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ARTICLE

Administration of Justice in Nigeria: Analysing the Dominant Legal Ideology
Omoleye Benson Oluwakayode and Eniola Bolanle Oluwakemi
Administration of Justice in Nigeria: Analysing the Dominant Legal Ideology

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The paper critically examined the dominant legal ideology of the Nigerian judges and their attitudes towards statutory interpretation. This was done in the light of the traditional and modern methods, and techniques of judicial reasoning and decision making. It condemned the strict constructionist legal approach which appears to be the pervading orientation of the judges and called for a truly broad and liberal approach that will advance social justice and promote national development. The methodology used was that of analyzing and evaluating rules of statutory interpretation, and the methods and techniques of judicial reasoning and decision making.

Key words: Administration of justice, legal ideology.

INTRODUCTION

The Nigerian judiciary has come under severe criticism and condemnation recently on account of the quality of its rulings. The popular perception is that the courts, particularly the Supreme Court, by its decisions, are detached and out of sync with the aspirations of the peoples and the requirements of national development. Although law is a specialty, the knowledge of which is mainly possessed minds trained in the intricacy of jurisprudence, there is nothing esoteric about it as the elementary principles of justice, seen largely from the prism of the common man also forms part of justice. Indeed it is a cardinal principle of justice that the common man must see the whole process of adjudication as being fair to all parties. The focus of this paper is to analyse the dominant legal ideology of the Nigerian judges; this will be done in the light of juristic thoughts and ideas on the role of the judge, and the parameters of striving to attain justice. It will examine and suggest legal ideological model suitable to Nigeria, one that will be in tandem with the peoples’ aspirations and advance national development.

The process of adjudication: The principles and techniques

The relationship between law and the court is perhaps similar to that between siamese twins. One can hardly be

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Odigie Oyegun Spoke of a fundamental problem with the Judiciary in the Nigerian Newspaper, THE NATION, Saturday 13th February, 2016, p.3
discussed without the other. Indeed some jurists have defined law almost exclusively in terms of the decision of the court. Salmon defined law as "the body of principles recognized and applied by the state in the administration of justice".

Gray (1921) is even more radical in his reliance upon the court for his conception of law. According to him, "the law of a state or any organized body of men is composed of the rules which the court that is, the judicial organs of that body, lay down for the determination of legal rights and duties". Holmes (1887) defined law in terms of the 'prophesy' of what the court would decide. Although these perspectives of the eminent jurists have been criticized as being unduly restrictive, as they ignore other critical dimensions of the phenomenon, it does show the pivotal role of the court in the administration of justice.

The process of adjudication involves a decision for one of two value choices. In common law legal systems, disputes are generally determined by the practice of following earlier decisions based on similar facts and principles. In other words, law and justice are administered in accordance with what have been done in previous cases (Karibi-Whyte, 1993). But there may be situations where previous principles are not exactly applicable. In such cases, the existing principles are to be adopted or extended in reaching a solution in deciding the new situation. This practice is described as analogical extension from previous decisions that results in the ability of the judge to decide any dispute before him. It is the logical plentitude of the law.

The process of judicial reasoning may take the form of inductive approach as in the common law system or deductive method of the civil or code system. In the latter, the law is deduced from the general legal rules in the code and applied to the particular circumstance before the judge. The decision is not necessarily based on any previous decisions of court or tribunal, superior or coordinate. Thus in the code system, individual principles do not constitute authority for the subsequent cases.

In case of inductive approach, as said earlier, the judge applies the principles in previous cases with similar facts to the present case. The use of this method is closely linked with the hierarchical structure of the court system, *stare decisis*, the doctrine of binding precedent and efficient law reporting system. A judge is also mandatorily required by the common law concept of *ubi jus ubi remedium* not to refuse to decide a case before him on the ground that the existing law does not cover it. In these circumstances, the court will have to adapt or extend existing principles in reaching a solution in deciding the new situations, or fall back on the general principles of equity, doing what is fair and just to the parties.

The inductive approach has been criticized as slow and inefficient in developing the law. Judicial process founded on inductive reasoning has also been assailed as fallacy. Poet Tennyson has observed in his own criticism: "the lawless science of our law that codeless myriad of precedent That wilderness of single instances".

It seems now widely accepted that law cannot do away with methods of logic if it must maintain its hold on rationality, this is because "law consists of abstract rules which attempts to reduce to order the unconnected facts of life".

Methods of logic become indispensable to achieve this goal. Discretion is also an element of the process of adjudication. Even though law is regarded as a body of rules the use of discretion will ensure that the rules are administered to meet the demands of justice in varying circumstances. It enables the judge to do justice within the limits of the rules of law, "the elastic nature of general standards and the rational application demands the exercise of discretion in the administration of justice".

The exercise of discretion outside the ambit of existing rules of law has however been a subject of controversy. Professor Hart (1961) has expressed the view that in cases in which the established legal rules fail to provide a single clear answer either because no rule seems to cover the case or because the applicable rule is vague, the judge should exercise his discretion. But Dworkin, another academic in Jurisprudence at Oxford University, countered, saying the exercise of this type of discretion is politically undesirable for judges and that in any event, there was no need for them to do so. He contended that a mature legal system has implicit legal principles which could be deduced from the general principles of the legal system. According to Dworkin (2013) conception of the judicial function, the good judge is that who understands in-depth his legal system and is able to distill the principles which are embedded in it and gives effect to these principles in his judgment. An approach which radically departs from the method of logic stated earlier was advanced by a popular movement for free law. It was

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2 J.C. Gray, The Nature and Sources of Law, 2nd ed., 1921, p.82.
6 Ibid. See also Ashby v White, (1703), 2Ed. Raym. 938.
7 Bello & Dors v A.G of the Oyo State (1986) 5 NWLR (pt.8) 826 SC.
9 Hobbes, Bentham and Austin have criticized the method. See A.G Karibi-Whyte, Ibid.
10 Ibid.
11 Ibid.
12 Ibid, p.245.
13 "Discretion may be employed to enable departure fro the rules of law" AG Karibi-Whyte, ibid, p.244.
an approach spurred by disenchantment with the methods of logic and its attendant rigidity.

A leading exponent of the school explained its object as follows:

**What we are striving is that the court may find the right judgment on the merits by practical sense and true comprehension of facts, instead of correct legal deduction by the help of scholastic subtleties**

The view has not gained popular acceptance as it has been described as "so dangerously wide as to deprive the law its logical core of rules". Scrutter L.J in *Hill v Aldershot Corp* put the matter as follows:

Liberty to decide each case as you think right without any regard to principles laid down in previous similar cases would only result in completely uncertain law in which no citizen would know his rights and liabilities until he knew before what judge his case would come and could guess what view that judge would take on a consideration of the matter without any regard to previous decisions.

In crypto-Sociological method, the judgment is expressed in a perfect chain of logical reasoning, concealing the true reason for the decision. The case is decided on merits, and the court searches for legal authorities to justify the result. Gery propounded the scientific research theory. It is only applied in cases of *primaee impressions* and where no assistance can be found in the sources. It encourages the judge to study the moral conscience and other factors to enable him understand the real nature of the problem. Having briefly discussed the main principles that govern the process of adjudication, it is pertinent at this junction to examine some other variables which influence judicial decisions. Thereafter, the dominant legal ideology and behaviour of the Nigerian judges will be examined

**Basic legal ideologies**

For centuries, conception and application of law has oscillated between two basic legal thoughts: natural law theory and legal positivism with their variants. The character, contents and general direction of a legal system depends, to a large extent, on the prevailing ideology of the judges involved in the administration of justice of the legal system. A judge who subscribes to strict constructionist ideology, the tradition of legal positivism, would certainly reflect this in his rulings. An Austrian Jurist, Eugen Ehlich, once said:

*“There is no guarantee of justice except the personality of the judge”*

The analytical positivists, as the adherents of legal positivism are called, "concentrate on the detailed but careful analysis of legal concepts with view to determining their theological nexus and function in a system of law. All ethical considerations must accordingly be excluded from any legal analysis, morals have nothing to do with law and it is no business of the lawyer to concern himself with the end or purpose of law which is peculiarly a function of the legislator".

The emphasis is on legalism, all ethical and metaphysical considerations are eschewed. Bare analysis of law is the distinctive feature of this legal approach. Legal positivism has for a long time in English legal history the dominant ideology. Because, it excludes moral and ethical issues, it has not been able to advance the cause of justice in social, economic and political life of a nation. It is an archaic ideology which has been jettisoned in most legal systems. Only few legal systems in modern times including Nigeria still operate on the basis of this ideology.

Although, the argument is basically that legal positivism ensures certainty of law and makes law more predictable, by its nature, it unduly constraints judges and reduce their capacity for flexibility often needed to achieve the end of social justice. A notable jurist put the matter as follows:

**Classical English Positivism which Nigerian judges and jurists have inherited from colonial masters never gave any serious thought to the question of justice as part of the definition of law or even as a concept to which law should direct its attention. And yet in modern times, people have come to the realization that law in the nature of rules, orders and so on must have justice as its main purpose**

Natural law, on the other hand, has consistently sought to subject secular law to certain conditions before its norms can be valid. Although, the school has many versions, its basic theses are in tune with the requirements of social justice. John Finnis’s natural law presents objective, comprehensive and rational enunciation of its basic ideas. According to him, “natural law is the set of

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16 See Fuches, cited in Science of Legal Method, 101
17 1933, 1KB, 259, 263
19 Ibid. p.203
20 AG.Karibi-Whyte

22 These include John Austin, Salmon, Gray, Lon Fuller, H.L.A. Hart
24 J.M. Jegede, Jurisprudence, Spectrum Book Ltd, pub. Ibadan Nigeria, P.50
principles of practical reasonableness in ordering human life and human community". He listed seven basic goods which must be the concern of man and which every legal system should espouse. "They are objective values in the sense that every reasonable person must assent to their value as objects of human striving". Saint Augustine said there is no law unless it be just and Aquinas opined that unjust law is a perversion of justice. It is clear therefore, that the basic teachings of natural law provide the template that advance social justice and national development.

The dominant legal ideology of the Nigerian judges

Legal positivism is the ideology subscribed to by most Nigerian judges. It has remained a serious constraint on the need for flexibility in the administration of justice. Judges need to be flexible in order to do justice in various circumstances. It is an ideology that "never gave any serious thought to the question of justice as part of the definition of law or even as a concept..." a learned writer, Prof. Oyebode (2005), also made the same observation as follows:

When confronted with a choice between applying law delegelata and law delegerenda, the majority of the judges would opt for the former in accordance with the strict constructionist legal ideology which they have imbibed.

This pervading judicial attitude was clearly stated by M.B. Belgore (1909) in what appears to be an articulation of the judicial policy of the Nigerian judiciary:

A judge is obliged to enforce the law laid down by the legislature or created by a higher court whether such law is unfair, absurd or even dangerous. It is justice according to law, not necessarily according to justice. So a judge is constrained if there is a wrong which cannot be fixed into any compartment created by parliament or laid down by a higher court, the legislature is the law giver and the court operates within the confines of the circle down.

The views of the Chief Justice is an exposition of classical positivism with its emphasis on strict construction of statute even when the result is 'unfair, absurd and dangerous'. Consistent with the ideology, a number of cases have been decided in recent times which seem to be out of tune with social justice and certainly do not meet the expectations of the citizenry. A few of them will be examined. In the case of Peoples’ Democratic Party (PDP) v Congress for Democratic Change (CPC) and 410Rs, the question before the court was whether the sixty day period provided under section 285(7) of the 1999 Constitution within which an appeal against the decision of a tribunal or court should be heard and decided excluded the entire period of the vacation or not. Section 285 (5-7) of the 1999 Constitution of the Federal Republic of Nigeria provides:

Subsection 5: An election petition shall be filed within twenty-one (21) days after the date of the declaration of result

Subsection 6: An election tribunal shall deliver its judgment in writing within one hundred and eighty (180) days from the date of filing the petition.

Subsection 7: An appeal from the decision of an election petition tribunal or court of Appeal in a matter shall be heard and disposed of within sixty (60) days from the date of delivering the judgment of the tribunal or court of Appeal

The contention of counsel for the Appellant Chief Gadzana SAN was that the relevant section quoted earlier should be construed to exclude the vacation period, Saturdays and Sunday. The court rejected this liberal and broad interpretation and opted for a narrow construction of the provisions. Onnoghen J.S.C said:

...it is my further opinion that the sixty (60) days allotted in section 285 (7) of the 1999 Constitution (as amended includes Saturdays, Sundays and Public Holidays as well as court vacations because if it was the intention of the framers of the constitution to exclude these days, they would have so stated in clear and unambiguous terms...

The judge went on to acknowledge that:

The intention of the drafters of the constitution being to stop the practice of unnecessary delays in election matters, it is our duty to ensure compliance with the law

26 Lloyds’s Introduction to Jurisprudence, (6th ed) p.119
28 Lloyds, Introduction to Jurisprudence, op.cit. p.142
30 Ibid
31 Ibid
32 Akin Oyebode, Law and Nation- Building in Nigeria, Center for Political and Administrative Research (CEPAR), Ikeja, Lagos, Nigeria, 2005, p.134
33 Ibid
34 Ibid
36 NWLR, December, 2011 pt.1277 at p.485
by doing what is needed within the time frame.

The court consequently ruled that the action was time-barred and struck it out. A liberal and progressive approach, one which advances the cause of democratic value would have reckoned that vacation period and weekends should not be included in the sixty (60) days time-frame even when such was not expressly stated in the constitution. It could not have been the intention of the legislature that vacation periods and weekends should be included in the sixty-day frame. The judge himself observed that 'the intention of the drafters of the constitution being to stop the practice of unnecessary delays in election matters'. The vacation period certainly was not caused by the parties involved in this matter and so the ruling was unjust. In *Ifezue v Mbadaugha*37, the court was also faced with the proper construction of section 258 (1) of the 1999 Constitution. The section reads as follows:

> Every court established under this Constitution shall deliver its judgment not later than three months after the conclusion of evidence and final addresses and furnish all parties to the case or matter with duly authenticated copies of the decision on the date of delivery.

The judgment in this case was delivered outside the three months stipulated by the constitution, the question was whether the provision was mandatory or not. Majority of the Justices construed the section literally, maintaining that the provision was mandatory. Bello J.S.C., however, gave a dissenting judgment. The learned Judge looked beyond the letters of section 258(1) and considered the injustice that would inevitably follow if the sub-section was construed as mandatory. Unfortunately, the majority carried the day and the case was determined on the basis of strict constructionist approach.

Perhaps the strict constructionist ideology is most vividly shown in many cases involving the determination of land rights. In *Savannah Bank Ltd v Ajilo*38, the Supreme Court construing Section 22(1) of the Land Use Act 1978 strictly permitted the right holder/mortgagor to obtain an order to declare the mortgage unlawfully and void for absence of consent. Although the Supreme Court seems to have overruled this decision in some subsequent cases such as *Ugochukwu v CCB, Anaeze v Anyaso and Onoboyes Technical Services Ltd v Union Bank*, where the court held that a holder of a right of occupancy whose statutory duty is to obtain consent cannot approach the court for an order that the interest he transferred should be annulled, subsequent decisions have restored the decision in *Savannah Bank v Ajilo*.

In *Union Bank of Nigeria Plc v Ayodare and Sons Ltd*39 and *Calabar Central Cooperative and Credit Society Ltd v Ekpo*, the Supreme Court again read section 22, Land Use Act literally and narrowly to conclude that once a party proves that consent was not obtained to a transaction, the transfer is void. *Ekpo*’s case, in particular, evokes a feeling of oddity. The plaintiff was employed in the services of the defendant company. He was alleged to have defrauded his employer the sum of N800,000. Upon his arrest, he signed a deed of conveyance transferring his house to the defendant so as to escape prosecution. Some eight years later he sued to declare the conveyance invalid on the ground that in the absence of Governor’s consent the deed was invalid. The Supreme Court upheld his claim. Commenting on this case, Professor Emekachianu said:

> This decision is simply calamitous and retrograde. If it is not speedily reversed it could smother commerce…either unconsciously or unavowedly, the Supreme Court, in its eagerness to achieve a desirable result on the facts flung itself headlong into a narrow conception of the consent issue…

Akinkugbe, J. construing consent provision under section 3 of the Native Lands Acquisition Law (NLAL) similar to the consent provision under section 22 of the Land Use Act, said:

> Where statutes contain words like ‘utterly void and of no effect’; ‘null and void to all intents and purposes’ and such like phrases, they are not always interpreted according to their natural meaning by the courts if injustice is to be avoided and the parties at fault are to be prevented from benefiting by their own defaults

The approach of strict construction of statutes has increasingly made Nigerian Judiciary detached from and even alienated the people. The institution is fast becoming irrelevant to the social conditions, aspirations and the requirements of national development.

However, some jurists have expressed divergent views on the question of statutory interpretation. Lloyd is of the view that a judge is not constrained to follow rigidly a single path of interpretation. According to him, a judge is confronted with value choices which allows a measure of flexibility needed to meet the demands of justice in every given case. He said:

> Conceptualism or legalism is a vice to which lawyers too readily succumb. Rules are means to an end, purposive instruments. They embody social objectives and policy choices. Thus he is not met by a bloodless category but a living organism which contains within itself value

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37 1 SCNL, 427
38 (1989) 1 NWLR (pt.97) 305
39 (2007) 13, NWLR (pt.1052) 567
40 (2008) 6 NWLR (pt.1083) 362
42 Barclays Bank Ltd v Bironke, (1967) Nig. Comm LR. 168
Oputa J.S.C, a former Justice of the Nigerian Supreme Court advanced an interpretative approach which leans less on technicality of law. He said:

This court is not a mechanical or automatic calculator. No, it is a court of law dealing with varying situations and applying the same law to these situations in order to do justice in each and every situation according to its peculiar surrounding circumstances.

Law in the nature of rules, orders and so on must have justice as its main purpose. Although the court is to administer law as it is and not law as it ought to be, rules present ‘value choices’ not a ‘bloodless category’. It functions to aid the end of social justice, the ultimate concern of every legal system, seen largely from the prism of the society at large. Oputa J.S.C in another case elucidated more on the dangers inherent in strict construction of statute. In the case of Aliu Bello & Ors v Attorney General of Oyo State he said:

The picture of law and its technical rules triumphant, and justice prostrate, may, no doubt, have its judicial admirers but the spirit of justice does not reside in forms and formalities; nor in technicalities; nor in the triumph of the administration of justice to be fund in picking one’s way between pitfalls and technicalities. Law and its technical rules are to be but a handmaid of justice and legal flexibility.

Eso, J.S.C., a contemporary of Oputa, J.S.C. put the matter succinctly in the State v Gwentco:

The court is more interested in the substance that the mere forms. Justice can only be done if the substance of the matter is considered. Reliance on technicality leads to injustice.

This liberal approach was also applied in a number of other cases during the period. The question apposite here is what does liberal interpretation of legal instrument entail? Fatai Williams, Chief Justice of Nigeria then has this to say in this regard:

I am strongly of the view that when interpreting the provisions of our 1999 Constitution, not only should the court look at the Constitution as a whole, they should also construe its provisions in such a way as to justify the hopes and aspirations of those who have made the strenuous effort to provide us with a Constitution for promoting good government.

And Schmidthold in tribute to Lord Denning, a foremost English Judge noted for liberal approach to law, said:

He looks at law as an instrument of doing justice, doing justice now in the case before him which is founded on what majority of right-thinking people regard as fair solutions to justice and which gives them confidence that those occupying the judgment seat do not live in a different world of ideas from their own and understands their hopes and anxieties. The belief that law is instrument of doing instant justice is the explanation of Lord Denning’s often misunderstood radicalism. His approach is teleological. He thinks of the result before he considers the legal reasoning on which it was to be founded. If the results to which established legal doctrines leads is obviously unfair and out of touch with what ordinary people would expect to be law, he will examine the principles in order to ascertain whether they really compel an injustice solution and after, this method will enable him to arrive at an answer which is more equitable to modern need.

From the views expressed by the two eminent jurists, a liberal construction of statute would require that statute is read as one organic whole taking into cognizance what majority of right thinking people regard as fair solution, justice which the common man understands and which gives them confidence. The views conflict sharply with those expressed by Hon Justice M.B. Belgore which advances strict interpretation of law even when it may lead to ‘unfair’ absurd or even dangerous, result.

Attitudes and ideology that promote social justice and national development

Nigerian judges must move away from the regime of legalism or the ideology of strict construction of law. It is

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44 Lord Denning in Seafood Court Estate Ltd v Asher, 1949, 2LB 498-499
45 AkinolaAguda, Poverty, Law and Justice, op.cit
47 Friedman M.D.A, Lloyds Introduction to Jurisprudence op.cit (1985) 5 NWLR 886
48 (1983) 1 SCNLR, 142, p.160
50 Senator Abraham Adesanya & Ors v The President of the Federal Republic of Nigeria & or, (1981), 5 SC, 112
51 See OgundipeAlatise, ‘Legal Practitioners’ Law Review, vol,2, no 1, 1987 00 3-6
52 Ibid
53 Ibid
54 Hon Justice M.B. Belgore, Constraints in the Administration of Justice, op.cit
an approach which does not take cognizance of the very essence of law- an instrument meant to achieve social stability, social justice and national development.

The teleological value of law is now a matter of overriding concern in contemporary legal systems. Issues of social justice and development have taken the center stage. This necessarily commends liberal approach which deploys legal rules to justify the end of social justice seen largely from the perspectives of the right-thinking members of the society. Lord Denning’s approach is particularly apt; he would consider the social justice of the matter before him first and thereafter employed the legal rules and concept that would enable him arrive at the destination.

According to Schmidthold, Denning’s approach is “doing justice now in the case before him which is founded on what majority of right thinking people regard as fair solutions, justice which the common people understand and which gives them confidence that those occupying the seats of judgment do not live in a different world of ideas from their own and understand their hopes and anxieties”. This approach is similar to crypto-sociological method of judicial decision. The case is decided on merits and the court searches for legal authority to justify the results. It is now widely accepted that judges perform law-creating role and that they are not just to declare law. They exercise discretionary powers in addition to express statutory powers that give ample room for flexibility to meet the demands of justice in varying circumstances. Radcliff said in this regard:

“There was never a more sterile question whether a judge makes law. Of course, he does. How can he help it- judicial law is always a reinterpretation of principles in the light of new combination of facts, judges do not reverse principles, one well established, but they do modify them, extend them, restrict them and even deny their application to the combination in hand”.

The law making function of judges has become axiomatic, beyond any question in modern times. More and more emphasis is put on the sociological or teleological approach to law which in turn stresses the creative role that judges perform. In the context of the two main political ideologies in the modern world, totalitarian ideology and democratic ideology, the judiciary is occupied with the creative role that judges perform law and that they are not just to declare law. They exercise discretionary powers in addition to express statutory powers that give ample room for flexibility to meet the demands of justice in varying circumstances. Radcliff said in this regard:

“There was never a more sterile question whether a judge makes law. Of course, he does. How can he help it- judicial law is always a reinterpretation of principles in the light of new combination of facts, judges do not reverse principles, one well established, but they do modify them, extend them, restrict them and even deny their application to the combination in hand”.

The Nigerian judges must employ the ideology that promotes democratic values in their judgments. They can only do this if they eschew strict constructionist approach to law and embrace liberalism. This enables law to keep pace with the changing conditions. As noted by Cardozo “law and obedience to law are facts confirmed to us everyday in our experience of life. If the result of the definition is to make them seem to be illusions, so much the worth of the definition, we must enlarge it till it is broad enough to answer to realities”.

Conclusion

Nigerian judges need to eschew strict constructionist approach of law, an ideology that does not advance social justice and national development. Majority of the judges still cling to this archaic ideology; yet they claim to subscribe to liberal approach. A few of the judges have recognized the correlation between liberal approach to legal interpretation, social justice and national development. The words of Pats-Acholonu, J.S.C in NdoamEgba v Chukwuogor are apposite.

I make bold to state that strict adherence by the law courts to the Austiniian theory of legal positivism was what brought about World War where the villainous and delivish dictator succeeded in emasculating the courts and the people by spewing out laws that had horrendous effect not only on Germans but more particularly on the Jews.

The Nigerian judges must give serious thought to the question of justice as part of the definition of law. They must be reminded that unjust law is a perversion of justice. They must strive to emulate Lord Denning who approached law mainly from the perspective of the right-thinking members of the society. Ayoola J.C.A. stated the approach clearly in Agbakoba v The Director DSS.

The error...is probably in not realizing that the constitution cannot condescend to details in its description of the fundamental rights and freedoms it guarantees. The constitution is an organic document which must be treated as speaking from time to time. It can therefore, only describe the fundamental rights provisions with contents such as would fulfill their purpose and infuse them with life. A narrow and literal construction of the human rights provisions in our

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59 Roscoe Pound. Social Control Through Law, see Lloyd’s Introduction to Jurisprudence, pp578-579
60 Schmidthold’s tribute to Lord Denning, see OgundipeAlatise, Legal Practitioner, op. cit
57 Paton, A. textbook of Jurisprudence, op. cit
58 Radcliff quoted in Mani Tripathi; An Introduction to Jurisprudence, Allahabad Law Agency, pub. Eighteen edn, Delhi India, p.228
59 Mani Tripathi, An Introduction to Jurisprudence, Ibid, p.229
60 Roscoe Pound
61 Mani Tripathi, An Introduction to Jurisprudence, Ibid
62 Cardozo quoted in Mani Tripathi, An Introduction to Jurisprudence, Ibid
63(2004), 6 NWLR (pt 869) at 433
65 As per Aquinas. See Lloyds Introduction to Jurisprudence; op.cit, p.142
66 (1994) 6, NWLR, pt.351 at 475
constitution can only make the constitution arid in the sphere of human rights. Such approach will retard the realization, enjoyment and protection of those rights and freedoms and is unacceptable. While the rest of the world is expanding the boundaries of freedom and reaping the consequence of such expansion in stability and economic and social development, it will be sad were we in this jurisdiction to define the boundaries of freedom so narrowly as to become meaningless.

Law and indeed the judges can only maintain their relevance to the people and truly function to promote common good of the citizenry by this liberal and broad approach to construing statutes.

CONFLICT OF INTERESTS

The authors have not declared any conflict of interests.

REFERENCES

Cardoso BN (1921). The Nature of Judicial process, Yale University Press, U.S.A.

67 Ibid at pp.488-389
Journal of Law and Conflict Resolution

Related Journals Published by Academic Journals

- International NGO Journal
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