law is not for the benefit of the State or the ruler. It is generally believed that there is an intersection between natural law and natural rights²⁴. Aristotle, while quoting Sophocles and Empedocles observed:

“Universal law is the law of Nature. For there really is, as everyone to some extent divines, a natural justice and injustice that is binding on all men, even on those who have no association or covenant with each other. It is this that Sophocles’ Antigone clearly means when she says that the burial of Polyneices was a just act in spite of the prohibition: she means that it was just by nature: ‘Not of today or yesterday it is, but lives eternal: none can date its birth.’ And so Empedocles, when he bids us kill no living creature, says that doing this is not just for some people while unjust for others: “Nay, but, an all-embracing law, through the realms of the sky unbroken it stretcheth, and over the earth’s immensity.”²⁵

- 5.2 Natural law theorists are of the opinion that any law that is inconsistent with natural law or divine law must be ignored.

²⁴ Aristotle, Plato, Thomas Aquinas, Francisco Suárez, Richard Hooker, Thomas Hobbes, Hugo Grotius, Samuel von Pufendorf, John Locke, Francis Hutcheson, Thomas Jefferson, Henry de Bracton and Jean Jacques Burlamaqui.

²⁵ Aristotle, Rhetoric, Book I - Chapter 13. Available at: <http://rhetoric.eserver.org/aristotle/rhet1-13.html> Accessed on 28 February, 2013

There is no obligation to obey laws that do not serve the common good. Lon Fuller argued that the legal system must always incorporate the rule of law and formal justice. Fuller admits that a society can have a genuine legal system that satisfies the demands of formal justice, and a legal system that satisfies the requirements of due process and the Rule of Law still meets the requirements of natural justice. This theory carries with it a requirement that its principles are universal, unchangeable and absolute. Natural law has been defined or described as the law of nature, higher law, external law, divine law, etc. Rosseau notes that:

“Liberty was a consequence of human nature and that there was therefore a natural law that was dictated by man’s nature and upheld men’s liberty and equality as their inalienable right.”²⁶

Natural law is a progressive law, it has influenced diverse legislative frameworks, including the British Magna Carta (1215), the US Bill of Rights (1791) and French Declaration of Right of Man (1789).

- 5.3 I agree with Dr. Tunji Braithwaite who postulated that the ten commandments given by God to the Israelites through Moses constitute the Living Oracles and, quoting Bodin with approval, the learned author enthused thus:²⁷

“All the princes of the earth are subject to them, and cannot contravene them without reason and rebellion against God. His yoke is upon them, and they must bow their heads in fear and reverence before God. The absolute

²⁶ Rosseau, J.; *The Social Contract* (London: Dent & Sons, 1935)

²⁷ See Tunji Braithwaite, *The Jurisprudence of the Living Oracles*, (Trafford Publishing, 2011) 196

power of princes and sovereign Lords does not extend to the Laws of God and nature. He who best understood the meaning of absolute power, and make Kings and Emperors submit to His will, defined his sovereignty as a power to override positive law.”

To my mind, all other laws made by man for man from ages past and till now ape and follow the ten commandments given by God to the Israelites. It can safely be argued that after God destroyed man and wiped-off His entire creation by flood,²⁸ with the exception of Noah and members of his family, he chose to regulate the affairs of man through a well set and laid out system of statutes contained in the tablets of stone, which were later read by Moses to the Israelites. Substantial parts of the other books of Moses explain in great details the ten commandments and what they signify.²⁹ All aspects of man-made or enacted laws, including criminal law, land law, law of tort, matrimonial law etc. follow these God-given Laws.

6.0 Legal Positivism³⁰

- 6.1 Positivism is generally ascribed to man-made laws and not divinely ordained. It includes the establishment of individual rights or group rights. It is the law enacted by the appropriate authority for good governance of the society. It is binding on everyone within jurisdiction when it emanates from the appropriate authority (i.e. the law making organ) in accordance with laid down procedures, Law is an embodiment of rules creating legal obligations binding on the people. Legal

²⁸ Genesis Chapter 7

²⁹ Leviticus, Numbers and Deuteronomy

³⁰ Some of the prominent legal positivists are John Austin, Jeremy Bentham, and H.L.A. Hart

positivism was one of the fiercest attacks on natural law.³¹ They opined that for law to be ascertainable, it must be divorced from moral or divine law.

6.2 It is a development emergent from the English justice tradition. Jeremy Bentham and John Austin were the two English jurists associated with the emergence of positivism. However, more prominence was given to Austin and consequently, the Austinian Command Theory. The Command Theory contends that law is the command of a sovereign authority intended to be obeyed by the people under his authority and supported by sanctions. This theory has been severely criticized on the ground that to what extent is sanction a determinant of law? Elias argued that:

“It contemplates the existence of a political sovereign whom the people in an organized political society are in the habit of obeying, on the pains of punishment.”³²

The Pure Law Theory propounded by Prof. Hans Kelsen, argues from the position of the “Grundnorm” and derivatives being the lower forms of legal norms. There is the basic norm from which all others are derivable³³. He argued that law must be severed from morality, psychology, sociology and politics.

7.0 The Sociological Jurisprudence

7.1 The sociological jurisprudence emerged by the middle of the 20th century. Roscoe Pound was one of the most prominent scholars of this theory. His view of the law is predicated on the

³¹ H.L.A.; *The Concept of Law* (Oxford: Clarendon, 1961)

³² T.O. Elias, *The Nature of African Customary Law* (Manchester University Press, 1993)p.37

³³ H. Kelsen, *The Pure Theory of Law* (University of California Press, 1967)

premise that there are competing interests in the society. These interests are claims, wants or desires which man asserts de facto, about which the law must do something if organized societies are to survive³⁴. Basically, the sociological school is concerned with social engineering which involves the balancing of competing interests of individuals, public and social natures. The purpose of social engineering is to achieve distributive justice, that is to say, a fair division of social benefits and burdens among the members of the community.

8.0 The Realist School of Law

8.1 The realists on their own focused on the court system, particularly trial courts with the ultimate objective of reforming the judicial system³⁵. They deny the existence of any law or legal rule until the court has made its pronouncement in a specific case. This theory is best expressed in the dictum of the distinguished Justice of the United States Supreme Court, Oliver Wendell Holmes, Jr. He is quoted as saying:

“The prophecies of what the courts will do in fact and nothing more pretentious are what I mean by law.”³⁶

This may have been responsible for such absolutism in judicial actions equating law. This theory recognizes the court as a crucial determinant of law.

³⁴ R. Pound, *Jurisprudence* (5 Vols) (St. Paul: West Publishing Co. 1957)

³⁵ D. Lloyd, *Introduction to Jurisprudence* (Stevens & Sons, 1969)p. 72

³⁶ *Ibid*

9.0 The Marxist Theory of Law

9.1 The Marxist theory is based on the materialist conception of law and recognition of its class with character. It argues that the economy is the base from which all other superstructure derives their validity and vitality. Furthermore, it argues that what is law is determined by the economic situation and as such, the character and tendencies of law are influenced by the material conditions of the society³⁷.

10.0 Endangered Specie

10.1 'Endangered Specie' is commonly used in reference to species of organisms facing imminent extinction.³⁸ Endangered specie in the context of this discourse is used figuratively in relation to law. It is used to signify that the Nigerian legal framework is not as effective as it should be; it is hanging by a thread. It connotes and captures the haplessness of the law in the face of mounting insecurity across the country. Law is endangered when a state of anomie is being fostered on the populace. A curious observation of events across the country signifies a near breakdown of law and order. The free online dictionary describes a state of anomie as 'Social instability caused by erosion of standards and values or/and alienation and purposelessness experienced by a person or a class as a result of a lack of standards, values, or ideals'.³⁹ The Nigerian legal framework is endangered, as would be discussed later, by

³⁷ H. Collins, *Marxism and Law* (Oxford University Press, 1984)

³⁸ There are currently 3079 animals and 2655 plants classified as Endangered worldwide, compared with 1998 levels of 1102 and 1197, respectively. See

http://www.iucnredlist.org/documents/summarystatistics/2012_2_RL_Stats_Table_2.pdf Accessed on 06 April 2013

³⁹ Available at the Free Dictionary: <http://www.thefreedictionary.com/anomie> Accessed on 04 April, 2013

several reasons, including but not limited to its failure to provide a fair and realistic grundnorm that addresses equity and fairness within a Federal System of Government that we claim to practice; its failure to deter, curb or effectively punish the rampaging violence and corruption that has enveloped the country; its inability to build a systematic structure in the country, leading to arbitrariness and whimsical behavior on the parts of both the Governors and governed etc.

11.0 Functions

11.1 Another word frequently engaged in this discourse is 'functions'. It refers to the purpose to which law is in place to perform. The essence of law in the society is measured by its effectiveness in maintaining peace and order.

12.0 The Functions of law

12.1 It may be contested that it is improbable to list all the functions of law, particularly within the focus of a brief discourse like this, because law serves many pragmatic purposes⁴⁰. However, I will like to agree with Funk, who identified seven major functions of law. Any other function of law will probably fall within the seven broad based functions he has identified and set out below. I will briefly dwell on:⁴¹

12.2 **To Legitimize:** The first major function of law is to legitimize governmental institutions. In this context, law serves as an instrument for conferring legitimacy on government

⁴⁰ B. Cardozo, *The Nature of the Judicial Process* 102 (1921). Cardozo states that "the juristic philosophy of the common law is at the bottom of the philosophy of pragmatism." See also the comment in F. Rodell, *Woe Unto You, Lawyers!* 222 (1939) to the effect that the end of law "is the practical solution of a human problem.

⁴¹ David A. Funk, 'Major Functions of Law in Modern Society' 23 *Case W. Res. L. Rev.* 257 1971-1972

institutions. For example, Part II of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) confers legitimate powers on the three organs of Government. Section 4 confers legislative powers on the National Assembly and House of Assembly of the States; Section 5 vests executive powers in the President at the Federal level and Governors at the State level; such powers may be exercised by the President directly or through the Vice-President and Ministers of the Government or through officers of the public service, and with regards to the States, by the Governors directly or through their Deputy-Governors and Commissioners. Section 6 vests judicial powers in the courts established for the Federation. The primary function of the law in this context is to confer constitutional legitimacy on the organs of government. This also applies to other Laws which create specific government Institutions and assign powers and functions to them.

- 12.3 **To Allocate Power:** The second major function of law is to allocate governmental powers in society to appropriate bodies or authority. The function of law in this context transcends the mere allocation of power to confer legitimacy; such powers must be exercised in accordance with due process that is, in accordance with the Rule of Law. In contextualizing this, I make reference to the comment I made in a lecture I delivered at the Faculty of Law, Obafemi Awolowo University, Ile-Ife on 27th February, 2006, that: "Although unlike the 1989 Constitution which provides that "the State shall...enforce the rule of law" in section 16(6), there is no direct provision in the 1999 Constitution. Howbeit, section 17(1) thereof states that "the State social order is founded on ideals of freedom, equality, and justice." To my mind, these ideals sum up or are encapsulated in the Rule of Law. The entire

Constitution itself, again notwithstanding its glaring imperfections, aims at Nigeria being governed by the rule of law, as against the rule of man or those who temporarily or transiently hold on to the reins of power. That is why the Constitution in Part II thereof and ss. 4, 5, and 6 respectively divides the legislative, executive and judicial powers amongst the three realms of State.”⁴² Further application of law in relation to due process can be distilled from the famous case of *Governor of Lagos State v. Ojukwu*.⁴³ This function of law serves as a restraint on the use of arbitrary power or excessive use of power. Inherent in this function is the need for the government officials to refrain from violating individual human rights protected under Chapter IV of the CFRN when exercising the powers conferred on them by the Constitution⁴⁴.

- 12.4 **To Order Society:** The third major function of law is to order society by providing a platform for social and individual interaction⁴⁵. The function of law in this regard is to provide stability within the polity and ensure consistency in policy making. Individuals should expect that government institutions should maintain consistency in policy formulation and implementation. This function of law is to ensure that goal posts are not moved in the middle of the game. For example, in the process of the ongoing privatization, the role of the law is to ensure that rules are followed and no one is unduly favoured.

⁴² Chief Wole Olanipekun, 'Assault on the Rule of Law: A Veritable threat to Democracy' in *The Voice of Law and Social Change Speeches and Thoughts of Wole Olanipekun*, SAN Vol. 2 2011 p. 134

⁴³ (1986) 1 NWLR (Pt. 18) 261

⁴⁴ Denning, 'Legal Institutions in England Today and Tomorrow', in *Legal Institutions Today and Tomorrow* 249 (M. Paulsen ed, 1959) asserts that the purpose of legal institutions in Western society is "to protect the individual from arbitrary power whether exercised by the government or anyone else."

⁴⁵ E. Ehrlich, *Fundamental Principles of The Sociology Of Law* 40 (1962) observes that: In all legal associations the legal norm constitutes the backbone of the inner order, it is the strongest support of their organization. By organization we mean that rule in the association which assigns to each member his relative position in the association (whether of domination or of subjection) and his function.

Equally, in bidding for oil blocks, telecommunication licenses, tenders etc. the law must ensure fairness and the bidders are entitled to have a legitimate expectation that the pre-bidding rules will be followed. Thus, it is said that some laws "provide individuals with facilities for realizing their wishes, by conferring legal powers upon them to create, by certain specified procedures and subject to certain conditions, structures of rights and duties within the coercive framework of the law."⁴⁶

- 12.5 **To Control Individuals:** The fourth major function of law is to control members of society by coercion and threats of coercion so as to maintain peace and order. This function follows the social ordering functions above. Once the law has performed its functions of creating an enabling platform for individuals to realize their aspirations, the law will perform its functions of imposing punishment on any deviation, or any attempt to manipulate the system. For example, the law is expected to perform its function of creating a level playing field for the oil marketers in the process of bidding for and importation of oil products. The law is also expected to impose punishment for any deviation from the rules. For example, the law must come down hard on any attempt by any marketer to undermine the process; bribes, kickbacks, inflation of prices etc, are vices the law is expected to punish. Law must deal with these situations to prevent it from becoming actual breaches of peace and order. The ultimate function of law in this regard is to maintain peace and order in the society.

⁴⁶ H. L. Hart, *The Concept of Law* 96 (1961)27. 'The power thus conferred on individuals to mould their legal relations with others by contracts, wills, marriage, etc. is one of the great contributions of law to social life' at p.28

12.6 **To Adjudge Conflicts:** The fifth function of law is to adjudge actual conflicts once they have broken out. This function is well captured by section 6(6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). This function requires that once a conflict has arisen there must be an efficient and responsive judicial process to deal with it, and dispose of same within a reasonable time, applying the principle of natural justice. This important role of law is widely acknowledged.⁴⁷ Bodenheimer reasoned that: "The legal system of a social body also sets up machinery for the adjustment of conflicts arising between various members of the unit and also perhaps between these members and their government..."[t]he function of the law is the orderly resolution of conflicts"⁴⁸.

Smith corroborated this view when he enthused that: "the principal end of government is to act as judge, or umpire, in the controversies which arise between men as to their mutual claims and demands upon each other."⁴⁹

Following the reasoning of these eminent scholars, law will perform its functions in Nigeria if it provides the enabling environment for quick and fair determination of disputes either against government or its agencies or between individuals. "This function is easily associated with the work of courts, which, after all, are the most visible legal institution. But, whether working through courts or other adjudicatory

⁴⁷ Lewis, Parry and Riposte to Gregor's "The Law, Social Science, and Social Segregation": An Assessment, 14 W. RES. L REV. 637, 642-43 (1963) alludes to the current view that law is a social instrument for cleaning up inevitable grievances and disputes. H. Berman, *The Nature and Functions of Law* 31 (1958), at 53 claims that "[o]ne of the most important ways of understanding law is to view it as a process, that is, a set of procedures, for the resolution of disputes." T. Arnold, *The Symbols Of Government* 44 (1962). The author states that "[l]egal institutions must constantly reconcile ideological conflicts."

⁴⁸ E. Bodenheimer, *Jurisprudence* 259 (1967) p. 259

⁴⁹ G. Smith, *Elements of Right and of the Law* 17 (1887)

agencies, the adjustment of conflicts which have already occurred must be a major function of law in any legal system."⁵⁰

- 12.7 **To Dispense Justice:** The sixth major function of law in modern society is to dispense justice. The function of law is to attain or seek justice that meets the needs of the people. The people generally have a perception of what justice should be, law must meet this desire. For example, there is a common adage that justice delayed is justice denied. Law fails in the performance of this duty when citizens are made to wait for unreasonable length of time before they can drink from the altar of justice. In addition, law must function to dispense substantial justice not technical justice. I agree with Roscoe Pound that dispensation of justice must be administered to meet the needs and yearnings of the people. In resolving conflicts, law must function like an Engineer, as well as an instrument of social engineering⁵¹. In a lecture I delivered sometime in 2010, I stated that "As a vessel of social engineering, law promotes social justice, decorum, as well as maintenance of social equilibrium. Law has no alternative or subsidiary as such in its social engineering role. It is either it does it or leaves the society to suffer and perish. The developed countries of the world are what they are today because they discovered early enough that law should be their vessel of social engineering and this approach has led to the liberation of their countries and various citizens. Africa remains backward among the list

⁵⁰ David A. Funk, 'Major Functions of Law in Modern Society' 23 Case W. Res. L. Rev. 257(1971-1972) p. 30

⁵¹ R. Pound, *Jurisprudence* 361-547 (1959), at 311 includes social engineering as part of the social interest in general progress. Pound declares: ... I am content to see in legal history the record of a continually wider recognizing and satisfying of human wants or claims or desires through social control; a more embracing and more effective securing of social interests; a continually more complete and effective elimination of waste and precluding of friction in human enjoyment of the goods of existence - in short, a continually more efficacious social engineering'

of continents of the world because of its disdain and disrespect for law, as most of the countries of the continent flagrantly refused and still continue to refuse to use law as the metaphor for social rehabilitation."⁵² The social engineering theory was adopted and applied by the Supreme Court in the case of Attorney-General of Ondo State v Attorney-General of Federation⁵³ and other cases discussed below.

- 12.8 To Change Society or Individuals: The seventh major function of law is to serve as an instrument of conscious change, either of society or of particular individuals in that society. This function is significant. Law must be able to change the society, the individual and the government. For example, it is generally agreed that corruption is endemic and widespread in Nigeria, by reason of which the Economic and Financial Crimes Commission (Establishment) Act;⁵⁴ the Corrupt Practices and Other Related Offences Act;⁵⁵ the Advance Fee Fraud and other Related Offences Act;⁵⁶ the Money Laundering (Prohibition) Act;⁵⁷ and the Recovery of Public Property (Special Provisions) Act⁵⁸ have been enacted. If law were to perform its function of changing the society or individuals, corruption ought to have been greatly reduced. There should have been a change of attitude towards corruption. Despite the avalanche of legislative framework to curb corruption, some state functionaries and private individuals still continue their

⁵² Chief Wole Olanipekun, 'Law as an Instrument of Social Engineering' in *The Voice of Law and Social Change Speeches and Thoughts of Wole Olanipekun*, SAN Vol.1 2011 p. 496

⁵³ (2002) 9 NWLR (Pt. 772) 222

⁵⁴ Cap. E1 LFN, 2004

⁵⁵ Cap. C31 LFN, 2004

⁵⁶ Cap. A6 LFN, 2004

⁵⁷ Cap. M18 LFN, 2004

⁵⁸ Cap. R4 LFN, 2004

looting unperturbed. There is an obvious failure of the Nigerian legal framework in this regard. Corruption has continued to fester without any regards to the law. Politicians also retain their army of violent thugs equipped with arms and ammunition. They often unleash mayhem on opponents and perceived opponents. This has often resulted in maiming and killing, kidnapping, intimidation, electoral manipulations, ballot stuffing, and imposition of candidates. The Electoral Act⁹⁹ has failed to act as a deterrent in this regard.

12.9 For now, I have adopted the seven major functions of law by Funk, and related them to the Nigerian environment. Each of the functions discussed above is a component of a whole; they are interwoven and are not independent of each other. Each is a part of a family of legal system.

13.0 Benchmarking the performance of Law

13.1 All the jurisprudential schools of thought recognize the truism that law performs a social control function. The efficacy of law is inextricably tied to every other development index through which developed, developing or under-developed countries of the world are judged and delineated. When Nigerians talk and write or debate endlessly and ceaselessly, in and out of season, about vices annihilating and dehydrating our land and debilitating against our development and growth, such as corruption, insecurity, unemployment, electoral fraud, child trafficking, slavery, loss of confidence in the judicial system, terrorism, amnesty, unresolved murders, killings, armed robbery, failed banks, failure of leadership, oil bunkering, subsidy and pension scams etc, what we or they are indirectly

⁹⁹ 2010 (as amended)

saying, albeit unwittingly is that the law has failed or the law is failing and nose-diving into a bottomless pit. By and large, the complaints then centre on Law appearing hapless and hopeless in performing its fundamental and strategic roles. This then cascades to a situation where law loses its potency and nearly becomes irrelevant to the extent that people are losing confidence in it. Law as law is very intangible or abstract. It is not an object that can be visibly seen or held; but it is an instrument that is so strategic, it builds nations, harmonises strained relationships, drives fear into rebellious hearts, thus cautioning them that in the event of being caught by it, they would be ostracized, either out of life or from the comity of decent people. Law is as important to man as oxygen. It has no substitute.

- 13.2 In this discourse and because of time constraint, I shall restrict myself to juxtaposing the topic and the ingredients and constituents of law as earlier analysed against the background of our nation's experience in areas of security, constitutionalism and corruption, three key areas that to my mind, are very critical to our corporate existence as a nation.

14.0 SECURITY

- 14.1 The Constitution of the Federal Republic of Nigeria, despite its imperfections and glaring inadequacies, captures the very essence of government and governance when it states and commands as follows:

“The security and welfare of the people shall be the primary purpose of government.”⁴⁰

⁴⁰Section 14(2)(b) CFRN 1999

In a gathering like this, it is important that we examine the operative words in the constitutional provision, particularly the words 'shall', 'primary' and 'purpose'. No Legislature uses words in vain. In particular, whenever the Legislature employs the use of the word 'shall' in any enactment, it shows that what is to be done is compulsory and not discretionary. It is mandatory and peremptory. In the words of the Supreme Court,⁶¹ "The word 'shall', in the ordinary meaning of it, connotes a command, and that which must be given a compulsory meaning. It has a peremptory meaning which is generally imperative and mandatory. It has the significance of excluding the idea of discretion to impose a duty. Thus, where a provision provides that a thing shall be done, the natural meaning is that a peremptory mandate is enjoined."

- 14.2 To Thomas Hobbes, it is the primary responsibility of government to provide security; its very mandate, thrust and *raison d'etre*.⁶² Our own Constitution is therefore not saying anything different from what has been the primary duty of any government since time immemorial. However, let me add that security is not and should not be the exclusive responsibility of government under the law, as both the government and the citizenry have the same degree of responsibilities and interests at ensuring that the security of the nation and environment is not breached at anytime. While the government through its programmes, actions, orientation and agencies are to protect and guard the territorial and environmental security of the nation, it behoves the citizens that the Rule of Law is neither threatened nor any Law put in place, security-wise is not broken. In our country today, we daily contend with high degree

⁶¹ *Bamalyi v. A.G. Federation* (2001) 12 NWLR (Pt. 727) 468 at 497 (SC) and *Ogidi v. State* (2005) 5 NWLR (Pt. 918) 286 at 327 (SC).

⁶² Thomas Hobbes, *Leviathan*, edited by J.C.A. Gaskin (Oxford University Press, 1996) p. 104

crimes like murder, arson, kidnapping, terrorism, arms proliferation, rape, monumental corruption, armed robbery (day and night), drug trafficking, as well as human trafficking, money laundering etc, all of which threaten the very fabric, foundation and corporate existence of the nation. Let us graphically consider some horrendous and mind-boggling stories as captured in some of our national dailies, all of which represent what Nigeria and Nigerians contend with on daily, if not hourly basis: "Kidnappers Abduct Commissioner's Mother in Bayelsa",⁶³ "Killing of 13 Cops in Bayelsa"⁶⁴ "Bayelsa: Bodies of 12 slain Cops not yet found",⁶⁵ "Bloodbath in Bayelsa - Militants kill 12 Policemen in boat attack"⁶⁶ "Luxury Bus Tragedy manifest Released - 36 corpses moved to mortuary - Lone Survivor dies"⁶⁷, "Palace Aide, Others Masterminded kidnap of Okonjo-Iweala's Mother",⁶⁸ "Evil Forces trying to derail Nigeria",⁶⁹ "North killings, genocide against Christians - CAN"⁷⁰ "One killed, many injured as PDP, ACN clash in Ekiti",⁷¹ "Outrage over Baga, Borno State massacre"⁷² "Tukur laments blood shedding, craves foreign intervention - JTF kills four insurgents in Yola",⁷³ "Warri Prison Van Attack: Police Arrest Five, Recover Corpse - Two more deaths recorded",⁷⁴ "There is blood in the land -by Femi Fani-Kayode,"⁷⁵ "Boko Haram Attacks Prison in Borno,

⁶³ The Daily Sun newspaper of Thursday March 28, 2013 at page 9

⁶⁴ The Daily Sun newspaper of Monday April 8, 2013 at page 5

⁶⁵ Nigerian Tribune of Monday, 8 April, 2013 page 2

⁶⁶ The Punch newspaper of Monday April 7, 2013 pages 3 & 7

⁶⁷ The Punch newspaper of Monday April 7, 2013 page 6

⁶⁸ Thisday newspaper of Tuesday, 16 April, 2013 page 7

⁶⁹ The Punch newspaper of April 7, 2013 page 3

⁷⁰ The Punch newspaper of Friday, March 29, 2013 at page 20

⁷¹ The Nigerian Tribune of Monday 1 April, 2013 at page 3

⁷² The Punch newspaper of Wednesday, April, 24, 2013

⁷³ The Guardian newspaper of Thursday, March 28, 2013 at page 5

⁷⁴ Thisday newspaper of Friday, March 15, 2013 at page 23

⁷⁵ The Guardian newspaper of Wednesday, March 27, 2013 page 68

sets Inmates Free,”⁷⁶ “Shock over assassination of Kwara CP, Asadu,”⁷⁷ “Baptism of Blood ... As Boko Haram hits Jigawa; Bombs ex-IG’s house, bank, Police Station ... five killed”⁷⁸, “N1.52 trillion Special Funds gone, Government, Agencies, Others indicted”⁷⁹, “Army razes Egbesu Camp in Delta”⁸⁰, “Senate begins probe of Minister, NNPC, Shell”.⁸¹

- 14.3 In the face of all these horrific and terrifying crimes, can one in good conscience still applaud the law in Nigeria or give kudos to it for being effective? Is it a free or an endangered specie? While the concluding part of this lecture will answer these questions, permit me to quote and agree with some eminent Nigerians in their postulations and writings, including editorial opinions of nearly all our leading national dailies. Writing under the caption ‘From Amnesty to Paralysis’ in *The Nation* newspaper,⁸² that fine writer, Sam Omatseye in his elegant but satiric prose thundered as follows:

“Where communication fails, peace eludes ... Now, what we have is not a theocratic State. It is not even a society of believers. It is a secular State professing a belief in a Higher God whom no one obeys. Like Charles Dicken’s novel on the French Revolution, it is the epoch of belief and the epoch of incredulity. Everyone is going to heaven and everyone is going the other way.”

⁷⁶ *Thisday* newspaper of Saturday March 6, 2013 at page 8

⁷⁷ *The Punch* newspaper of Monday, March 4, 2013 at page 2

⁷⁸ *The Daily Sun*, Tuesday, April 30, 2013 pages 1 & 2

⁷⁹ *The Nation* of Wednesday, May 1, 2013 pages 1 & 53

⁸⁰ *Nigerian Tribune* of Thursday, 2 May, 2013 page 50

⁸¹ *Nigerian Tribune* of Thursday, 2 May, 2013 page 2

⁸² *Monday*, April 15, 2013 backpage

Also in its Editorial titled: “Land of senseless killings”, the influential *Punch* newspaper⁸³ asserted thus:

“A mammoth human disaster is looming in the country going by the rate at which Nigerians are being savagely murdered on a daily basis. The carnage is senseless. The toll of destruction is becoming disastrous and should rouse us to righteous anger. ... Nigeria is one of a few countries where danger is part of everyday life. As the country continues to occupy a notorious position on the list of *Forbes* magazine’s most dangerous countries, human life, regarded as sacred by all religions, is systematically being wasted openly and secretly by common felons, criminals and terror group operatives. No one is too young to be killed as was the case with the killing of three kids of a family - Blessing Jacob, five; Dachollom Jacob, four; and Ayuba Jacob, one - in Kogom Tah Village of Plateau State. Yet, there has been no resolute and co-ordinated action against these obnoxious killings that have reached unprecedented levels, in spite of the official claim that the country is not at war. In its 2012 report, the United States Commission on International Religious Freedom says more than 14,000 Nigerians were killed in religiously - related violence between Muslims and Christians. Remarking on this unwholesome situation, the Deputy Senate President, Ike Ekweremadu said, ‘There is a general consensus that security of lives and

⁸³ Tuesday, April 2, 2013 page 22

property in Nigeria has abysmally declined since 1966 and has come to its lowest ebb in recent years. Even high profile crimes have not only been successfully perpetrated without prevention, but they have also largely gone unresolved and unpunished.”

- 14.4 The point must be clearly made that right from the Garden of Eden, man developed rebellious traits against God and Law. God was so incensed with man's rebellion and lawlessness to the extent that He wiped-off His entire creation at a stage⁶⁴. The Bible also recalls that “The heart of man is deceitful and desperately wicked ...”.⁶⁵ The point at stake is that man is always prone to breaking laws and wreaking havoc on his neighbours and the society. But what differentiates man from animal is the ability of law to put in check man's animalistic, criminal, primitive, barbaric and wicked tendencies; that is also what differentiates, to a high extent, stable and unstable nations or developed and under-developed countries. A recent example was the barbaric bombing of athletes/sportsmen at the Boston Marathon in Massachusetts in the USA. Like any other set of criminals, Dzhokhar Tsarnaev and Tamerlan Tsarnaev, the masterminds of the bombing set out to maim, kill and destroy. In the process, three people died and about a hundred wounded. One out of the two of the criminals died, while the second was apprehended. The surviving one has already been charged to court. What has been demonstrated in the entire unfortunate saga is the ability of the law over there to curtail criminals and criminality, as well as the high efficiency of the Law enforcing agencies and also the support and vigilance of the people. Segun Adeniyi captured it all in his

⁶⁴ Genesis 7

⁶⁵ Jeremiah 17 verse 9

piece titled: "Endgame in Massachusetts"⁸⁶ when he posited that:

"... for a society to be safe, secure and prosperous, it would take those in authority being alive to their onerous responsibilities and members of the society not only holding them to account but also playing their own roles."

- 14.5 Against the Boston background and the swiftness of the law in the USA is the docility and near-coma stage our own law is vis-à-vis apprehending criminals, even in what is now regarded as high profile unresolved killings or murder cases. These include but not limited to the killing of Dele Giwa, October 19, 1986 Lagos, parcel bomb; Babatunde Elegbede May 5, 1994, Lagos, shot; Captain Tunde Ashafa, June 11, 1995, Lagos, shot; Mr. Alfred Rewane, October 6, 1995 Lagos, shot; Kayode Awosanya, January 1996, Lagos, shot; Tajudeen Abiola (Mrs.) February 9, 1996, Lagos, shot; Admiral Olu Omotehinwa, May 22, 1996, Lagos, shot; Irene Obodo (Mrs.) June 1996, Lagos, shot; Alhaja Kudirat Abiola, June 4, 1996, Lagos, shot; Chief Adejola Balogun, June 15, 1996, Lagos, shot; Esther A. Tejuoso (Mrs.) September 19, 1996, Lagos, shot; Alhaja Suliati Adedeji, November 14, 1996, Ibadan, shot; Toyin Onagoruwa, December 1996, Lagos, shot; Patrick Okoye, January 31, 1999 Lagos, shot; Sunday Ugwu, September 9, 1999, Enugu, shot; Igwe Francis Nwankwo, February 15, 2000, Anambra, Shot; Joseph Osayande, December 4, 2000, Benin, shot; Chief Layi Balogun, December 10, 2000, Lagos, shot; Ogbonna Odimbaiwe, August 23, 2001, Ebonyi, shot; Ifeanyi Nnaji, August 23,

⁸⁶ Thisday, Thursday, April 25, 2013 back page

2001, Ife, shot; Chief Bola Ige, December 23, 2001, Ibadan, shot; Mr. S. A. Awoniyi, January 7, 2002, Lagos, shot; Ifeanyi Igbokwe, April 18, 2002, Lagos shot; Musa Dayo, May 9, 2002, Bauchi, shot; Maria-Theresa Nsa, June 11, 2002, Cross-River, shot; Chief & Mrs. Barnabas Igwe, September 1, 2002, Onitsha, shot; Mr. Ogbonnaya Uche, February 8, 2003, Owerri, shot; Emily Omope, March 3, 2003, Ibadan, shot; Marshal Harry, March 5, 2003, Abuja, shot; Ajibola Olanipekun, June 21, 2003, Ibadan, shot; Aminosoari Dikibo, February 6, 2004, Delta, shot; Lateef Olaniyan, July 16, 2005, Ibadan, shot etc.⁶⁷ In addition to the foregoing, a serving Commissioner of Police, Chinwike Asadu in Kwara State was gunned down by die-hard criminals, just very near his own premises on March 3, 2013.⁶⁸

- 14.6 Our (law) recipe for murders, kidnappings, rape, terrorism, assassination etc. is outpouring of sympathy and emotions, rather than apprehension of the culprits. It is embarrassing to all of us as Nigerians that a serving Attorney-General of the Federation was murdered right in his bedroom since 2001 and till date, our law enforcement agencies have not been able to unravel the mystery surrounding his assassination. Again, one cannot but agree and share the views expressed by Kabir Alabi Garba in his comments titled "Boston blasts: How good police-media relation yields bumper harvest"⁶⁹ where he stated as follows:

"And no comment that it was the opposition or the 'losing' presidential candidate that orchestrated it! It was all a statement of intent, purpose and that of assurance to the citizens

⁶⁷ Source "The Criminal In All of us ... by P.E. Igbinovia, University of Benin Inaugural Lecture Series 2003

⁶⁸ The Punch newspaper of Monday, March 4, 2013 at page 2

⁶⁹ The Guardian newspaper of Monday April 22, 2013 page 69

that the government (of America) is in charge and will take care of their worries. And giving efficacious interpretation to Obama's statement, within 48 hours, one could see proactive law enforcement agencies in action. They were simply on top of the situation. And nobody was left in doubt that, at least, the first part of Obama's prediction (we will find out who did this) would soon come to pass. It did, just five days later. Dzhokhar Tsarnaev, 19, is cooling off in police custody, while the law enforcement authorities perfect strategies for the realization of other aspects of the mandate as indicated by President Obama: the motivations for the bombings and holding perpetrators responsible. Dzhokhar's co-suspect, his older brother, Tamerlan, 26, died on Friday during a gun battle with the Police."

- 14.7 Let us remind ourselves that the Boston Police was primarily in charge and control of investigating and apprehending the criminals in the State of Massachusetts. They worked in cooperation and collaboration with the Homeland Security and CIA. In America, deference is given to the President as the Head of State, but power is never over-concentrated in Washington as we have it in Abuja. It is bizarre that a country as big as Nigeria has continuously enacted in its Constitution that there shall be only one Nigeria Police Force.⁹⁰ The Governors are arm-chair Chief Security Officers of their respective States who can be likened to Emperors without Empires or Kings without Kingdoms. It is against the norms,

⁹⁰ Section 214 of the 1999 Constitution (as amended)

spirit, principles, tenets, tenor and constituents of federalism to have powers so over-concentrated in the centre as we do in Nigeria. In developed countries of the world, most of which are not half as big and expansive as Nigeria, they have Police formations in cities, how much more in States. The point must be bluntly made that with the present arrangement and structure, we cannot nip in the bud the threat posed to the corporate existence of Nigeria by insecurity of lives and properties. If those who argue against the creation of State Police are honest about their submissions, one wonders then why they do not go the entire stretch to call for the abolition of *vigilante* groups that provide security in several communities, towns, villages, streets and settlements? Why have they not also gone to Court to challenge the award of anti-oil pipeline vandalism contracts to some Militant groups in the South-South and South-West, bearing in mind the fact that our Constitution provides for one Naval Force whose duty is to secure our territorial waters.

- 14.8 Adjunct to this is the resort to self-help, insurrection, conflicts and stock-piling of arms, as rightly brought into fore by A. J. Omode.⁹¹ The Governor of Osun State, Ogbeni Rauf Aregbesola also hit the nail on the head when he recently captured the situation this way:

“When there is disharmony between social justice and universal law, chaos and disorder ensues ... The environment of extreme poverty, ignorance and diseases where might is right, where the gap between the haves and have-nots is increasing at a

⁹¹ A. J. Omode 'Nigeria: Analyzing the Security Challenges of the Goodluck Jonathan Administration' Canadian Social Science Vol. 7, No. 5 2011, pp. 90 - 102

geometric proportion, where law serves the interest of the few, where most people are hopeless, can only but encourage such sundry acts of terrorism capable of regressing man into the Hobbesian state of nature where there is war of all against all and the life of man is nasty, brutish and short.”⁹²

15.0 CONSTITUTIONALISM

15.1 It is an understatement to say that Nigeria does not have a stable Constitution. Since 1999 when we embarked on our new democracy, we have been toying with the Abdulsalam Military imposed Constitution, just in like manner as a baby toys with his toys. The Constitution is tinkered with at the whims and caprices of every session of the National Assembly, acting in concert with successive Executives at the Federal level. Provisions which ought to ensure observance of law and order and emergence of an egalitarian society are either obscured or made non-justiciable. Contrariwise, provisions which are antithetical to the spirit of federalism are enshrined, thus paving way for foisting on the nation a unitary, rather than a federal system of Government. It has been held that a Federal Government will mean what the Constitution writers say it means and this can be procured within the four walls of the Constitution only.⁹³ But our own federalism is a lip-service one and not a constitutionally guaranteed or enshrined federalism. It is universally accepted and acknowledged that the Constitution is the basic and supreme law of the land, as well as the organic law, setting out the fundamental principles

⁹² The Punch newspaper of September 2, 2011 page 11

⁹³ *Olafisoye v. FRN* (2004) 4 NWLR (Pt. 864) 580 at 647

according to which a nation is constituted and governed.⁵⁴ The nature of a country's Constitution, therefore, shapens the type of governance it has; as well as the orientation of her people. To my mind, our Constitution does not support or encourage an egalitarian society; it does not believe in its heart of hearts that sovereignty actually belongs to the people as sufficient safeguards are not contained in the Constitution to actualize the rhetoric in section 14(2)(a). Let me state again that the provisions in Chapter II of the Constitution relating to Directive Principles of State Policy are mere decorative and not enforceable. Put in the legal jargon, they are non-justiciable. But again, it can be argued that despite the decorative nature of these provisions, section 13 thereof can be resorted to by our courts to make them justiciable as it provides thus:

"It shall be the duty and responsibility of all organs of government, and all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution."

In this wise, particular emphasis would have to be placed on the word 'shall' employed by the said section 13, as well as the basic canon of interpretation of statutes which enjoins that the later provision of section 13 should prevail over the earlier provision of section 6(6)(c) which makes Chapter II non-justiciable.⁵⁵ The Supreme Court attempted to make the provisions justiciable in the celebrated case of *A.G. Ondo State v. A. G. Federation*⁵⁶ where it gave its judicial approval to

⁵⁴ *Kalu v. Odili* (1992) 5 NWLR (Pt. 240) 130 at 188 and *Imonikhe v. A.G. Bendel* (1992) 6 NWLR (Pt. 248) 396 at 411.

⁵⁵ See *Nigerian Ports Authority Superannuation Fund (NPAS) v Fasel Ltd* (2001) 17 NWLR (Pt. 742) 261 at 284

⁵⁶ (2002) 9 NWLR (Pt. 772) 222

section 15(5) which provides thus:

“The State shall abolish all corrupt practices and abuse of power.”

Unfortunately, this has been an isolated decision and in our country today, it is strange that government is not committed to making education free and affordable contrary to the intention of section 18 of the Constitution; there is no fidelity to the provisions relating to equality of rights, sanctity of human persons, humane nature of governmental actions, impartiality and integrity of courts of Law, provision of employment opportunities so that every Nigerian can secure adequate means of livelihood; provisions of medical and health facilities for all, protection of the children, young persons and aged against exploitation and neglect etc.⁹⁷ The Indian Supreme Court asserted the justiciability of its own equivalent of our Chapter II in the celebrated case of *Minerva Mills Ltd. v Union of India* AIR⁹⁸ where it rightly concluded as follows:

“The large majority of people who are living in almost sub-human existence in conditions of abject poverty and for whom life is one long unbroken story of want and destitution, notions of individual freedom and liberation though representing some of the most cherished values of a free society would sound as empty words bandied about in the drawing rooms of the rich and the well to do, and the only solution for making these rights meaningful to them was to re-make the material conditions and usher in a new social

⁹⁷ Section 17, 1999 Constitution (as amended)

⁹⁸ (1980) SC of India

order where socio-economic justice will inform all institutions of public life so that the preconditions of fundamental liberties for all may be secured.”

- 15.2 In a beautiful write up by Eze Onyekpere in the Punch newspaper⁹⁹ titled “Making economic and social rights justiciable”, he analysed the report of the House of Representatives Ad-Hoc Committee on the review of the 1999 Constitution, vis-à-vis the views of Nigerians across the States on whether or not the provisions of Chapter II should be made justiciable and posited that: “According to the results, Nigerians by majority of 279 Constituencies voted in the affirmative while 78 rejected the proposal ... The implication of this result is that Nigerians have voted in favour of improved governance, service delivery and a rights-based approach to development”. In my humble submission, there is a failure of the organic law of the land when and where, as we have now, it cannot guarantee free education, employment opportunities, old age care and assistance, reasonable and fair but qualitative health care delivery and facilities etc. It then means that the grundnorm of the country itself which is the foundation of all other laws and to which every other Law must conform is endangered. The end result is that assuming without conceding that any other Law passed by Parliament attempts to create an exception or give an impression that government at any level or tier is attempting to improve the lots of our people, that attempt would amount to placing something on nothing, which cannot stand.¹⁰⁰

⁹⁹ Monday, 29 April, 2013 page 24

¹⁰⁰ *Skenconsult v. Ukey* (1981) 1 SC 1 at 27; *MACFOY v. UAC* (1962) AC 152.

16.0 CORRUPTION

16.1 A lot has been said and written about corruption in our country and I do not think I should dissipate much energy at x-raying the debilitating state of decay and rottenness Nigeria has descended to as a result of the corruption plague. Former President Obasanjo initiated anti-corruption war on assumption of office and as a follow up to this, he established, with the approval of the National Assembly, the Independent Corrupt Practices Commission (ICPC)¹⁰¹ and the Economic and Financial Crimes Commission (EFCC)¹⁰². A lot of legal fireworks and research were displayed by the team of counsel who represented the Federal Government (under the indefatigable and rugged leadership of Chief Afe Babalola, SAN) before the ICPC Act could be judicially saved and approved in a Federal set up like Nigeria.¹⁰³ Howbeit, majority of the provisions in both Acts are well covered by previous penal laws in the country, except that these two laws vest in the Federal Government the jurisdiction to assume prosecution in respect of crimes relating to corruption.¹⁰⁴ One must give it to Chief Olusegun Obasanjo that he has what it takes, including rich experience garnered over the years, guts and determination to fight corruption. He understands Nigeria very well. On September 29, 2002, the Sunday Punch quoted Chief Obasanjo as saying:

“My objective, basically, is to change the attitude and orientation of Nigerians, so that

¹⁰¹ Corrupt Practices and Other Related Offences Act Cap. C31 LFN, 2004

¹⁰² Economic and Financial Crimes Commission Act Cap E1 LFN, 2004

¹⁰³ See *A.G. Ondo State v. A.G. Federation* (2002) 9 NWLR (Pt. 772) 222 at 297 - 300

¹⁰⁴ See the Criminal Code Law of Lagos State Cap. C17 Laws of Lagos State 2003; Criminal Code Law, Laws of the old Western Region of Nigeria Cap. 28; Criminal Code Act Cap. C38 LFN, 2004; Penal Code Act Cap. 89 Laws of Northern Nigeria 1963; Penal Code (Northern States) Federal Provisions Act Cap. P3 LFN 2004 etc.

we will move way from egocentricism, ethnicism, selfishness; ... when I was growing up, it was almost unthinkable to hear that somebody stole government money. Now, it is almost unthinkable that you will be in public service and you won't steal government money. People will even be asking you, are you mad?"

Those candid statements were made by the erstwhile Nigerian President in 2002. But the nagging question remains that in spite of the establishment of the ICPC and EFCC and despite his homilies on the evil effects of corruption, was he able to shift the goalpost or change the orientation of Nigerians, including his subordinates as at the time he left office on May 29, 2007? The answer is in the negative and the reasons are not far-fetched. Both Laws, in instances where they were implemented were not evenly applied. In my humble judgment, the Laws were/are merely preaching "do what I say and not what I do". In other words, the spirit of each of the Laws was put under domination and, by extension, the two Laws became endangered right from inception.

- 16.2 Even those of us who are relatively younger than the former President would agree with him that when we were growing up, corruption was not near-endemic and threatening as we have it today, simply because to a very fair and reasonable extent, the leaders then practiced what they preached. A good number of them were also role models and mentors, even in the mould of the African pride, Mandela.

16.3 In his recent controversial book titled "The Accidental Public Servant", Mallam Nasir Ahmad El-Rufai (Minister of the Federal Capital Territory under President Obasanjo and a foremost member of his kitchen cabinet) opened a can of worms about the happenings in the very inner recess of Government during the second term of President Olusegun Obasanjo.¹⁰⁵ Bearing in mind what Chief Obasanjo told The Punch on 29/9/2002 as our President as reproduced in 16.1 supra, he on his own, as an anti-corruption crusader who set up the two anti-graft bodies should ask or demand the Government or the said bodies to investigate the horrendous allegations contained therein.

16.4 One is not saying that everything or anything put in the book is correct, or that Chief Olusegun Obasanjo stands condemned straight away, but the fact remains that if Law should assume its function as law, or, put in specific terms, if the ICPC and EFCC put in place by the then President Olusegun Obasanjo are to perform their functions in accordance with the powers vested in them by their respective Laws or, submitting further, if the penal provisions relating to corruption in these Laws are not applied unevenly, it goes without saying that with the voluminous information on corruption in high places under the auspices of Chief Olusegun Obasanjo supplied by El-Rufai in his book, both El-Rufai himself and the former President

¹⁰⁵ See page xlv where he accused Obasanjo of wasting over N900 million on the failed National Political Conference; page 349 where he pointedly stated that a sum of N50 million each was distributed to a Representative and N75 million each to a Senator for Obasanjo's third term agenda; page 335 where he stated the sordid deals on the Transcorp shares involving the former President on which 300 percent capital gain would be made overnight for doing and offering nothing; pages 335, 363 and 364 where he respectively stated and still contends that over US\$ 300 million was raised to pursue the third term agenda and how he met Ribadu and Obasanjo in an exchange of hot arguments with Ribadu banging the table on Obasanjo demanding that he should hand-over the Transcorp shares.

should, at least, have been invited to make statements. However, the book written by El-Rufai, though controversial to some people, is in a permanent form, for the present and future generations of our country to read and form an impression of Chief Olusegun Obasanjo, as well as his anti-corruption crusade. With those revelations in print and with the Law pretending as if it is totally incapacitated or prevented from investigating them, how then will our children not continue to have permanently planted in their sub-consciousness that the easiest avenue to make money is for one to just meander his way to Government, particularly at the federal level and more particularly the Presidency. It was recently reported that a former **Zambian President, Rupiah Banda** was arrested and later arraigned before **Magistrate Joshua Banda** (in Zambia) on a charge of abuse of power linked to an oil contract deal with Nigeria while in Office. Former **President Gloria Arroyo** of the **Phillippines** is still facing trial for allegedly tampering with electoral materials in favour of one of her supporters, who contested election to the Senate in 2007; **Silvio Berlusconi**, **emeritus President of Italy** was recently convicted on tax related offences, fined heavily, imprisoned and banned for life from holding public office (trial concluded after his immunity as President expired); former **President Nixon** of the **United States of America** had a criminal charge instituted against him while he was still in office by an Attorney-General he personally appointed in the celebrated case of **United States of America v. Richard Nixon, President United States of America.**¹⁰⁶ The point being driven at with these few examples is that notwithstanding the immunity clause for the Executives in our

¹⁰⁶ 418 US 683, 94 S.ct 3090, 41L

Constitution,¹⁰⁷ if both ICPC and EFCC are not nearly being theatrical to their respective commissions, they should mount sufficient courage to investigate, and, if evidence abounds, prosecute past Chief Executives at the centre; for all they have been doing this while is the investigation and prosecution of Chief Executives at the State level.

CORRUPTION IN THE JUDICIARY

16.5 It is sad enough that on a day like this when this lecture is being held in honour of one of the best judicial minds ever produced in the entire Commonwealth jurisdiction, our own Judiciary is being bugged down by accusations of corruption against a sizeable number of our Judges, leading to the suspension, compulsory retirement, dismissal and serious warnings of some of them. In a recent editorial by *The Guardian* newspaper,¹⁰⁸ the leading newspaper under the caption "To save the Judiciary" expressed the sense of outrage of Nigerians at the level of moral decadence the Judiciary has sunk into, describing it as "a victim of debauchery and moral despoliation foisted on the country by politicians, a factor which transposed it to a veritable tool of do-or-die politics or its appendage. Of course most of the Judges, contrary to time-honoured tradition, were nominees of politicians to whom they feel highly indebted and obligated." Earlier, the editorial referred to the disgust expressed by Chief Justice Aloma Mariam Mukhtar on the extent of corruption that has ravaged the temple of justice, leading to the loss of faith in the Judiciary by Nigerians.

¹⁰⁷ See Section 308 of the 1999 Constitution (as amended)

¹⁰⁸ April 16, 2013 page 14

- 16.6 While one would commend the National Judicial Council (NJC) for its humble efforts at sanitizing the Judiciary, the point must be made that a lot more has to be done, and quickly too. It is being suggested through this lecture that, just like it happened in the United Kingdom in the 1620's when a few Judges were noticed to be entangled in corrupt practices, a Commission should be immediately set up, whereby much more latitude than we have within the narrow confines of the NJC (which only acts upon petitions) be given to Nigerians of all shades and opinions to express their views, reservations and accusations concerning Judges and Lawyers with corrupt tendencies. It is submitted that it is a crime against God, the very ultimate of justice for any Judge who holds justice in trust for Him to dispense justice other than according to law, the Constitution, evidence before him and fear of God. The House of Commons set up a Committee about 1619 to inquire into abuses in the course of justice. The Committee turned-in its report on 15th March, 1620 and one of those indicted was the Lord Chancellor Francis Lord Verulam, Viscount St. Albans. The complaints were reported by the Commons to the Lords, with supporting evidence. A Select Committee of the House examined witnesses. Against the Lord Chancellor, 28 separate articles on charge of bribery and corruption were made. He was invited to come and defend himself but he feigned sickness. He pleaded guilty thereafter and in his written allocutus, he stated "I do plainly and ingeniously confess, that I am guilty of corruption; your sentence may not be heavy to my ruin, but gracious and mixed with mercy. After this example, it is like that Judges will fly from anything that is in the likeness of corruption ... as from a serpent." Sentence was thereafter

given against him (and others) in the sum of £40,000 as fine, imprisonment in the Tower at the King's pleasure, incapacitated for life from holding any public office or employment in Britain or the entire Commonwealth and that he shall be barred from ever sitting or coming near Parliament or the verge of the Court.¹⁰⁹ According to Lord Denning,¹¹⁰ "Since that time we have had no Lord Chancellor - and Judge for that matter - who has accepted a bribe." I submit that unless and until a Commission of Inquiry is set up to look into all these corrupt and bribery allegations against Judges and lawyers alike, where names will be named and particulars supplied, where reservations will be expressed openly, where instances will be given etc., I doubt if our Judiciary will never be cleansed. The Commission of Inquiry should also be saddled with the responsibility of looking into the ways and manners our Judges are appointed to the superior courts of record, including but not limited to the character of each Judge, his learning, experience, background, disposition, orientation, school background, cases handled before appointment, industry, diligence, state of mind etc. The Commission of Inquiry should also determine and delineate when and how we derailed, bearing in mind that the Nigerian Judiciary and legal profession started very well, producing Judges and Jurists who were universally acclaimed and respected, as well as being imbued with sound mind, knowledge and wisdom - God fearing people who sat on the Bench and treated bribery like a plague or serpent. One of them, without patronizing him at all is the Chairman of this occasion, the Honourable Justice Adolphus Godwin Karibi-Whyte. Although his Lordship is not searching

¹⁰⁹ See more details in Landmarks in the Law (Butterworths), by Lord Denning Chapter 2, Pages 43 - 51.

¹¹⁰ Page 51 infra

for any appointment or engagement, he is one of the most proper and fittest, amongst our retired Justices to chair the Commission of Inquiry. As an addendum, the Commission should also find out where and why we have chosen, in a federal set up, to unitarise the Nigerian Judiciary, vesting virtually every jurisdiction in the Federal Courts and almost starving the State Judiciaries of jurisdiction, even in respect of matters and causes that accrue in their backyards, involving their employees etc.

- 16.7 The essence of what I am saying is that a partial or corrupt Judge qua arbiter endangers Law and the Rule of Law. There is no way any party or his counsel can find favour before a Judex who is compromised. While corruption in the political, social, economic, educational, electoral, industrial, executive, legislative etc, sectors are condemnable and ruinous, I dare submit that corruption on the Bench is suicidal to a nation. In like manner, Judges, like Dr. Akinola Aguda should be intellectually sound. While appreciating the fact that all fingers are not equal and that it is not every Judge that can be as versatile as Akinola Aguda, the admonition is that the Agudas of Nigeria should be the role models and goalposts of our Judges. Hear him write about himself as follows:

“At home my exit from the judiciary heralded a fantastic period of intellectual output in the nature of academic publications and lectures. Between 1981 and 1987 I delivered twenty-five papers and lectures at Kano (1), Ife (3),

Ibadan (5), Lagos (5), Ilorin (1), Kuru (NIPS) (4), Badagry (ASCON) (1), Zaria (2), Akure (1), Ado-Ekiti (1), Maiduguri (1). And between 1980 and 1985 I was able to write and publish eight books. Three of these were published in the United Kingdom, three in the USA, and two in Nigeria.”¹¹¹

In his judgment in the celebrated Afe Babalola case (*supra*), he thundered under a military regime as follows:

“They (Respondents) proceeded to act as if the courts do not exist, or that if they existed, they are only there to give judgment favourable to them. Any judgment or orders not convenient to them or which are not favourable to them must be disobeyed. No judiciary rarely worthy of its name should tolerate this. The Judiciary is the greatest hope of the common man in the event of there being a conflict of interest between him and the State or State officials. If the State or State officials feel themselves only bound to obey orders of court which are in their favour or convenient to them and are permitted to act accordingly without any detriment to themselves, then clearly that will be the end of justice within the State. Any Judiciary which abandons its responsibility in that fashion is not worthy of its existence and cannot justify its continuance.”¹¹²

¹¹¹ Flashback by Akinola Aguda at pages 114 - 115.

¹¹² Flashback *Infra* at page 110

He ended up convicting Adegborioye, the contemnor in the case and sentenced him to a term of imprisonment for 6 months with an option of a fine of ₦250.00. The Court of Appeal, upheld his judgment. Nevertheless, this judgment led to his voluntary retirement from the Bench and from his then exalted position as the first Chief Judge of the old Ondo State (now Ondo and Ekiti States). He had a premonition of what would happen if he went ahead to deliver the judgment the way he did. He had a choice to allow the Law become the servant of the powers-that-be then and endanger both Law and the Rule of law. He paid the sacrifice, but today, we are celebrating him and he would continue to be celebrated. At page 109 of his book,¹¹³ he opined thus:

“At that stage, I became painfully aware that the die was cast; there could be no going back. I had to maintain the integrity of the Judiciary and in consequence the dignity of my country and its people. I was left with no doubt of what was going to befall me personally, but I could not care less. Someone had to take the bull by the horn.”

In the days of Aguda, the Law was never allowed to be endangered. The Rule of Law was defended with every pint of blood of a Chief Judge like him. Law then was the conqueror, while arbitrariness was the conquest. Against the background of the topic of this lecture, the question arises, how many of

¹¹³ Flashback

our numerous Chief Judges are ready to take the bull by the horn as Aguda did, in defence of the Judiciary and his country? Let us quickly remind ourselves that that judgment was rendered under the Military Government and a State High Court convicted a high ranking Federal Government official for contempt. The judgment was instantly obeyed. Heavens did not fall. But heavens will definitely fall and might soon fall when Law is endangered.

17.0 CONCLUSION

17.1 In this discourse, I have striven to do a sketchy appraisal of Law, its definitions and expositions by various and diverse schools of thought, including my own rudimentary knowledge of law. There should be a confluence between Law as it is (*de lege lata*) and Law as it ought to be (*de lege ferenda*). For Law not to be endangered, the very essence of its promulgation and existence must always be espoused by law enforcement agencies and abided with by the citizenry. Unequal justice, whether in terms of law-making by the Legislature or interpretation and dispensation by the Judiciary is no justice known either to Law as it is or Law as it ought to be.

17.2 Three critical areas have been examined within the context of this paper, that is, **security, constitutionalism and corruption**. Each of the three of them is critical to the corporate existence of Nigeria. God forbid our entering into the Guinness Book of Records as the foremost country where law is emasculated with impunity. Apart from the actual threat of terrorism which we

face, how does one rationalize the audacity of over 5,000 ex-kidnappers seeking amnesty and demanding for compensation from the Government because they voluntarily surrendered their arms.¹¹⁴ How do we also rationalize or defend the retention in our statute books of an antiquated law which stipulates a penalty of ₦750,000.00 for someone convicted of corruptly making do with or dissipating Pension funds amounting to ₦23.3 billion? The mockery to which our laws is further subjected to can be clinically analysed if we compare that within the same clime, a hungry man or an unemployed youth who stole the telephone handset of a serving Governor was convicted and sentenced to a term of imprisonment of 45 years by an Osogbo High Court.¹¹⁵

- 17.3 Law is very humane, but at the same time regulates and ensures societal orderliness. While some of the law enforcement agencies are permitted to use force when appropriate, Law itself is not 'might' and does not pretend to struggle or contend with 'might'; for 'might' symbolizes, in most cases, oppression, repression, suppression, wickedness and anti-social behavior. 'Might' should ordinarily succumb to Law, but in a clime where 'might' overpowers the Law, the red light is already lit, only for the red card to be flashed. 'Might' might be displayed at the instance of the Government against the governed through the breach of law and, as we have in Nigeria today, 'Might' might also be unleashed by a section of the governed, both against government, its agencies and

¹¹⁴ The Nation newspaper of April 16, 2013 titled: "5,000 ex-kidnappers seek amnesty-Petition National Assembly" at page 53

¹¹⁵ The Punch newspaper of Tuesday, April 30, 2013

institutions, as well as against co-innocent citizens and their properties. The Baga case is a classical example of a cross-fire between the 'might' of Government and the 'might' of the insurgents, leading to several casualties on the side of the Government, the insurgents and several innocent citizens and by-standers. Wherever two 'mights'; as demonstrated here explode and implode, a confluence is usually created which can metaphorically be described as the "valley of the shadow of death". In each situation, the Law is submerged and societal equilibrium is dislodged, dislocated and displaced. If Law is respected as law, there would be far less corruption in every facet of our national life than we are witnessing now, for Law is already there to checkmate corrupt tendencies. But since Law has been endangered and placed under the jack-boot of 'might', whether in the Executive, Legislature, Judiciary, classroom, Boardrooms and even among the Clerics of different religions, it is then incapable of performing its functions and roles at curbing the animalistic and criminal tendencies of man.

- 17.4 A hapless Law attracts a hopeless citizenry; a bankrupt Law breeds impotent people; when Law is inefficient, then the country becomes rudderless; if Law is so frail, then the society is encircled by a gathering of unruly crowd; when and where Law is disrespected, the populace would go astray and whenever it is subjugated, anarchy becomes enthroned; at any given situation where Law can no longer tame, criminals are born, bred and raised to the positions of leadership in every facet of national life; when Law becomes the servant, it

automatically metamorphoses to an endangered specie. This scenario is a prelude to what Sociologists describe as a state of anomie. Although George Orwell did not go this far in his best-selling book titled *Animal Farm*, a state of anomie will usher man into an animal kingdom.

- 17.5 Applying Funk's principle, we have considered the seven functions of law in this paper, that is, to legitimize, to allocate power, to order society, to control individuals, to adjudge conflicts, to dispense justice and to change society or individuals. The nagging question then arises, that is, has the law in Nigeria fairly or satisfactorily fulfilled any of these functions? The answer is definitely in the nay, if we do not want to deceive ourselves. From the way things are going and happening, it would appear as if some people want Nigeria to prepare the requiem for Law and render its *nunc diminitis*.
- 17.6 With this humble analysis and presentation, it behoves every Nigerian to have a rethink about our individual and corporate approach to Law, respect it and jealously guard and preserve the Rule of Law. This was what the Akinola Agudas of this world stood for and defended, even in an era that could be described as the days of yore. We have a more compelling responsibility to subscribe in these days and threatening times to quickly retrace our steps and stop rendering Law as an endangered specie, as any specie that is endangered goes into extinction. Let us ensure that Law does not go into extinction in Nigeria. May I make the point that it is not a question of offering prayers in

either or both Churches and/or Mosques without being remorseful or demonstrating penitence. God is not hypocritical. It is a demand for us to render our hearts and not our garments.¹¹⁶ It is only then that Law can grant us amnesty.

- 17.7 On this note, may I appreciate the authorities of the Nigerian Institute of Advanced Legal Studies for the honour bestowed on me to serve as the Guest Lecturer at the 2013 Dr. Akinola Aguda Memorial Lecture. I hope I have not disappointed you too much. I also thank the audience for listening.

CHIEF WOLE OLANIPEKUN, SAN, OFR, FCI Arb, FCEI

7th May, 2013

Lagos

¹¹⁶ Joel 2 verse 13