



***“BRIDGING THE LEGAL, MORAL AND SOCIAL
INTERPRETATION OF LAW”***

Being a Lecture Delivered on Behalf of the Honourable, the Chief Justice of Nigeria, Hon. Justice Mahmud Mohammed, GCON, by Hon. Justice Ibrahim Tanko Muhammad, CFR, on the occasion of the Second Justice Anthony Aniagolu Memorial Lecture Series, Holding at Godfrey Okoye University Convocation Arena on 27 October 2016 at 12:00 PM.

I. PRAYER

Oh Lord, we are weak and imperfect, make us to be among the righteous and direct all our affairs through the right path. Oh Lord, enrich me with knowledge, adorn me with piety and beautify me with health and knowledge and ease my tongue so that I can be properly understood.

II. PREAMBLE

I feel greatly honoured to be given the privileged task of serving as guest lecturer at this august occasion. We are here to celebrate the memory and legacy of a distinguished Jurist, trail blazer and legal luminary, in the person of the late Hon. Justice Anthony Aniagolu, JSC, whose unrivalled contribution to the Nation's jurisprudence and administration of justice, is certainly worthy of note and recognition.

It is on record that his lordship Justice Aniagolu, JSC was a colossus, serving his nation as a member of the Federal Electoral Commission of Nigeria from 1958 to 1965. In 1963, he became the Chairman of Eastern Nigeria Festival of Arts Committee. In 1975, his lordship was made acting Chief Judge of the East Central State, and upon the creation of Anambra State in 1976, became the pioneer Chief Judge of the State from 1976 to 1978 and was a justice of the Nigerian Supreme Court from 1978 to 1987. When the Nation needed an erudite leader to lead the dialogue on our system of Government in 1988, his lordship was chosen and went on to creditably chair the Constituent Assembly, which was selected to propose a draft constitution for Nigeria's Third Republic.

I must confess that as a young lawyer and Magistrate on the Bench, I was inspired by legal personalities such as his lordship, whose sound judgments helped to forge a strong Judiciary, which continues till this day, to benefit from the contributions of our forbears such as Justice Aniagolu. He dispensed Justice with a sense of decency, integrity and industry, which made us all proud of being lawyers and jurists.

His lordship has left an indelible mark upon the Courts and is still missed by the Nigerian Judiciary. It is my earnest prayer that the Almighty God will continue to grant him rest from his labours while comforting his family with the solace to bear the irreplaceable loss of their patriarch, though five years later.

I wish to express my gratitude to the Vice Chancellor of the Godfrey Okoye University, Reverend Father Professor Christian Anieke for the kind invitation. An examination of the ultra modern facilities and cleanliness of the Campus tends to show that, doubtless, Reverend Father Anieke is not only a consummate professional and cleric, but also an administrator *par excellence* and an academic of some repute. I am also thankful to the Organising Committee and the family of late Justice Aniagolu, for counting me worthy of this honour. I greet all the dignitaries here gathered and duly observe all protocols.

III. INTRODUCTION

I am particularly delighted by the choice of this topic, "*BRIDGING THE LEGAL, MORAL AND SOCIAL INTERPRETATION OF LAW*", which acts as a confluence for the three primary motivations that propel and sometimes challenge the interpretations made by Judges in any Court. Needless to say, the chance to address you all on a topic which arouses passions within us all and, I am sure, within all members and indeed friends of our noble legal profession, is certainly welcome, especially as the Nation strives to define a new paradigm for law and order as well as restructure itself to meet the desire for justice.

No doubt, recent acts of disorder and insurgency in the nation have highlighted the difficulties that surround the law, enforcement of that law and indeed the interpretation of the law. In the course of this lecture, I will be defining some of the operative terms of the Lecture topic, while also putting forward a narrative that revolves around the issues and policy options that we all need to be particular about. Suffice it to say that this Lecture will be restricted to the evolution of the Judiciary, an evaluation of the various jurisprudential views of the purpose of the Law and the manner in which it should be viewed and applied. I must of course add the caveat that some of the issues raised in this lecture are of a philosophical nature but nevertheless tie into the dialogue, which I hope to generate with this paper.

Now, in the course of my presentation, it is essential to start with us gaining an insight into what law is. The nature of all laws presupposes that law is a unique socio-political phenomenon, utilised to control human behaviour to the attainment of an imagined or real purpose. A discussion on the philosophy of law also assumes that law possesses certain features, and it possesses them by its very nature, or essence, as law, whenever and wherever it happens to exist.

Law, however, is also a normative social practice: it purports to guide human behaviour, giving rise to reasons for action. However, Law is not the only normative domain in our culture; morality, religion, social conventions, etiquette, and so on, it also guides human conduct in many ways which are similar to it. Therefore, part of what is involved in the understanding of the nature of law consists in an explanation of how law differs from these similar normative domains, how it interacts with them, and whether its intelligibility depends on other normative orders, like morality or social conventions.

IV. EXAMINING THE MORAL INTERPRETATION OF THE LAW

The law is, in part, a reflection of the morals of every society and has historically formed the mould from which our earliest laws were sculpted. In the earliest discovered law- the Code of Lipid-Ishtar 1868-1875 BC¹, we see an attempt to introduce a sense of restorative justice to the crime of common theft where for instance we see the provision that *"If a man entered the orchard of (another) man and was seized there for stealing, he shall pay ten shekels of silver"*.

By contrast, we see a more Mosaic retributive approach much later on in humanity's history especially in the middle ages of our history and up until relatively recently. Based on the oldest of jurisprudence, it was echoed by famous philosophers in the 19th Century² and posits that a person who commits a crime must be punished so as to send out a message to the public as to society's repugnance at the deviant behaviour which the sanction seeks to punish. In other words, *"an eye for an eye, tooth for a tooth"*³. This policy, which was a darling of past governments in Europe and the Americas of the 1980s and turn of the century, has its basic code defined as follows:

¹ A law discovered in the Code of Hammurabi, the ancient king of Babylon, Mesopotamia, which can be accessed via <http://avalon.law.yale.edu/ancient/hamframe.asp>, accessed on 05 October 2016 at 09:04am

² Please see: Kant, Immanuel "Metaphysics of Morality" referred to in Pages 174-175 of Martin, Jacqueline (2005) "THE ENGLISH SYSTEM", 4TH EDITION, Hodder Arnold Publishers. See also: Andre, C and Velasquez S, (2008) "The Just World theory" Santa Clara University, retrieved on 31/08/2012 from <http://www.scu.edu/ethics/publications/lie/v3n2/justworld.html>

³ Deuteronomy 19:17-21. This equates with Islamic Law provision in Quran Chapter 5:45, which stipulates, equally, an eye for an eye, tooth for tooth.

"A retributive theory of Criminal Punishment proposes reduced judicial discretion in sentencing and (proposes) specific sentences for criminal acts without previous regard to individual defendant"

More recently, prominent philosophers and legal theorists including John Finnis and Michael Moore have argued for the idea that legal punishment is (at least partly) justified.⁵ This is premised upon the notion that the wrongdoer, in this case a thief, has done some act that gave him undue advantage over the wronged and therefore needed punishment to redress that balance and discourage further deviation from the established law, which provided that moral balance.

There can be a number of issues about the relationship between morality and law in a pluralistic, and nominally secular democracy like Nigeria. Among them are whether legislation should reflect moral principles, whether judges should interpret laws in light of moral values and principles, whether laws should enforce morality, whether laws are binding if they do not reflect moral principles, whether it is moral or not to disobey bad laws, and what gives law its authority, but to name a few.

Sometimes morality is confused with religion and that may not necessarily be untrue. Indeed, the Code of Hammurabi begins with a rendition of vainglorious praise for the gods of his time, along with an attempt to claim a divine mandate for his rules, hence at least proving that the Code itself is a repository of the society's morals at this time. However, for purposes of this paper, it will not matter whether someone's moral principles are based on religious doctrine or commands or not. The important traits will be the soundness, and perceived soundness, of any moral principles, not their genesis.

In interpreting the law, a Court is guided by what I recently called "*the law as is and as it ought to be*". Nevertheless, when we are faced with incidents that sear our conscience like a hot knife, then how do we expect our courts to react? Permit me to give a practical example.

⁴West's Encyclopaedia of American Law 2008, 2nd Edition, copyright by The Gale Group Inc, USA

⁵Article by Rodgers, Miriam "On Retributive Justice" accessible on http://oxford.academia.edu/MiriamRodgers/Papers/112975/On_Retributive_Justice, accessed on 4th September 2012

In the event that there is a sexual assault on the campus of a University and the victim is seriously injured or the assault involves multiple assailants, then what role should morality play in the mind of a Judge? For obvious reasons, there will be anger in the society, indignation by civil rights groups and a demand for justice to be done. The law prescribes stiff penalties but also affords sufficient discretion to the Judge to determine the quantum according to the law.

In the United States this year, a famous University's star swimmer and Olympic hopeful, Brock Turner was convicted of sexually assaulting a fellow student while drunk. He was convicted of this offence but was sentenced to only six months imprisonment, with a mandatory order to register as a sex offender for life and face three years of supervised probation. As if this was not enough, after three months he was released, though disgraced and unable to ever represent his country in swimming. However, it bears reminding that this is a young man with his life ahead of him. He had a scholarship and was probably set to become a success in life.

It is impossible to know how any other person would have acted if they were the Judge but clearly this offended the moral sentiments of the society and led to criticism of the Judiciary. However, one should ask the question that "*when we pass judgment, are we obliged to bridge a moral gap, or do justice?*", in other words, should justice be premised on what society considers as just? Is the society sufficiently equipped with the facts necessary to make such Judgment calls? What if the culprit has shown remorse and promised restitution, should he then be harshly punished as the retributive model of punishment posits? Doubtless the parents of the victim or other persons sympathetic to him or her would rightly think so.

So how does the Judge bridge this gap? Well there are a few considerations that must be borne in mind. Firstly, some laws are managerial or administrative in that they institute behaviour for procedural purposes that could, from a moral or socially useful point of view, have been written in a different way so as to accommodate others. The common example is traffic rules about which side of the road one is to drive on or prescribing a ban on hawking on the streets. It does not matter from a moral standpoint, which law a country adopts as long as the choice of law is made among equally right (e.g., safety) options, though once chosen by law, it is generally prudent, and morally obligatory without some good reason to the contrary for us to abide by the choice. So it would not be morally wrong for a Judge to punish a person

