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# The Law as a Legal Light: A New Definitive Approach

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## Abstract

The definitional aspect of law has presented it as a difficult subject that has resisted successive rational attempts to state in clear terms what it is all about. Prior to this time, law has been approached from different angles including historical, sociological and economic angles. Each genre of definition reflects a narrow perception of law with a somewhat leaning towards anachronistic views of a subject whose dynamism cannot be accommodated by such restrictive surmising. In this article, an attempt has been made to basically define law as a legal light which emanates from a legitimate source with the aim of providing a clear guide to the human society. This guide may be provided by the law in written or unwritten form.

## Introduction

This article seeks to introduce a definition of the word, 'law'[1] in a way as to help the human society remove the mystery surrounding the three-letter word on the basis of the difficulty usually sustained in attempts at proffering an acceptable definition of the word and thus provide an informed answer to the

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[1] Jeremy Bentham's view on law was informed by his belief in the doctrine of utility. See G.W. Patom and D.P. Derham, eds., *A Textbook of Jurisprudence*, Clarendon Press, Oxford: 1972, p. 4.

question, 'what is law?[2] It is submitted that what law does is akin to what a light does. Light shows the way forward and provides a guide to the feet of wayfarers in order to go the right direction and prevent their feet from stumbling into an avoidable obstacle.

To this end, law is a light reflected from a legitimate source and coded in letters or practices which provide a legitimate and binding guide to all persons in the conduct of their general or particular affairs without which a society is thrown into darkness and anarchy. This definitive approach to law is an attempt at arriving at a comprehensive definition of law[3]. The letters of the law are structured in the forms of codes, rules, treaties, conventions, protocols, edicts, decrees, declarations, circulars, bye-laws, Acts, laws, constitutions, commands, ordinances, directives, agreements or resolutions. All written laws fall into statutory provisions. This nature of law is composed of laws codified by legitimate authorities following laid down procedures. In other words, the laws in a state are reduced into letters or in writing as light to guide.

On the other hand, social or communal practices can crystallize into law which, though unwritten, provides a guide as qualitative as the one provided by written or codified laws[4]. These practices could be an embodiment of the social norms, values or mores which have generated a wide acceptance and have been consistently adhered to over time by a significant number of people in a society or community. The consistent practices which provide a legitimate guide in the conduct of general or particular affairs crystallize into customs. Customs are veritable sources of law both in domestic or foreign jurisdictions[5]. The Nigerian Legal System, for instance, is one of the legal systems that has customs as one of its sources of law.

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[2] See C. U. Anyanwu, "Legality of the Nigerian Legal System – A Theoretical Approach of the Nature of Law", *Nigerian Journal of Public Law*, Vol.2, No.1 2009, pp. 338-339.

[3] The ordinary aspect of a law in a society perceives and receives, not law but laws, i.e. norms which purport to guide behaviour. See A. Allot, The Limits of Law, Butterworths, London: 1980, p. 8.

[4] The fact is that law, in which ever form it is, primarily regulates behaviour of conduct. While psychology concerns itself with the study of behaviour, law is interested in the regulation or control of human conduct or behaviour.

[5] Even in international law, custom is one of the sources of international law. See Art.33 of the Statute of the International Court of Justice.

## Provisions of the Law as a Pathfinder

The provisions of the law on any subject act as a pathfinder to a society[6]. The areas in which provisions are made for the regulation of matters bordering on the subjects such as contract, crime, torts, conveyance, advocacy, land, petroleum, aviation, maritime, commerce, insurance, banking, bankruptcy, executorship, arbitration, administration, the constitution or energy. Society[7] needs the law to survive. It is the law that states what behaviour is within a permissible range of human behaviour and what behaviour is outside that range. This is particularly true of criminal law. It is a material fact that crime is a creation of the law. Any behaviour not perceived by law as criminal in nature does not constitute a crime. The Nigerian law favours the position that crimes must be prescribed in a written form. This is an attempt by the law to foreclose any arbitrary and oral prescription of crimes[8].

A society in order to attain a stable political and economic height allows certain behaviours while proscribing certain other behaviours. The vehicle of driving the society to the path of political and economic stability is the law. The law is the template on which all the matters concerning a particular society are predicated. A society driven by law is the backbone of the concept of rule of law[9]. Before the law begins to rule, it must be born first. A king does not rule before his birth. The birth of a king precedes his rule and the age at which he assumes the royal throne may be immaterial in relation to his wearing the royal apparel, the golden diadem, wielding the staff of authority or exercising the actual kingly authority.

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[6] A society without law is like a soup without salt. Apart from the appetizing aspect of salt, the preservative quality makes it an indispensible material in home economics. In the same vein, a society where the rule of law is in operation gives investors the appetite to invest in it on the hope that the preservative aspect of law would preserve their interests in the society by giving these interest the needed legal protection.

[7] A lawless society is unfit for human habitation. It is like living in the wild where no respect for life and civility is guaranteed.

[8] The idea which a society generates about what is crime is in most cases taken beyond the level of private or personal considerations and made to rest on corporate societal benefit. In this sense, it becomes easy to understand why crimes like arson, murder, rape and stealing, though they have personal considerations attached to them; but they are technically designed in order to promote security which is beneficial to a societal existence.

[9] The ring, placed greater emphasis, than Bentham, by means of taking Bentham's utility concept and emphasizing the more, the function of law as an instrument for serving the ends of human society. See Lloyd and Freeman, *Introduction to Jurisprudence,* London: Stevens & Sons Ltd., 1985, p. 553.

In the same vein, the law is born when it has come into force and soon after that time begins to rule the affairs of the society, community or state which has begotten it. On the basis of this assertion, any law that tends to regulate the affairs that took place before its birth is a social misfit, an aberration, barbaric and wicked[10]. It is at best good to be thrown into the trash can of rejection and by so doing send it to an everlasting oblivion and forgetfulness. Ad hominem, laws and legislations are reflective of the mindset of tyrants, authoritarian figures and callous people who exhibit the basest form of human depravity which is mostly reflected in envy and pride.

The loopholes existing in a legal system are not sufficient reasons why such laws as have been described above should be made. Loopholes in a system amount to a call or an invitation to plug them. What the law in any civil society has failed to give attention to can still secure the attention of the law the moment such loopholes come to the limelight and the operative date made to begin from the date when the law comes into effect[11]. In a situation where the position of the law shifts with respect to or in relation to a position of its subject matter[12] the date of the operation of the law[13] with respect to the new position should still be the date on which it comes into effect and should not be a date sooner than the time when the law was made. To buttress this point with a graphic representation, if X commits an offence bordering on drug trafficking and at the time of his offence the law proscribing the act of drug trafficking fixes the penalty for committing the offence is a certain term of imprisonment, it is only proper and legitimate that the law should be applied as it is to the offence of drug trafficking. Change of the position of the law on

[10] This is more applicable in a case where the *ex post factor* is targeted at certain persons in order to secure the legal template to warrant their execution, confiscate their properties or cause them to suffer certain loss, pain, deprivation or banishment in any form including extradition.

[11] According to Engels, "all the social, political and intellectual relations and legal systems, all the theoretical outlooks which emerge in the course of history... are derived from the material condition of life. See J. M. Elegido, *Jurisprudence, A Textbook for Nigerian Students,* Ibadan: Spectrum Law Publishing, 1994, p. 70.

[12] A shift in a position of a subject matter which is reflected on a negative aspect takes place in a situation where the law's earlier position on drug trafficking offenders which proscribes a certain term of imprisonment is suddenly changed and made to carry a death penalty.

[13] The word "jurisprudence" has been used to refer to the study and exposition of the rules and general principles of law, the study of the relations between law and other disciplines. See M.T. Ladan, *Introduction to Jurisprudence Classical and Islamic*, Lagos: Malthouse Press Limited, 2006, p. 1.

the subject of drug trafficking after X has committed the offence[14] of drug trafficking to the point where such offence is now made to carry a death penalty is, simply put, a perpetuation of tyranny and a reflection of barbarism and wickedness.

The import of the above unfortunate state of affairs is that life would be sacrificed on the pretext of using the law to sanitize a society. The sanitation of society is not an issue in this conceptualization; what is an issue is the timing of the new position of the law. It defeats the course of justice which is to the effect that there will be no crime without the law. The law is the mother of crime. The law creates crime[15]. Without it, crime cannot be created or revived. The revival of crime is in the creation of law. If all laws are banished, crimes and offences against the law cannot be in further existence. This informed the reason why crimes differ from one society to another or from state to state. Abortion may be a crime in one state; whereas, in another state it is not. Again, capital punishment may constitute a penalty in one jurisdiction, but in another jurisdiction, it may not be so. This observation is with the aim of strengthening the position that crime is a creation of the law; the law itself is a light which provides a legitimate guide in the conduct of general or particular affairs.

The nature[16] of law is basically captured in this article as a light which possesses both normative and legitimate qualities that make the guide which it

[14] The word crime is synonymous with the word offence and both words are interchangeable. A crime is an act or omission which under any written law is deemed to be a crime, thus attracting punishment. The hallmark of a crime, therefore, is the singular criterion of the act or omission complained of or alleged, being designated a crime in a statute, be it an act of the federation, a law of a state, an edict of a state or a bye-law of a local government. See O. Doherty *Criminal Procedure in Nigeria*, *Law and Practice,* London: Blackstone Press Limited, 1990, p. 1.

[15] See S.2 of the Criminal Code Cap C38, Laws of the Federation, 2004. This section defines an offence as an act or omission which renders the person doing the act or making the omission liable to punishment under this code, or under any Act, or Laws. See also the Money Laundering Act 2004; the Advanced Fee Fraud and other Related offences Act 1995; the Failed Banks (Recovery of Debt and Financial Mal-practices in Banks Act, as amended; the Banks and other Financial Institutions Act 1991, as amended; Miscellaneous Offences Act, the Penal Code, Criminal Procedure Code.

[16] There are some observable features that are unique only to law. For instance, law essentially consists of a body of rules. Some laws have both moral and legal contents. See T.O. Dada, General Principles of Law, T.O. Dada and Co., Lagos: 1998, p.1.; D.P.P.V. Shaw (1961) I. A. ER. 230 which dealt with prostitution and living in its profits. Law varies with

provides a binding guide and the scope of its application a limitless one. Making law to assume the nature of the command of the sovereign the breach of which attracts sanctions is an attempt at limiting the law to only those which have sanctions attached to them. Such laws are found in the criminal system of modern jurisdictions. However, from observable facts, it is not all laws that have the string of sanctions attached to them. This fact provides a sufficient ground upon which this preposition of law as constitutive of sanctions is impeached.

On the aspect of law emanating from the spirit of the people both living and dead, the proponents of this view maintains that law emanates from the practices of the people[17]. This refers to the customs of the people. Customary rules, no doubt, constitute a source of law both in the Nigerian legal systems and other jurisdictions like England where common law could best be described as a relation to customary law and shares a similar origin, character and nature. These are the practices of the people over a period of time commonly accepted as law. It is a notable fact that customary law is not the only source of law in modern judicial systems. Therefore, the historical school of jurisprudence provided a restrictive definition of law taking into consideration their position as to the nature of law.

In a different perception[18], the realists maintain that law emanates from both the decision of the courts and from legislative actions. It is true that case laws

societies as captured in the decision of *Mohammed v. Knott* (1969) I.Q.B.I. which related to the minimum age of marriage from culture to culture.

[17] Even though the source of law is very important, the legitimacy of law is more important. A law that emanates from a questionable or illegitimate source cannot attract obedience. Law could be sources from the practices of the people and these practices accepted over a period of time to provide the light guiding social relations and other types of existing relations in a society. Moreover, the law provides a light as per what happens or what should be done during the breach, disobedience or flouting of legal rules or principles. Procedurally, the law provides the light on what procedure to follow in other to claim a right or in order to carry out an obligation. Therefore, the intrinsic nature of law is all about the provision of a guiding light to the human society.

[18] A disturbing feature relating to law as a concept is the non-acceptance of the fact that law itself and some of the principles connected with it are said to have no generally accepted definitions, thus, giving the impression that either the subjects are too hard to comprehend holistically or that the people proffering the definitions are too rigid and egocentric as to permit the acceptance of definitions which have the propensity to be developed with time into more comprehensive definitions relating to those subjects. From whichever angle one looks at law, it points to the fact that law is a legal light emanating from a legitimate source for the guidance of man.

which are created by judicial precedents constitute a valid source of law and legislative actions in relation to law making equally provide the bedrock of creating laws in modern legal systems. Be that as it may, legislation constitutes a source of a legal system, so also are case laws.

The sociological school on its own perception of law adopts a utilitarian approach to the definition of law; law, in this context, is a tool for the balancing of existing interests in a society[19]. In the same vein, law is applied as a tool in order to resolve conflicting interests in a society. It is therefore a guide to society in handling societal affairs, but the perception does not reflect the constitutive element of practices which are consistently accepted as a guide and on the basis of this qualify as a law.

The natural law protagonists, on their own presentation, submit that law must be in accord with reason[20]. According to this position, unreasonable laws are no laws and as such should not attract obedience. The ideal law according to them is that law which is in accord with reason. This view accepts law to be a guide. The only grouse it has with the definition of law is that it must be done with limitation of law to be that which is both normative and rational. Defining law to include any irrational element is unacceptable to the natural law protagonists.

On a different note, the Economic school perceives of law as that which is used as a tool to protect the economic interests of the law makers. It sees law as an instrument of oppression of the masses by the ruling class. In other words, law is only a guide to the extent that it points the way of the masters to the slaves or servants and guide their unwilling feet in the path wherein their oppressive masters want them to walk[21].

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[19] Conflicts arise where human interests exist. The peaceful resolution of these conflicts advance, to a large extent, societal cohesion, stability and progress. The law provides the legal light by which conflicts are resolved and without which the society may be fractured, dismembered and these would eventually lead to its collapse. The fact that the string of the perception of law as that which concerns itself with interests harmonization emanates from the sociological school of jurisprudence does not cancel the truth that the nature of law, generally conceived, is reflected in the legal light that it provides.

[20] An unreasonable law, at worst, can shine on unreasonable light. The fact remains that it is, after all said and done, providing a light to a pathway which may be an unpopular pathway or subject matter.

[21] Socialist states adopt this kind of view about law. The welfarist approach of these states is founded on a clear concept of utilitarianism, that is, using the law to serve the needs of the general members of the society. This approach is severally antagonistic to capitalism which empowers those who control the means of production.

An analysis of the foregoing positions would reveal the fact that the different positions maintain that law is basically a light guiding the society or state on how to handle their affairs[22] whether general or particular in nature. However, the approach encourages segmented views of law which have common link one with another. The graphic representation of the views is that they are like the coaches of a locomotive engine which are not pulled along together by a common engine or sharing the same rail line. Each coach has its own engine and a separate rail line[23].

The definition of law as a legal light reflected from a legitimate source and coded in letters or practices is one that embraces all known perceptions or views on law and about law. Law must emanate from a legitimate source – the king in the form of decrees, the legislature in the form of Laws and Acts, the local people in form of customs, and individuals in the form of a formidable contract – in order to qualify as a legitimate and binding guide to all persons in a given society or state. It is this legitimacy, for instance, that adds power to the decrees or words of a king which the people follow as a guide when handling affairs that are of a general or particular nature. The point being made here is that the binding nature of law is based on its legitimacy. An unbinding rule is no legitimate law. In this sense one can say that moral obligations are no laws until they are incorporated into law through a legitimate source.

A society without law[24] is like a child left on his own without any form of guide. The absence of law in a given society promotes anarchy. Even societies regulated by law still have human elements in them who do not believe in law and social institutions. Such individuals walk in their own

[22] Affairs within a domestic jurisdiction are handled by the provisions of domestic law, while the affairs of international nature are handled by international law.

[23] The veracity of the assertion is embedded in the different views of the natural, positive, realist, sociological, historical, economic and the anthropological schools of law. Each school spends energy trying to establish the fact that its own perception of law is a better perception than the rest. In fairness to these schools, they made valuable contribution to the understanding of law, though on a segmented basis. A critical appraisal of each of the positions maintained by each of these schools reveals the truth that law is a binding legal light providing a pathway to follow in legitimate relations, procedure, practices or decisions.

[24] All human societies have systems of law. A system of law that a community of people or a human society recognizes as legally binding on them is a legitimate legal system. The whole legal system of a community shines a legal light on how affairs in that community should be handled, the consequence that follows a breach of the legal rule arising from that legal system and on permissible range of acceptable behaviours in that community.

chosen ways and deliberately walk against the provisions of the law. Armed robbers, ritualists, arsonists and terrorists are within this visible classification. The operations of these individuals show a lack of regard for the laws which forbid such operations. The effect of these operations is an unpredictable state of general or particular affairs, an opposite of the objective of law which is to leave a predictable state of affairs subject to a consistent obedience to the law[25].

Where law is totally extinguished or wholly absent, there cannot be a light to guide anymore and such a place or society remains in legal darkness with everyone groping in the dark until such a light is shone to guide. The law of the Sea, for instance, came to guide sovereign states on the use of the sea and the belt of the waters that could be subjected to national jurisdiction. This guide, acceptable by the comity of nations has helped in no small measures in regulating all issues relating to the rights of states over territorial waters and other belts of the sea.

**Conclusion**

The need to define a subject matter is a crucial one because of the essentiality of understanding the nature of such a subject matter. Multiple definitions of a single subject by different protagonists would very likely make the protagonists unduly antagonistic of one another thus leaving their audience in a state of avoidable confusion. Another side of the story is that such confusion would generate a negative attitude towards the study of a subject matter with multiple opposing definitions. Actually, this is one of the problems of Jurisprudence especially as it relates to legal theories and this makes the study a dreaded branch of legal knowledge to some students and lawyers who see the course as stinking to the nostrils. The truth is that law provides the legal light that illuminates the pathway of every human society both ancient and modern. The form that it takes notwithstanding, it must emanate from a legitimate source. This new definitive approach to law would help law students, law teachers, lawyers, judges and jurists to come to a better understanding of law in their quest to promote the rule of law and justice.

[25] The knowledge of the position of law on any matter strengthens the predictability of the outcome of a breach of law which provides the urge to avoid the breach of law and walk in line with the guidance provided by law. This facilitates consistency of behaviour which is a bedrock for the thriving of law and order in a society.