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THERELEVANCEOF
SOCIOLOGICALJURISPRUDENCE TO
NIGERIAN LEGAL SYSTEM

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THE RELEVANCE OF SOCIOLOGICAL JURISPRUDENCE TO NIGERIAN LEGAL SYSTEM

INTRODUCTION

Following the clue left by the historical school, legal philosophers of both the 19th and the 20th centuries departed from the World of metaphysics in legal thinking and adopted the line of Comte (1798-1857), that the advancement of human knowledge can only be enjoyed by application of the empirical method of observation and experiment. They began by asking not so much of what law is but what purpose it serves and is meant to serve in society. These factors gave birth to the sociological school of jurisprudence which has since become the dominant feature of modern jurisprudence. According to Professor Ogwurike:

"Unlike analytical positivism sociological jurisprudence teaches a fundamental principle that law is made for man and not man for law. What is made for man is for his comfort and progress, and law ought to meet these ends. Since man's life and values in society are not static, law which controls that life and those values, must not be made to stand still. It must encourage and advance movement and progress. The task of the law giver is to balance the evolutionary process of society with revolutionary concepts for rapid development. In this way social mobility and progress can be achieved without unbalancing social solidarity."

As Professor Friedmann once observed:

"The law must, especially in contemporary conditions of articles law making by legislators, courts, and others, respond to change if it is to fulfill its functions as a paramount instrument of social order."

According to him:

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"The major assumption is, first, that the law is not a breathing omnipotence in the sky but a flexible instrument of social order dependent on the political values of the society which it purports to regulate..."

And in the words of Professor T. O. Elias:

"Aseming consensus among leading jurists is that law does not exist in vacuo, that it is the result of life in society. Law exists to serve certain social interests, but becomes sterile when divorced from its milieu and conceptualized as Austin and his school have done."

The gravemen of this article therefore is to examine the theories that have been put forward by certain sociological jurists in regard to the function law performs or should perform and to consider their relevance to the administration of law in Nigeria by looking into some aspects of our law. For our present purposes we propose to examine the pure sociological theories put forward by DUGUIT and EHRlich.

1. DUGUIT (1985 - 1928)

Leon Duguit is a writer whose postulates detaches the idea of law from metaphysical speculations. He attacked traditional conceptions of state sovereignty and law and sought to fashion a new approach to these matters from the angle of society. He uses social solidarity as the basis of his thesis. Since man is born in society and cannot exist outside it, Duguit takes to the view that no individual right can exist quite independent of society. Therefore, law can serve no end no useful purpose, except it is a social one.

Social life should be viewed, he insisted, as it is lived, so as to be able to extract the most accurate generalizations. The outstanding fact of society is the interdependence of men. This has always existed and becomes more...
the interdependence of men. This has always existed and becomes more and more widespread as life grows more complex and as man's mastery of the world increase, people have common needs which require concerted efforts; they have also dissimilar needs, which require mutual adjustment and accommodation. No one can live at the present time without depending on a far-reaching web of services provided by his fellowmen. Water, food, housing, clothing, recreation, entertainment and so on are dependent on other people. This social interdependence is not a conjecture, but an inescapable fact of human existence. Consequently, a rule of conduct known as law is imposed on man by the nature of his living in society, that he must so act that he does nothing which may be prejudicial to the social solidarity upon which he depends. More positively, he must do all that which lies within his power and which naturally tends to promote social solidarity for his ultimate good.¹

One of Duguit's main thesis is that all institutions are to be judged according to how they contribute towards social solidarity. Thus, the duties imposed by the principle of social solidarity are binding on every member of society, including corporate body known as the state. Both the ruler and the ruled as well as the state are subject to law and are bound by it. The state cannot therefore claim any special position or privilege. The state is only one form of human organization. So long as the command of the state is issued in furtherance of social solidarity, there is a duty to obey, uphold and encourage it. When the state deviates from the main function of achieving and promoting social solidarity, the citizen is justified to disobey the law and revolt against it.

Thus, neither the State nor sovereignty is sacrosanct and indispensable. As a social organisation of human beings, the State's existence is functional and all State powers does not extend beyond the functions they perform in society. They are therefore restricted by the principle of solidarity. Thus where constitutional checks and balances and other legal means, such as the judge's power to quash legislation fail to keep the State powers in check, revolution is the only alternative to the citizens to correct oppression and tyranny of the rulers and steer society back to normal course to attain its main goal.

In Duguit's view, as sovereignty disappears there disappears also the authority traditionally ascribed to laws, for the basis on which these were thought to rest is sapped of vitality. If sovereignty is mytical, so too are the notions that a law is

1. the command of the sovereign, single and individual;  
2. unchangeable; and  
3. the product of a single creative act

The point which emerges from Duguit's analysis is that the criteria for legal validity is based on social solidarity. He asserted that a precept which does not further social solidarity is not law, and denied that status and decisions make laws in themselves. There are three formative laws, namely, respect for property, freedom of contract, and no liability without fault. The precepts of positive law conform to these formative laws and they can only achieve validity when received and approved by the mass of the public opinion.

A rule of law exists wherever the mass of individuals composing the group understands and admits that reaction against the violation of the rule can be socially organised.

Thus, legal development should be centered around the mass of public opinion so that, in this way, the gap between that Ehrlich called the living law and the formal law can be narrowed down.

One criticism leveled against Duguit is that his social facts with respect to his theory of social solidarity are facts of a high metaphysical order.¹⁰ The

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second criticism is against his acceptance of public opinion as a measure by which the validity of laws should be judged. This has been said to be vague and obviously unsatisfactory in nature.

2. **EHRLICH (1962 – 1922)**

Eugene Ehrlich was primarily concerned with social basis of law. For him laws derived from social facts and depends not on state authority but on social compulsion. His thesis was the formally stated rules of law are insufficient to govern the life of a people in society. What is important is the actual behaviour of man in society.

He drew a distinction between norms of decision, which correspond to that which is traditionally understood to be laws and norms of conduct, which govern life in society.

Thus for Ehrlich the real source of law is not status or reported cases but the activities of society. There is a "living law" underlying the formal rules of the legal system. Thus, a commercial usage may develop, but it is only after the lapse of sometime that courts will acknowledge it and import it into contracts. Eventually it may become embodied in status, but by this time modifications of it and fresh usages may have developed. So the process goes on. There will always be an inevitable gap between the norms of formal law and of actual behaviour. The point Ehrlich was trying to make was that the "living law" of society has to be sought outside the confines of formal legal materials which is, as Ehrlich insists, in permanent evolution, always outspacing the rigid and immobile State Law.

In Ehrlich's view, the knowledge of the living law has an independent value, and this consist in the fact that it constitute the foundation of the legal order of human society. In order to acquire a knowledge of this order we must know the usages, relation of domination, legal relations, contracts, articles of association, declarations by last will and testament quite independently of the question whether they have already found expression in a judicial decision or in a statute or whether they will ever find it. Ehrlich thus minimize the place of legislation as a formative factor in law.

A statute which is habitually disregarded is no part of the living law in Ehrlich's thesis. He sees no difference between the sources of efficiency of formal legal norms and norms of customs and morality. Both derive efficacy from social pressure. According to him, enforcement by state is not the distinction between formal and living law; the difference resides in social psychology. Some types of rules evoke different feeling from others. So there are many reasons why a person obeys even a legal rule other than fear of state enforced sanction. Ehrlich summarizes his thesis as follows:

"At present as well as at any other time, the centre of gravity of legal development lies not in legislation, nor in juristic science, nor in judicial decisions, but in society itself." 17

Thus like other sociological jurists Ehrlich rejects any _a priori_ notion of law. 16

Some of the examples in English law where English practice differs from the formal law, are mainly in the field of commerce. These include the Marine Insurance Act, 1906 and The Money Lender's Act, 1900. There is constant neglect of the provisions of the Acts by the people. According to Professor C. K. Allen, the most curious thing abut the practice is that even individuals who are adversely affected by the breach fail to bring cases to court to avail themselves of the relief offered by the Act.

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11. R. W. M. Dias, Op Cit p. 438
15. See C. Ogwurike, Concept of Law... Op Cit. P. 129
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J. C. D. Lawrence records that among the Iteso of Uganda, the maximum limit for marriage payment fixed by law is being evaded "wholesale". The men, he says, find it profitable to pay the legal penalty of one hundred and fifty shillings in the unlikely even of being detected. 17 on the other hand, a chief edit prohibiting bride-price among the Ngwato of Bechuanaland has been seen to be effective. 18 this is presumably on the basis that the edict is expressive of the people's wish.

Other examples abound where peoples practices deviated from the formalised legal norms thus rendering the letter inefficacious. We shall not examine the Nigerian situation fully under obsolete laws. To be binding and efficacious therefore, law must be dictated by the social order, which is an expression of the collective purpose and power of society.

SOCIOLOGICAL JURISPRUDENCE AND ITS APPLICATION TO NIGERIA: OBSOLETE LAWS

It is generally agreed that a society, any society is in a constant state of flux. It is ever changing and dynamic in the struggle for survival within the matrix of its own environment. Each society is defined by the repetitive interactions between its members peculiar to its form of social organisation. For instance, Nigeria differs from China because its members interact differently than do the Chinese.

A society changes when there is a change in the patterns in which these repetitive interactions occur. Thus, as the structure of human relationships in society, any law which does not reflect the social sentiment may be enforceable only as a valid formal law, nevertheless, it is generally regarded by the people's as not naturally binding. For example, an act of parliament may conform with all legislative procedure and receive the Royal assent (i.e. the

assent of the Head of State) which makes it valid, but in as much as it goes against the social sentiment which is the soul of legal efficacy, it is regarded as not binding. Such an act can, however, be enforced (unless there is a successful rebellion against it in the meantime).

But, our laws should be able to effect desirable changes in our value system rather than violating the status quo. This has to be so in a dynamic society such as ours where the most constant phenomenon is change itself. Regrettably however this has not always been so in the Nigerian situation where there are still so many unrealistic and irrelevant laws existing in some of our statute books. According to one learned writer:

"...And it is true that the actual state of legal system in Nigeria leaves much to be desired. The legal system has remained static and unresponsive to desired social change. This is primarily because the legal system is made up of obsolete rules of law and archaic statues that were largely meant to nurture a colonial society. This immutable situation is discernible in most Third World countries where law fails to induce the observance of prescribed social behaviour.

Consequently, we would agree with Ehrlich that analytical positivism which limits the scope of jurisprudence to a study of the formal law is not only narrow but unrealistic, as it denies law its dynamism which stems from society itself. In fact no true study can be made of law without an understanding of the social milieu. As Ehrlich succinctly puts it:

"The centre of gravity of legal development lies not in legislation, nor in juristic science, nor in judicial decision, but in society itself."

Our aim here is to highlight some areas of our laws that are (in our humble view) not in accord with present societal values and invariably need complete repeal or amendment in accordance with the sociological school. We cannot conceivably catalogue all the areas that need attention. Such an exercise is in any event not desirable for our present purposes. The law Reform Commission is to address this issue in greater detail.

17. Lawrence, J. C. D. The Iteso (1957) pp 202-203
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CRIMINAL LAW

The State creates more crimes in accordance with developments which follows changes in the social habits of the society. This view is supported by Friedmann when he said:

"The state of the criminal law continues to be as it should be a mirror reflection of the social consciousness of society. What kind of conduct an organized community considers at a given time is sufficiently condamnable to impose official sanctions, is pairing the life, liberty, or property of the offender, is a barometer of the moral and social thinking of a community. Hence the criminal law is particularly sensitive to changes in the social structure and social thinking."

Unfortunately however, the Nigerian criminal law cannot be said to be sensitive to changes in the social structures and social thinking of our people. In fact since the enactment of the criminal code well over 40 years ago, it has remained so with so many of its provisions becoming irrelevant and obsolete to our society. We shall address some of them.

BIGAMY

Section 370 of the Criminal Code provides for the offence of bigamy. The section states:

"Any person who, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, is guilty of felony, and is liable to imprisonment for seven years.

This section does not extend to any person whose marriage with such husband or wife has been dissolved or declared void by a court of competent jurisdiction in or to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been absent from such person for the space of seven years, and shall have been heard of by such person as being alive within that time."

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Despite this provision, in actual fact, a man married under the Marriage Act often takes more wives under the customary law. Although this is contrary to law, our society which is polygamous conscious often condones this offence and it is not thereby uncommon to find a Marriage Act wife living peaceably and harmoniously under the same roof with those other strange women who are recognised by the family. It is noteworthy that since the enactment of the Criminal Code over 40 years ago only one case on bigamy has been reported. This is the case of R. v. Princewill. According to the learned trial judge Reed J:

"I have not been referred to, and I have been unable to find reported cases on Section 370 of the criminal code. In my experience on the bench, first as a Magistrate and then as a judge since 1946, I have not seen a prosecution under this section."

In Ghana Dr. Allot discovered only one reported case of bigamy which turned out "at a closer inspection not to be a case of true bigamy as defined, but of marrying by customary law after being married under the ordinance."

Thus it is clear that the law of bigamy does not reflect the social sentiments of the present society. After all it is not antisocial for a man to have several wives. The law is clearly obsolete and should be repealed. Professor Okonkwo observed with great solemnity:

"The question arises as to what is the purpose of this branch of the law. If a man may lawfully take two wives under one form of marriage why is he punished for doing the same thing under another form of marriage? Is this a question of morals or of form?"

24. (1963) N. R. N. L. R. 54; see also (1963) 2 ALL. N. L. R. 31
25. Ibid at p. 55
And as Professor T. O. Elias has rightly pointed out:

"It is unthinkable in our society for a wife who has children to deliberately go to court to prosecute her husband for bigamy, which if proved will lead to the imprisonment of the father of her children." 28

Indeed Dr. Aguda has also queried the wisdom of the continued retention of the offence of bigamy in our criminal code when he said:

"If we agree that Christianity prescribes monogamy, why must the criminal law punish in a very severe way someone who decides to practice polygamy by marrying two wives in a country such as ours where plural marriages are practiced?" 29

**ATTEMPTED SUICIDE**

Section 327 of the Criminal Code provides that:

"Any person who attempts to kill himself is guilty of a misdemeanor and is liable to imprisonment for one year."

It is suggested that this provision be abolished: imprisonment can never be the answer to a person who attempts suicide because he has lost the will power to make the necessary adjustment to his changing environment. There is no known case in Nigeria where this offence has been prosecuted and more over, attempted suicide is no longer an offence in England. 30

**BURIAL IN HOUSES**

Section 246 of the Criminal Code provides that:

"Any person who without the consent of the Governor-General or Governor buries or attempts to bury any corpse in any house, building premises, yards of any dwelling house, or in any open space situated within a township, is guilty of a misdemeanor and is liable to imprisonment for six months."

However, it is a matter of everyday practice to see women soliciting persons for the purposes of prostitution. This law has had little or no effect for whether it is worth. The society tends to turn a blind eye to this practice. In fact there has been constant pressure brought to bear on the legislature to legalise this practice. There is in fact an association of prostitutes in Nigeria and they feel they have a right to do their business without interference from the government. Some countries have legalised prostitution since the practice still flourished inspite of laws against it. This averts other related problems and a prostitute feels free to seek medical advice and treatment without the fear of being prosecuted.

**ABORTION**

Section 228, 229 and 230 of the Criminal Code deal with abortion and makes it an offence. Section 228 provides that:

"Any person who administers to a woman who is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever is guilty of a felony, and is liable to imprisonment for 14 years."
And by section 229:

"Any woman who, with intent to procure her own miscarriage, whether she is or is not with child, unlawfully administers to herself any poison or other noxious thing or places any force of any kind, or uses any other means whatsoever, or permits any such thing or means to be administered or used to her, is guilty of a felony, and is liable to imprisonment for seven years."

Section 230 goes on to provide that:

"Any person who unlawfully supplies to or procures for any person anything whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman whether she is or is not with child, is guilty of a felony, and is liable to imprisonment for three years."

Although these laws exist in the statute book, abortion is committed every day in Nigeria. Abortion has been the cause of death of so many young girls. The fact is that since abortion is made illegal and girls tend to resort to quack means of getting ridd of unwanted pregnancies or resort to quack doctors who are incompetent to perform the operation. There has thus been a great outcry in recent times by many well meaning Nigerians for the legalisation of abortion so that it can be done without fear of prosecution and could be freely done so that lives may be saved.

In recent times there has been a lot of debates as to whether it should be legalised or not. It is suggested since the practice goes on unabated in the society, a fact which is common knowledge to everyday, abortion should be legalised in our society, so far as unwanted children are not desirable for the vices and hazards they may engender. We should be able to draw inspiration from the United States and other countries where this has been done.

The American States have adopted the recommendations of the American Model Penal Code, which proposes a considerable liberalisation of the prevailing laws. The British Abortion Law of 1967 adopted these recommendations but goes further permitting abortion in circumstances which may be described as "social indication" i.e., consideration of family circumstances. Some of the American States including the State of New York in 1970 have gone even further by making abortion a matter of consent between the woman and her doctor. This explosion or legislative reforms in the field of abortion is a remarkable illustration of the way in which changes in moral values and social thinking first modify the administration and interpretation of the law, but eventually force a more systematic, i.e legislative, change. Unfortunately, this is not so in Nigeria. The "living Law" has to be reflected in the "formal law" to bring this desired change.

SLAUGHTERING OF ANIMALS

Section 41 of the Public Health Act provides for ways and means by which animals can be slaughtered for food. The section provides thus:

(a) A Governor may make rules for his Region;
(b) A local authority of a township of the first class or a township of the second class in respect of the said township may make by-laws and
(c) A native authority, in respect of the area for which it has been appointed, may make rules, with regard to-:
1. Licensing slaughter house and regulating the slaughter of animals intended for the food or man and use of slaughter house.
2. Regulating the preparation and sales of meat.

However, we find this law violated daily. A ram or goat is slaughtered for food without authority or license. Animals are slaughtered for ceremonies without permission.

Thus, the sociological jurist will denounce this kind of law as not being a useful law of the people since it is habitually disregarded.

LIMITATION OF BRIDE PRICE

It is a well-established principle of customary law in Nigeria that the payment of bride-price or dowry is essential for a valid customary marriage. Bride-price has been accurately defined as:
Generally, customary law does not fix the quantum of bride price for customary law marriage. The quantum varies from one locality to another. Sometimes, the amount of bride price may be the subject of negotiation between the two families. In other cases, the man’s family is merely asked to pay what it considers fit and proper for a daughter-in-law. In some cases, the bride price paid reflects the affluence of the suitor or his family.

However, in parts of Nigeria, there are statutory limitation on the amount of bride-price payable in respect of customary law marriages. The Limitation of Dowry Law 1956 regulates the quantum of bride price or dowry in Eastern Nigeria. This law fixes the amount or value of bride price in respect of customary law marriage at sixty-naira (N60), where no incidental expenses of the marriage are paid. But where there are incidental expenses, the amount of bride price must not exceed fifty naira (N50) and the incidental expenses should not exceed the sum of ten naira (N10) in amount or value.

It is an offence to pay or to receive as bride price any amount in excess of the maximum prescribed by the law. Moreover, it is also an offence to incur any incidental expenses above the maximum figure of ten naira. The offence is punishable on conviction, with a six months imprisonment.

In Uganda, the maximum limit for marriage payment among the Iteso is being evaded “wholesale”. The men finds it profitable to pay the legal penalty of one hundred and fifty shillings in the unlikely event of being detected. On the other hand a Chief’s edict prohibiting-bridal price among the Ngwato of Bechuana land has been seen to be effective presumably because the edict is expressive of the people’s wish.

32. Section 2, limitation of Dowry Law Cap. 76, Laws of Eastern Nigeria, 1964 CE. The definition in section 2 of the Marriage and Custody of Children Adoptive By-Laws Order 1958, “a customary gift made by a husband to or in respect of a woman at or before marriage.”

33. Section 3 (b)

34. This refers to the market value in the locality in which the marriage is intended to take place or has taken place.

35. Section 4(a) & (b)

36. See schedule A

37. Section 4 (c)

38. WRIN 456 of 1958

39. See Schedule A

40. Section 4 (f)

41. Section 5 (1)

42. Section 5 (1) – The Sadaki is the dower of Islamic Law


44. See J. C. D. Lawrence. The Iteko, 1957 pp. 202-203

The limitation of bride price by law contrary to the sentiments of the society becomes obsolete and irrelevant since it is habitually disregarded.

"Osu" System Law

Customary law in some parts of Nigeria prohibits the intermarriage of so-called "free citizens" and members of some castes, for instance, a slave.

An Osu is, *inter alia*, a person who is a slave or has been offered symbolically in sacrifice to idols, or a descendent of such a person. The Osu is therefore subject to some legal or social disability or social stigma. But this obnoxious rule which established the Osu and disable them from freely marrying other members of the community has been to all intents and purposes, abrogated in the Eastern States by the Abolition of the Osu System Law 1956.

The law abolished for all time the Osu system, and made it unlawful. The Osu system is defined to include:

"...any system, status, institution or practice which impairs that any person is subject to the legal or social disability or stigma which is similar to, or nearly similar to, that borne by an Osu."

Henceforth, all persons who are previously regarded as Osu are free from the handicaps of that status, and are able to exercise all the rights and privileges of other members of the community. The law makes it an offence punishable with a fine of one hundred naira or six months imprisonment for any person to enforce any disability whatsoever relating to marriage against another on the ground of the Osu system. Furthermore, it is an offence to preclude anyone from the observance of any social custom, usage or ceremony. The abatement of this offence is also punishment.

Thus the abolition of the Osu system law 1956 seems very irrelevant to the sentiments of the people in the areas where Osu system is practiced. For that society, it is not their "living law". No wonder it is habitually disregarded.

CONCLUSION

In this work our aim had been primarily to assess the relevance of the postulates of sociological school of jurisprudence vis-à-vis the Nigerian legal system. We have done this in the main by extraction of rationale from some aspects of the Nigerian law.

There is no equivocation from our discussion that the sociological school of jurisprudence has great relevance to the Nigerian legal system. We have found out that, under Nigeria law, there are so many laws that were made without taking into account the daily habits, ethos and cultural practices of the people for which such laws were made. Consequently, these laws have become obsolete and are habitually disobeyed. We have accordingly called for the complete repeal or amendment of these laws to bring them in line with the present societal and cultural values of our people.

The adequacy of law and its suitability of any given society lies in its harmonious effect and tranquility it brings to the order it serves. Law must
command obedience to itself, not by reliance on state forces to coerce obedience to it, but by the fact of it being the accepted popular venue for ushering in the popular goal and bringing fulfillment and satisfaction to the wants and desires of the people. In Nigeria therefore our laws must be made to reflect at any point in time our habits and value system. As Professor Okuniga correctly observed:

"It is lucidly demonstrable that the vast majority of the teeming population of this country—perhaps not less than 90% thereof—do regulate their lives by the indigenous laws of the land. So the indigenous law is still a strong force to reckon with in our legal order."

It is submitted that "indigenous laws" in this context refers to the customs or habits of the people and it is akin to Ehrlich’s concept of the “living law”.

In the words of James Coolidge Carter:

"Law is not a common or body of commands, but consist of rules springing from the social standard of justice, or from the habits and customs from which that standard has itself been derived... a statute which conflicts with customs or habits cannot be enforced and is really a nullity."

Thus, breaches of law in spite of very formidable state forces to coerce obedience, prove to us that there are primary social factors, whose primacy are quite independent of the law. They can generate forces to oppose any law that is not in harmony with social values which they dictate. It is these factors that prove the substratum of any social order.

As Professor Ogwurizke aptly appraise the sociological school:

"There is much that we can draw from the postulates of the writer of sociological jurisprudence. The first is that law must have a function, and that functions must be for the interest and security of the society. Secondly, that since society is..."

52 A.A.O Okuniga, Transplants and Mongrels and the Law: The Nigeria Experiment. An Inaugural Lecture delivered at the University of Ile-Ife on 17th May, 1983, p. 21


54 Emphasis supplied

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made of individuals with varied interest, social harm any dem and that these interests be not suppressed or submerged, but rather balanced, in such away that social solidarity can be achieved and maintained. Thirdly, since society is always forward-looking, law, as an instrument of social change should be progressive. New values ought to be infused into the law for social advancement and progress, but the values, to be effective and not hamper the efficacy of the law, must be expressive of the people’s general will, and be such as will enhance the achievement of the new aspirations."

We entirely agree with Professor T. O. Elias when he declared that:

"Never before in the long history of human thought has law had to face a more challenging situation than that in contemporary Nigeria. The prevailing social and economic forces call for a lawyer who is at once a social engineer and an analyst, a pericles and a plumber, capable of appreciating the values of existing institutions and mores and yet even ready to make a dynamic contribution to the maintenance of a proper balance between the need for stability and the need for change, between the claims of the state and those of the individuals. Law and society should be engaged in a continuous dialogue both as to the choice of means and as to the end of view."