Pound's Sociological Theory of Law and Its Implications for National Development: The Nigerian Experience

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Abstract

Society/nation states are organized under certain rules, laws, customs, norms and values; and these are intricately crucial to the maintenance of public morality and achieve national development. The making (or finding) of a law presupposes some mental picture of what one does, is doing and why is so. In the stage of equity and natural law, the prevailing theory of the nature of law seems to answer the question as to its end—even though this has been a subject of debate among Western thinkers since the ancient Greeks. Thus with colonial encounter and post-colonial experience, Africa has been wallowing in the deepest sea of legal pluralism and uncertainty. Yet, in its more than centenary history before, and sixteen (16) decades after the embarrassing intrusion of the west into it, Africa had maintained a steady social, economic, legal and socio-political order vivified by high moral standards and responsibility—an order lacking in contemporary times. Many have attributed this to the embracement of Western legal system/order that represents rebarbative legal fictions and largely neglect certain basic African norms, values and public moral order. The situation has led to several adverse social-political and constitutional infamies that seem irredeemable. Thus the role of people-centered legal-order in the democratic consolidation of Nigeria cannot be overstated. Hence Pound's legal theory has immense implications for meeting this standard. Consequently, this article adopts qualitative/analytical procedure to

examine Pound's theory and discovers that his exposes that for a law to be people-oriented, it must be seen to have sprung from the interest and aspirations of the people it is meant to guide. By implication, the Nigerian legal order must reflect principles that stem from the citizens' interests and aspirations for their common good. The work winds up suggesting a prompt recourse to the route that could lead to the generation of such order, perhaps through an independent constitutional confab.

Key words: Development, law, national development, Nigeria, Pound.

Introduction

Society/nation states are organized under certain basic norms and values: rules, laws, and principles; and these are intricately crucial to the maintenance of public morality and to achieve national development. The making (or finding) of a law presupposes some mental picture of what one does, is doing and why is so. In the stage of equity and natural law, the prevailing theory of the nature of law seems to answer the question as to its end—which had been a subject of debate among Western thinkers since the ancient Greeks. Thus with colonial encounter and post-colonial experience, Africa has been wallowing in the deepest sea of legal pluralism and uncertainty. Yet, in its more than centenary history before, and sixteen (16) decades after the embarrassing intrusion of the West into it, Africa had maintained steady social, economic, legal and socio-political order vivified by high moral standards and responsibility—an order lacking in contemporary times. Many have attributed this to the embracement of Western legal system/order that represents rebarbative legal fictions and largely neglect certain basic African norms, values and public moral order. The situation has led to several adverse social-political and constitutional infamies that seem irredeemable. Thus the role of people-centered legal-order in the democratic consolidation of Nigeria cannot be overstated.

Hence Pound's legal theory has immense implications for meeting this standard in Nigeria. Accordingly, it is necessary to examine Pound's theory in order to espouse what it takes for a system of law to be people-oriented—which is that it must be seen to have sprung from the interest and aspirations of the people it is meant to guide. By implication, the Nigerian legal order (which has never met this proviso, historically) must be adjusted to reflect principles that stem from the citizens' interests and aspirations for their common good.

As Williams (2006) rightly observes, "…as an intellectual discipline, jurisprudence has attracted the least of intense cerebral attention in contemporary studies on Africa." Every society is governed by certain rules (the law), customs, norms and values; and these are

intricately crucial to the maintenance of public morality. Invariably, to some, there is a public morality which provides the cement of any human society; the law, especially the criminal law, must regard it as a primary function to reflect and maintain this public morality.

All primitive societies more or less apprehend and operate within the framework of natural law but a conscious and reflective appreciation of the moral content of natural law makes a man to be philosophical. No doubt, ideas about what law is for are so largely implicit in ideas about what law is. Accordingly, a brief survey of the ideas about the nature of law from such standpoint could be useful. Plato, Aristotle, Cicero, and the Stoics were classical theorists of the nature of law. Cicero, for instance, held that "true law is right reason in agreement with nature…" (Yakubu, 2000, 4). It is pertinent to point out here that the term, natural law is not wholly compatible with or exhausted by the law of nature. Laws of nature, (for instance, the law of gravitation and motion) are used analogically, for law is a code or ordinance which guides behavior. Irrational creatures, being irrational, cannot recognize and promulgate to themselves any natural law. For present purposes, law is taken to mean the:

> aggregate of legislation, judicial precedents, and accepted legal principles; …the body of rules, standards, and principles that the court of a particular jurisdiction apply…." It is "the written or unwritten body of rules largely derived from custom and formal enactment which are recognized as binding among those persons who constitute a community or state, so that they shall be imposed upon and enforced among those persons as appropriate sanctions (Garner, 2009, 962).

Law, Legal Order and the Judiciary: A Terse Review of the Nigerian Experience

No doubt, the judiciary is one important arm of any democracy and its role is immense. In fact, the effectiveness of any democratic state lies in her unique system of laws amid an independent judiciary (Oluwadayisi, 2016). A cursory look at the history of the Nigerian legal system and the judiciary reveals that it has four distinct historical phases: pre- 1842; 1845-1912; 1914-1953; and 1954 till date.

Agreeably, before the British conquest, the country now known as Nigeria existed as independent kingdoms, communities, clans and tribes. Disputes were commonplace during the time given the quest for expansion which was prevalent among the people and kings (Edefe, 2012). To that extent, the mechanism for dispute resolution and social engineering was as sophisticated but less contentious as it has become in modern times.

Among the Yoruba, for instance, through an effective checks and balances, the head of the family would resolve disputes within it; or refer unresolved cases to the head of the compound—in case the judgement delivered at the family level was unacceptable to the parties until it got to the palace of the Oba who gave final judgment (Ali, n.d). Similarly, among the Ibo (although without a centralized system as some other tribe), they managed to settle their disputes from the family level to the village elders who usually gathered at the *Obi* to deliver their judgement (Okonkwo, 2010). Also, among the Hausa/Fulani, with a well-structured checks and balances, laws which had their roots from Sharia were administered by *Alkalis* in the scattered court systems with the emir as the highest judge (Ali, n.d). What this shows is that the place of the justice system was recognized at the time. After 1842, under colonialism, the powers to dispense justice were vested in the native courts. These courts created taxation systems, instituted sentencing policies—including death sentence and civil laws/procedures (Edefe, 2012). Moreover, these courts served as the precursors to the extant Customary Area (and Sharia) Courts. In fact, the arrival of the British between 1843 and 1913 meant that various courts were established in the Southern part of the country through a combination of Foreign Jurisdiction Act (1843/1893). By 1854, various courts known as *Courts of Equity* were established by the British in the South especially in Opobo, Benin, Brass and Okirika (Ali, n.d). The composition of these courts was mainly the principal agents of trading firms, consular or administrative officers. Further, these Courts of Equity functioned side by side with the courts established by Royal Niger Company which were given the powers to administer justice on the basis of the agreement established with the British government until it was revoked in 1899 (Edefe, 2012; Ali, n.d). Interestingly, despite the British courts, the native courts were allowed to exist so long they were not repugnant to natural justice, equity and good conscience. Following the Ordinance No. 11 of 1863, the Supreme Court of Lagos was established to handle both civil and criminal matters (Ogbu, 2007). In 1900, through the Supreme Court Proclamation Order No. 6, a Supreme Court was established for the Southern Nigerian protectorate which had jurisdiction over matters as vested Her Majesty's High Court of Justice in England. Common Law, doctrines of Equity and general application of laws in England were to apply by the court so long they were compatible with the domestic circumstances (Ogbu, 2007).

The North operated the Sharia Law in its entirety before 1892 (Nwankwo, 2010). However, the British Crown by the Order-in-Council (1899) took over the administration of the North, with Sir Henry Gollan appointed (1901) the Chief Justice of Northern Nigeria—even though such powers hitherto rested with the Commissioner for Northern Region by Northern Order in Council (1899). By virtue of the order, the Commissioner issued the *Protectorate Courts Proclamation* (1900), which led to the establishment of Supreme Court,

Provincial Court and Cantonment or Magistrate Courts (Ali, n.d). The High Commissioner also issued the *Native Courts Proclamation Order* (1900), which established a new system of Native Courts for the territory. The Native Courts were presided over by an Alkali, the higher grade called Judicial Council was presided over by an Emir (Ali, nd.; Ogbu,2007). That arrangement lasted until 1914 when both Southern and Northern protectorates were merged, named Nigeria. To that extent, the Provincial Courts were abolished and replaced with High Courts, followed by Magistrate Courts and Native Courts. The Supreme Court exercised an appellate jurisdiction over the High Courts; so that between 1934 and 1954, appeals from the Supreme Court went to the West African Court of Appeal and appeal from the West African Court of Appeal went to the Privy Council, England (Obilade, 1979). By 1954, following the creation of the Regions, a Federal Supreme Court was established that received appeals from the High Courts that operated at each of the Regions (Edefe, 2012). Appeals from the Magistrate Courts and Customary or Native Courts (Grade A) went to the regional High Courts (Obilade, 1979). In 1967, each of the twelve (12) states in the federation had its own judiciary. The Western state through the Court of Appeal Edict, No.15 1969 established a regional Court of Appeal (Ali, n.d). By this, the Supreme Court stopped entertaining appeals from the High Court of the State. Furthermore, to determine the revenue of the government, the Federal Revenue Court was established by the Federal Revenue Court Decree No 13 of 1975 (Obilade, 1979).

Nigeria's 1999 Constitution, the courts recognized as constituting the judiciary are the Supreme Court, Court of Appeal, Federal High Court, the High Court of the Federal Capital Territory Abuja, the Customary Court of Appeal, Abuja, State High Courts, Sharia Court of Appeal of the States and the Customary Court of Appeal of the states (Ogbu, 2007). The establishment of Sharia Court of Appeal of a state or Customary Court of Appeal of a state is optional (Ali, n.d). Moreover, these courts reserve powers to hear and entertain matters in accordance with their respective jurisdictions. Nevertheless, led by sound professionals to assure sound judgment, the Constitution presumed that it would deepen democracy in Nigeria (Oputa, 2003). Unfortunately, neither the colonial nor post-colonial devolution of law and legal order has achieved the desired goal nor hope of deepening or consolidating democracy in Nigeria; and such has been the bane of her national development.

National Development

Development implies advancement and growth in any organized states, not merely quantitative but also in qualitative terms: establishment of structures, and building of attitudes/institutions—economic, social, political, religious, and legal. Under-development is the absence of these. Development is positive in nature. In some sense, development

implies a comparative state of affairs: between past state of the same society, or between two or more societies—a matter of per capita income. Development is also a "strategy of spatial reorganization crucial for the whole process of political mobilization and central state control of the planning of productive forces, not necessarily centralized at just a point" (Uroh, 1998). This means that development is the exploitation of nature, education, human capacity for social up-lifting. Human development connotes enhancement of man's thought and rationality, purity, and being; the moral uprightness of individuals. A society of moral individuals is already one with a foundation for infrastructural development—involving the provision of amenities, services, and other physical and technological structures for man's use. Whether in human or infrastructural aspects, the aim of development is utilitarian: to provide man with basic necessities of life (food, shelter, clothing, and security); to free man from all forms of human misery, ignorance, servitude, and dependence. Hence purposive national development plan must reflect those two ideals—human and material.

According to Anyaebe, Abdulkadir and Alabi (2020, 53), development implies "advancement, improvement and progress in all facets of human endeavors". Hence they hold national development (ND) refers to a "state of change in conditions or situations within a particular nation to better ones…denotes positive changes or improvements in some or all aspects of the national life of a country". Hence ND does involve policies, programmes and actions designed towards problem-solving of national challenges, so as to ensure effective performance of governmental agencies, the private sector and the entire citizenry. Nevertheless, a state's legal order is the foremost pedestal to assure its ND. Pound proposes a nature for such order.

Pound on the Nature of Law: A General Historical Survey

Pound begins his theory by reviewing the nature of law in a historical matrix. What follows (in this section) is an abridged re-print of Pound's work on law as it appeared *in* A. K. Bierman and J. Gold (1969, 345-257). According to him, "First, we may put the idea of a divinely ordained rule or set of rules for human action, as for example, the Mosiac law, or Hammurabi's code, handed him ready made by the god, or Manu, dictated to the sages by Manu's son Bhrigu in Manu's presence and by his direction. Second, there is an idea of law as tradition of the old customs which have proved acceptable to the gods and hence point the way in which man may walk with safety. For primitive man, surrounded by what seem vengeful and capricious powers of nature, is in continual fear of giving offense to these powers and thus bringing down their wrath upon himself and his fellows. The general security requires that men do only those things and do then only in the way which long customs have shown at least not displeasing to the gods. Law is the traditional or recorded

body of precepts in which that custom is preserved and expressed. Whenever we find a body of primitive law possessed as a class tradition by a political oligarchy it is likely to be thought of in this way, just as a body of like tradition in the custody of priesthood is certain to be thought of as divinely revealed. A third and closely related idea conceives the law as the recorded wisdom of the wise men of old who had learned the safe course or the divinely approved course for human conduct. When a traditional custom of decision and custom of action has been reduced to writing in a primitive code it is likely to be thought of in this way, and Demosthenes in the fourth century B.C. could describe the law of Athens in these terms.

Fourth, law may be conceived as a philosophically discovered system of principles which express the nature of things, to which, therefore, man ought to conform his conduct. Such was the idea of the Roman juris consult. Grafted, it is true, on the second and third ideas and on a political theory of law as the command of the Roman people, but reconciled with them by conceiving of tradition and recorded wisdom and command of the people as mere declarations or reflections of the philosophically ascertained principles, to be measured and shaped and interpreted and eked out thereby. In the hands of philosophers the foregoing conception often takes another form so that, fifth, law is looked upon as a body of ascertainment and declarations of an external and immutable moral code. Sixth, there is an idea of law as a body of agreements of men in politically organized society as to their relations with each other. This is a democratic version of the identification of law with rules of law and hence with the enactments and decrees of the city-state which is discussed in the platonic Minos. Not unnaturally Demosthenes suggests it to an Athenian jury. Very likely in such a theory a philosophical idea would support the political idea and the inherent moral obligation of a promise would be invoked to show why men should keep the agreements made in their popular assemblies.

Seventh, law has been thought of as a reflection of the divine reason governing the universe; a reflection of that part which determines the "ought" addressed by that reason to human beings as moral entities, in distinction from the "must" which it addresses to the rest of creation. Such was the conception of Thomas Aquinas, which had great currency down to the seventeenth century and has had much influence ever since. Eight, law has been conceived as a body of commands of the sovereign authority in a politically organized society as to how men should conduct themselves therein; resting ultimately on whatever basis was held to be behind the authority of that sovereign—so thought the Roman jurists of the Republic and of the classical period with respect to positive law. And as the emperor had the sovereignty of the Roman people devolved upon him, the Institutes of Justinian could lay down that the will of the emperor had the force of a law. Such a mode of thought

was congenial to the lawyers who were active in support of royal authority in the centralizing French monarchy of the sixteenth and seventeenth centuries and through them passed into public law. It seemed to fit the circumstances of parliamentary supremacy in England after 1688 and became the orthodox English juristic theory. Also it could be made to fit a political theory of popular sovereignty in which the people were thought of succeeding to the sovereignty of parliament at the American Revolution or of the French king at the French Revolution.

A ninth idea of law takes it to be a system of precepts discovered by human experience whereby the individual human will may realize the most complete freedom possible consistently with the like freedom of will of others. This idea, held in one form or another by the historical school, divided the allegiance of jurists with the theory of law as command of the sovereign during almost the whole of the past century. It assumed that the human experience by which legal principles were discovered was determined in some inevitable way. It was not a matter of conscious human endeavor. The process was determined by the unfolding of an idea of right and justice or an idea of liberty which was realizing itself in human administration of justice, or by the operation of biological or psychological laws or of race characters, whose necessary result was the system of law of the time and people in question. Again, tenth, men have thought of law as a system of principles, discovered philosophically and developed in detail by juristic writing and judicial decision, where by external life of man is measured by reason, or in another phase, whereby the will of the individual in action is harmonized with those of his fellow men. This mode of thought appeared in the nineteenth century after the natural- law theory in the form in which it had prevailed for two centuries had been abandoned and philosophy was called upon to provide a critique for systematic arrangement and development details.

Eleventh, law has been thought of as a body or system of rules imposed on men in society by the dominant class for the time being in furtherance, conscious or unconscious, of its own interest. This economic interpretation of law takes many forms. In an idealistic form it thinks of the inevitable unfolding of an economic idea. In a mechanical sociological form it thinks of class struggle or a struggle for existence in terms of economics, and of law as the result of the operation of forces or laws involved in or determining such struggles. In a positivist-analytical form it thinks of law as the command of the sovereign, but of that command as determined in its economic content by the will of the dominant social class, determined in turn by its own interest. All of these forms belong to transition from the stability of the maturity of law to a new period of growth. When the idea of the self-sufficiency of law gives way and men seek to relate jurisprudence to the other social sciences, the relation to economics challenges attention at once. Moreover in a time of

copious legislation the enacted rule is easily taken as a type of legal precept and an attempt to frame a theory of legislative lawmaking is taken to give an account of all law.

Finally, twelfth, there is an idea of law as made up of the dictates of economic or social laws with respect to the conduct of men in society, discovered by observation, expressed in precepts worked out through human experience of what would work and what not in administration of justice. This type of theory likewise belongs to the end of the nineteenth century, when men had begun to look for physical or biological bases, discoverable by observation, in place of metaphysical bases, discoverable by philosophical reflection. Another form finds some ultimate social fact by observation and develops the logical implications of that fact much after the manner of the metaphysical jurist. This again results from the tendency in recent years to unify the social sciences and consequent attention to sociological theories.

Each of the following foregoing theories of law was in the first instance an attempt at a rational explanation of the law of the time and place or of some striking element therein and each with a clearly philosophically ascertainable principles moreover having some to explain or expand the endeavor to understand it and to state it rationally and in so doing work out the theory of what it is hence each of the theories reflects the institution which it was devised to rationalize, even thou they were placed in universal terms yet there are some common elements in the foregoing twelve pictures of what law is for instance that of some ultimate basis, beyond reach of the individual human will, that stands fast in the whirl of change of which life is made of whether that basis is thought of as divine pleasure or will or reason, immediately revealed by an agent or moral code similarly we find in those theories of the nature of law a picture of a determinate and mechanically absolute mode of proceeding from the fixed and absolute starting point.

Today, a newer a broader idea of security is appearing at a time when the world seems o longer to afford boundless opportunities, which men only need freedom to realize, in order to be assured of their reasonable expectations, and if it turn to ideas which have obtained in conscious thinking about the end of law, we will recognize three which have held the ground necessarily in legal history and a fourth which is beginning to assert itself. The first and simplest idea is that law exists in order to keep the peace in a given society "to keep the peace at any event and at any price this is the conception of what may be called the stage of primitive law". It pulls satisfaction of the social wants of the general security, for the purpose of the legal/social order: such as the clash of kin interest. Later Greek philosophers came to conceive of the general security in broader terms and the think of the end of the legal order as preservation of the social status quo, it came to think of maintain

the general security mediately through the security of social institutions an d so they thought of law as a device to keep each man in its appointed groove and does prevent friction with his fellows; adulating the virtue of *sophrosyne* and avoiding the vice *hybris* in the mind.

The second approach is platonic that law is meant to maintain the social order and order that must follow individual and social justice that is holding each individual to its appointed duty however the third approach saw Roman lawyers who turned the Greek Philosophical conception into a three precepts of juristic theory reducible to Justinian Institute (that everyone is to live honorably, preserve the moral worth in his own person. Everyone is to respect the personality of others and everyone is to render to everyone else his own that is respect the acquired rights of others.

In the medieval era the above ancient conception of law came back with Germanic law because it was thought of to meet the needs of the medieval societies, in which men have found relief from anarchy and violence in relations to service and protection in social organizations which classified men in terms of such relations and required them to be held to their functions as so determined but in the feudal social order reciprocal duties involves in relations to establish by tradition and taken to rest on authority where the significant legal institutions. But with development in more human activities there became the need to maintain different levels of the social order, but this marked the beginning of consideration of the end of law coming to be conceived as a making possible of the maximum of individual free self-assertion.

Spanish jurist astrologers of the 16th century introduced newer modes of thinking the end of law theirs was based on one of the natural limits of activities in relations with individual with each other that is, of limits to human action which expressed the rational ideal of man as a moral creature and which were imposed on men by reason so as against the Greeks the 16th century jurist of the counter reformation held that men's activities were naturally limited and hence that positive law might and should other men's activities limit because all men have freedom of will and ability to direct themselves to conscious ends . so this jurist thought of natural ideal equality hence law did not exist to maintain status quo and arbitrary restraint on individual will rather it existed to maintain the natural equality which often was threatened or impelled by the traditional restrictions on individual activities therefore law as a securing of natural quality became law as a securing right Kant rationalized the law as a system of principles or universal rules, to be applied to the human action whereby the freewill of the actor coexist along with the freewill of anyone else. Hegel rationalized it as the system of principles wherein and whereby the idea of liberty

was realizing in human experience. Bentham rationalized it as a body of rules laid down and enforced by the state authority or the sovereign, whereby the maximum of happiness which coexist in terms of free self-assertion was secured to each individual, Spencer rationalized it as a body of rules formulating the government of the living by the dead in all of this the end of law is to secure the greatest possible general individual self-assertion; to let men do freely anything they may consistently in a like freedom for their fellow men. Over the centuries law has been put to three main uses: (1) as a means of clearing way the restraints upon free economic activities. (2) It has been used as a constructive idea. 3. It has been used as a stabilizing idea. Consequently law has helped to maintain economic social political order in contemporary times, jurist has begun to think the end of law in terms of human wants or desires or expectations rather than of human wills three elements account for this, 1. the dictates by developments in psychology and economics; 2. in differentiation of society involved in industrial organization this revival of judicial idealism is a precursor to gaze social Unitarianism and natural law philosophy of the 17th and 18th centuries both which have the attention fixed upon the phenomena of growth and conscious improvement of law as. Neo-Kantians put it that law must consider time and place; as the new Hegelians put it we may need to discover and formulate the *Jural Postulates.* In all of his, Pound sees the end of law as satisfying the whole body of human wants" as a social institution to satisfy human wants" and a mode to secure social control as a continually more efficacious social engineering."

Pound and His Sociological Approach to Law

Within the purview of sociology, law is regarded as a sociological phenomenon which reflects human needs and aspirations. The term 'Sociology' is the study of the behavioral pattern of people in relation to their environment or surrounding. Thus, Faris defined sociology as "a branch of the science of human behavior that seeks to discover the effects that arises in social interactions among persons and in the intercommunication and interaction among persons and group" (Cahill, 1952, 18). The Sociological school of law is a collection of academics and practitioners committed to the study of law as a social phenomenon. In other words, Sociological approach to jurisprudence is the study of law in its social setting or as a social institution. In his mechanical jurisprudence (1908), Roscoe Pound explains that Sociological Movement in jurisprudence is:

> A movement for pragmatism as a philosophy of law; for the adjustment of principles and doctrines to the human condition they are govern rather To assume first principle; for putting the factor in central place and Regulating logic to its position as an instrument.

From the above, it can be said that the sociological school of jurisprudence considers law or legal development from the perspective of the people in the society. Perceiving law as a social phenomenon, it posits the harmonization of law with the wishes and aspirations of the people. In order words, it is insist on the harmony between law and the interest of the people, hence, if law becomes inconsistent with the people or even violates their interest or aspirations such law is not worth it; it is not people-oriented. Thus "the sociological approach to law offers a window for legislators and reformers to take to account the interest of the people…" (Rosen, 1972, 31). This means that the sociological approach to law considers the *here* and *now* of these people. This is unlike the historical approach that looks at the past or the history of the people. In order to do justice to the topic, we shall be considering the theories of Roscoe Pound in relation to law.

Roscoe Pound, who was a dean in Harvard Law School, is known to have been the most influential proponent of the American Jurisprudence. He essentially saw law as a social institution created and designed to satisfy human (individual and social) wants. He argued that traditional scholarship focused almost exclusively on the law in the textbook to the detriment of law in action. Law in action refers to the law that actually reflects the current behavior of the people. In other words, he was of the view that the society should be focal point of law and legal development, that the social mass must be able to influence the law that regulates their behavior. This approach has the potential to, in the long run, eliminate UNJUST laws. Essential features of the legal order were the securing and protection of various (often competing) interests in the society. He dwelt much on interest, and in his outlines of lectures on jurisprudence (1943), he defined interest as:

> A demand or expectation which human beings either indirectly or in groups, or associations, or relations, seek to satisfy…. Therefore, the adjustment of human relations and ordering of Human behavior through the force of a politically organized Society must take account.

In carrying out his studies, Pound reached the conclusion that his sociological jurisprudence would focus more on how law develops due to the link between law and society rather than an analysis and interpretation of statutes and cases. To understand his actual theory, one needs not to be disturbed by the wealth of information to be found in more than a century's worth off academic. Pound's actual contribution to the school of sociological jurisprudence indeed lies in his discussion on "Legal interest" and "jural postulates".

Pound on Legal Interests

According to Pound, there are three categories of legal interests, namely, individual, public and social interests.

Individual Interests According to Roscoe Pound, individual interests are demands or desires from the stand point off the individual life" (Rumble, 1968, 42). They include (consists of interests relating to an individual's physical and spiritual existence; for example, physical security, freedom of will, privacy and sensibility, beliefs and opinions); domestic relations (including interest off parents and children and the protection of marriage); and substance (composing interest off property, succession testamentary disposition, freedom of industry, contract and association, that is, those claims or demands 'asserted by individuals in title of the individual economic existence').

Public Interests These are "demand or desires involved or looked at from the view point of life in a politically organized society, asserted in title of political life" (Rumble, 42). They include the interest of the state considered as a juristic person (a legal entity), that is, its integrity, freedom of action and security, as well as the interest of the state considered as the guardian of social interests

Social Interests Social Interests are those 'wide demands and desires involved in or looked at from the standpoint off life in a civilized society and asserted in title of social life" (Rumble, 43). Suh social interests enumerated by pound are many and they comprise:

a. General security, including claims to peace and order (against those actions likely to threaten the very existence of society), safety, health, security off transaction and acquisition;
b. Security of social institutions (domestic, religious, political and economic);
c. general morals, that is security of social life against acts offensive to general moral sentiments;
d. Conservation of social resources, for example, the use and conservation of natural resources, protection and education of dependent and defectives, as well as protection of thee economically dependent;
e. General progress which is the assertion of the social group toward higher and more complete development of human power, including economic progress (freedom of property, trade industry), political progress (freedom of criticism), cultural progress (freedom of science, improvement of education and aesthetic surrounding); and
f. Individual life, involving the claim or demand of each individual to live a full life according to societal standards.

With the above array of interest in society, it is only a matter of course that contention, conflict and controversies could arise. How then does pond expect those interests to harmoniously exist in the society? His response is that law is rarely about reconciling, harmonizing or compromising these conflicting interests either through securing them directly and immediately or through securing certain individual interest so as to give effect to the greatest number of interests, or to the interest that weigh most in our civilization with the lease sacrifice of other interests. All he appeared to be saying is that, if all interests cannot be prioritized over others and enforced with minimum collateral damage to non-priority interests" (Freeman, 2001, 141).

Pound was of the opinion that "the concern of the law is to satisfy as many interest as possible" and to resolve any conflict amongst the categories of interest he had identified (Dhyani, 1984, 23). This leads us to the *jural postulates* of Roscoe Pound.

Pound on Jural Postulates

In order to evaluate the conflicting interest in due order of priority, Pound suggested that every society has certain basic assumptions upon which its ordering rest, though most of the time, they may be impolicity formulated. He used social engineering as a metaphor. According to him, law is an instrument off social engineering, for balancing competing individual, public and social interest within the society. In doing so, pound argued that the tools of rules, principles, conceptions and standards must be employed. Pound noted as a society progress, "new interest" will emerge evolve. Notice that international human rights law has witnessed the evolving of new generational human rights. Recognition of such interest would be realized subsequently to their being tested by reference to "jural postulates" of a civilized society. These postulates embody societal values. Such reference would enable legislators to consider possible modification of values through legislative reforms. And according to Pound, pursuant to the postulates, the citizens in a civilized society are entitled to assume the following six postulates as follows:

A: *Jural Postulate 1* In a civilized society, man must be able to assume that others will commit no intentional aggression upon them.

B: *Jural Postulate 2* In a civilized society, man must be able to assume that they may control for beneficial purposes what they have discovered and appropriated to their own use, what they have discovered created and acquired with their own labor under the existing social and economic order.

C: *Jural Postulate 3* In a civilized society, promises must be carried out in good and reasonable and unjust enrichment will be prevented as far possible.

D: *Jural Postulate 4* In a civilized society, persons engaged in a course of conduct must act due care so as not tto create unreasonable risk of harm to others.

E: *Jural Postulate 5* In a civilized society, citizens are entitled to assume that burden incident to social life must be borne by society; and

F: *Jural Postulate 6* In a civilized society, as a minimum matter, a standard human life shall be assured to every citizen.

It should be noted that Pound confessed that the above jural postulates are not absolute; they have a relative value. They are only a sort of ideal standard which law should pursue in a civilized society. They are of a changing nature and new postulates may emerge if the changes in the society so warrant. Thus, the jural postulates of Roscoe Pound provide guidelines for righteous and civilized life. They also seek to strike a synthesis between reality and idealism as well as power and social accountability of men in the community.

Pound, the Judiciary and Democratic Consolidation in Nigeria

The Nigerian judiciary has been implicated in various corruption dealings which tend to deconsolidate Nigerian democracy (UNODC, 2006). As noted in Enweremadu (2011), there are three basic measurements of the degree to which the judiciary contributes to the stability and quality of democratic consolidation. The first is the independence of the judiciary. By this is meant if the judiciary is not mired in special interest or beholden to any of the two or all of other branches of government, that is, the executive and legislature. The second is the competence and integrity of the judges so as to command universal respect and approval. The third is the availability of adequate facilities and qualified personnel. By this is meant whether the judges are professional and qualifies for the duties assigned to them (Enweremadu, 2011). A careful review of the 2003 and 2007 general elections exposes that the Nigerian Judiciary fell short of all of those requirements (Enweremadu, 2011). What this implies is that, first, the judicial arm is not independent by variety of ways, particularly by the way the judges are selected including their appointments, promotions and conditions of service and the use of 'pliable judges'; second, the glaring evidence of 'sectional bias' and corruption of the bench; and third, the use of inadequate judges and inability to dispense justice in record time impels litigants to seek out extra-constitutional means to secure justice (Enweremadu, 2011).

Conflicting and controversial judgments, corruption indictments and unnecessary delay in dispensing justice are indicated in Nigeria's legal history. For instance, in the Second Republic, elections conducted 1979 and 1983 were substantially marred by malpractices and election petitions flooded the election tribunals (Olurode, 1990; Enweremadu, 2011). Delayed justice led to the beckon on the military to intervene. So also was the annulment of 12 June, 1993 presidential elections.

During the return to democratic rule in 1999, it appeared that the judiciary undertook reforms that would repair substantially its previously damaged reputation even though there were pockets of corruption charges against some judges. According to Enweremadu (2011), three basic reforms are worth mentioning. The first involve some outstanding provisions of the 1999 constitution which provided for the establishment of two independent regulatory institutions, the NJC and the Federal Judicial Service Commission (FJSC). The second was the personal commitments of some CJNs, particularly the CJN, Justice Mohammad Uwais who undertook profound reforms in the judiciary by ensuring that every judge adhered to the prescription of Code of Conduct. The third was the heightened public awareness and the involvement of civil society, human rights activists and politicians from opposition parties. They usually raised alarm whenever any traces of corrupt practices were noticed (Enweremadu, 2011). This development ignited some hope that Pound's maxims would be integrated. Unfortunately, since 2010, it seems that the judiciary has returned integrity and fearlessness to the bin of partisan politics—with a delving into dispensation of justice for patronage executive politicians, indictments over corruption, and delayed justice.

Further challenges on the Nigeria judiciary to meeting ideal standards include is the lack of its independence despite constitutional uphold of the principle of separation of powers. Nigerian government seems to have forgotten this; this manifests in sack or arrests of judges by government. Another major challenge facing the judiciary is financial autonomy—with incessant strikes by Judiciary Staff Union of Nigeria (JUSUN) over financial autonomy of the arm which is also contained in sections 81 (3) and 121 (3) of the Constitution of Nigeria (FRN, 1999). Reluctance and inadequate judicial personnel are also responsible for delayed justice and backlog of cases.

Evaluation

It is a known fact that law is made for the people and not the people for the law. And until this is known among Nigerian legislators and those at the helm of affairs in Nigeria, the making and application of law will continually bee abused. A law that is anti-people cannot be accepted in a civilized society. For this reason, Roscoe Pound maintained that the social mass be able to influence the law that regulates their behavior. And this can only be effective through the use of public opinion. But Nigeria is a country where law makers formulae laws without the consideration for the masses; they have no regard for public opinion even on vital issues that pertains to the life and wellbeing of the people. But according to Pound, law should be a social institution created and designed to satisfy human (individual and societal) wants.

More so, the Nigerian legislators do not bridge the gap between law and society. If they do, then the various laws passed would have a reflection of the people's needs and aspirations. But what we see in Nigeria is the reverse; a situation where the law is seen as anti-people. In the Nigerian legislative system, we cannot draw a clear a cut harmony between law and the interest of the people. And if law becomes inconsistent with the people or even violates their interest or expectations, such law is not worth it; it is not people-oriented. The relations between the individual, society and the State have been changing and various theories regarding them have been proposed from time to time. In the beginning, society was governed by customs which had only social sanction. Then came the supremacy of the priests; then the secular state emerged and dominated all the institutions. As a reaction, the importance of citizens has been stressed by thinkers and philosophers. Thus the necessity of balancing the social and legal wellbeing of the society was realized.

And according to Pound, law "is social engineering which means a balance between the competing interests in society"; in which applied science are used for resolving individual and social problems. And for the purpose of maintaining the legal framework and its proper functioning, Pound maintained that certain interests need to be considered, and such interests include individual interests, public interests, as well as social interests. And in order to evaluate the conflicting interests in due order of priority, Pound suggested that every society has certain basic assumption upon which its ordering rests, though for most of the time they ,may be implicitly expressed. These assumptions may be called jural postulates of the legal system of that society. Finally, for a law to be people-oriented Pound maintains that it must reflect the needs and aspirations of the citizenry. But history reveals that the Nigerian legislative system falls short of this requirement, where obnoxious laws are passed without due consideration for the interests of the people. Pound values social values, but claims such are relative; he emphasizes engineering, but does not forsake the task of maintaining balance with rules derived from social research. Even though Pound seems to ignore the place of specific interest, he maintains *that where there* is a clash of interests, those whose interest weighs much more should have their way. But this utilitarian view of pound will be an injustice to the interest of the minorities. But Pound's take on interest could be moderated or aggregated for larger good.

Conclusion and Recommendations

The impact of the judiciary in the democratic consolidation of Nigeria cannot be overstated. Nigeria has been struggling since independence to craft a nation that drives through democratic principles. Instead, the state appears to be retrogressing in achieving this objective particularly given various military incursions into the Nigerian political

terrain. As the last hope of the common man, the judicial arm is reposed with confidence and trust of bridging the gap between a declining state and democratic erosion. But there have been glaring cases of abuse of authority through bribery, corruption and deliberate delay of cases which appeared to have further emboldened political interference into the activities of the supposedly independent arm. Instead of becoming a democratic consolidator, it appears the arm has become the reverse. Though the judiciary has been fingered in corrupt practices, it is not farfetched to see the systemic and structural challenges such as flagrant interference into the judiciary affairs by other arms and politicians, poor conditions of service, lack of financial autonomy and inadequate personnel and infrastructural development that have become both pull and push factors to indulging in corrupt activities.

The sociological jurisprudence of Roscoe Pound has contributed in no small measure to sociological school of jurisprudence. This is because his exposes the fact that for a law to be people-oriented, such law must be able to spring from the interest and aspirations of the people it is meant to guide. By implication, the Nigerian legislative system must be able to draft out laws that stem from the interests and aspirations of the people. What it meant by "interests" is the interest that lead to the "good'; that is, procedural justice towards a good political structure for public order.

Against this backdrop, the following recommendations are suggested.
First, the judiciary should be truly independent. This would mean establishing financial autonomy of the judiciary to enable it dispense justice without fear. The flagrant intrusion into the homes or offices of the judicial officers by the security agents on account of fighting corruption amounts to rascality and should be discouraged. Second, no worker works effectively in a poor environment. The executive reserves the responsibility to ensure that adequate infrastructure that would enhance justice dispensation is put in place. Third, the NJC should train and retrain judges on ethics and procedures. Training develops the mind for bigger challenges. Moreover, as justice delivery has gone technological, analogue judicial workers should be retrained in order to tackle court challenges effectively. Finally, and most importantly, Nigeria should ensure that all her system of law is predicated on and generated by a consideration for the general/common (rather than specific) interests of citizens.

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