

AN ANALYSIS OF THE HISTORICAL DEVELOPMENT OF THE RULE OF LAW AND THE CONTRIBUTION OF EARLY PHILOSOPHERS

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Abstract

The rule of law has been an important ideal in our political tradition for millennia (several thousands of years). It is impossible to grasp and evaluate modern understandings of it without fathoming the historical heritage. Indeed the concept of the rule of law has evolved from the ancient Greek Scholars, through Medieval Scholars till now. This paper appraises the historical background of the rule of law as well as the application of same in Nigeria. However, the paper highlights gaps in the application of the rule of law and provides recommendations to be adopted by stakeholders in the justice sector.

Keywords: Historical; Development; Rule of Law; Contribution; Early Philosophers.

1. Introduction

In order to safeguard the rights of the citizenry, promote accountability, transparency and other essential virtues of a decent and just society, it is necessary to promote, strengthen and protect the integrity of our judicial system as well as the integrity of the individual adjudicator that is charged with the onerous responsibility of the dispensation of justice.

A judiciary of undisputed integrity is the bedrock institution essential for ensuring compliance with democracy and the rule of law. Even when all other protections fail, it provides a bulwark to the public against any encroachments on rights and freedoms under the law. These observations apply both domestically in the context of each nation state and globally, viewing the global Judiciary as one great bastion of the rule of law throughout the world. Ensuring the integrity of the global judiciary is thus a task to which much energy, skill and experience must be devoted.

The judiciary is the arm of government that is responsible for the determination of the rights of the citizenry amongst themselves and between them and the State. It is saddled with the constitutional responsibility of providing essential checks on the executive arm by reviewing its actions to determine whether or not they are in line with the standards established by the Constitution. In addition, the Judiciary has the responsibility to determine whether or not the

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laws passed by the legislature violate the provisions of the Constitution or the other established legal requirements in a “young” democracy like ours.¹

However, it is critical to appreciate that regardless of the importance of its responsibilities, the Judiciary’s authority is supported by neither the purse nor the sword. It commands no armies and collects no taxes.² Its authority rests squarely on the public’s perceptions of its propriety. This means confidence in its impartiality, fairness and ethical standards.

Though the legal authority of the Judiciary emanates from the Constitution, it is important to appreciate that the efficacy of the exercise of such constitutional powers is necessarily anchored to a moral authority that is garnered from the public. Public confidence in the judge and the judicial system reinforces conviction for the attainment of justice and thereby enhances the willingness of the populace to subjugate themselves before the law.³

It follows therefore that where public confidence in the judicial system is high, the incidence of people taking the law into their own hands would be very low indeed. Whereas reverse would be the case where public confidence is low. Accordingly, De Balzac aptly asserted that: “...the lack of public confidence in the judiciary is the beginning of the end of society”.⁴

Furthermore, in the unfortunate situation where either the executive or the legislature chooses to disobey court orders, it is the subsisting perception of the moral propriety of the Judiciary that buttresses the resistance of the civil society, the media and the general public against such gross violations of the rule of law. This fact further underscores the importance of public confidence in the judiciary. It is the all important source of the judiciary’s moral authority and as such the most precious asset of this branch of government.

No modern society can operate without efficient and expeditious performance of legal functions anchored by direct enforcement of rules together with the deterrent effect of threatened

¹ The lack of legislative experience occasioned by many years of military rule may result in the passing of laws that tend to work against the fundamental principles of constitutional democracy. For example, the dictatorial executive powers that were enjoyed by our numerous military regimes (wherein both executive and legislative functions were fused together coupled with the limitation of the jurisdiction of courts via ouster clauses) seem to affect the willingness of the Executive to allow the other two arms of government to exercise their functions without interference.

² Frankfurter J., opined that; “*The Court’s authority-possessed of neither the purse nor the sword- ultimately rests on sustained public confidence in its moral sanction*”. See *Barker v. Carr*, 369 U.S. 186, 267 (1962)

³ Confidence in the attainment of justice encourages the populace to seek redress for wrongs done unto them from the courts rather than taking the initiative into their own hands. This fact further underscores the importance of ensuring that the public perception of the judicial system remains positive in order to maintain sanity in society. For it would be terrible indeed if people take the law into their own hands. The natural consequence of this unwanted trend would ultimately be anarchy, - “might is right”.

⁴ See (De Balzac) in *Tzaban v Minister of Religious Affairs* H.C.732/84, 40 (4) P.D 141, 148.

enforcement. The sense of personal security of the citizen as well as the sanity of the social order is to a large extent determined by the extent to which people can arrange their personal affairs and relationships on the assumptions that basic standard of propriety would be met failing which a trusted system exists to adjust any would be glitches.

Thus, societal perception of the integrity of the judicial system occupies a critical role in the promotion of social order by administering the law in a manner that satisfies the fundamental requirements of justice. This perception gives reassurance to the mass majority of society who bask in the comfort that no person, institution or government - no matter how powerful or wealthy - is outside the sphere of legal authority. This in turn encourages the public to willingly submit to the authority of system.⁵

2. Elements of the Rule of Law

The concept of the rule of law can be very wide. The basic elements however are a general idea postulated by ancient and modern scholars which by and large includes the following:

- i. That no one is punished or can lawfully be made to suffer, personally or materially, except for a distinct breach of the law, the proof of which is established by due process in the ordinary Courts of the land.
- ii. That no person is above the law and that every person is subject to the jurisdiction of the Courts.
- iii. That the Constitution of every country is the supreme law of the land and everybody including Governments, Institutions and Individuals are subject to the Constitution as interpreted by the Courts.

Thus for the smooth running of a nation, whether in Nigeria or anywhere else in the world, the foundation is the rule of law.

3. Historical Development of the Rule of Law

Historically, it is on record that the heritage of the argument about the rule of law begins with Aristotle (c. 350 BC); it proceeds with medieval theorists like Sir John Fortescue (1471), who sought to distinguish lawful from despotic forms of kingship; it goes on through the early modern period in the work of John Locke (1689), James Harrington (1656), and (oddly enough)

⁵ The significance of the submission to legal authority in this context must be distinguished from forced submission. All authority seeks legitimacy. Before the *Magna Carta*, Medieval Kings in Europe legitimised their authority by claiming *divine right* and enforced their will by *forceful subversion*. However, in this context legitimacy is firmly rooted in the public perception of the moral propriety of the system.

Niccolò Machiavelli (1517); in the European Enlightenment in the writings of Montesquieu (1748) and others; in American constitutionalism in *The Federalist Papers* and (even more forcefully) in the writings of the Federalists' opponents.

In the modern era, the concept of the rule of law was further embellished and enriched in Britain in the writings of A. V. Dicey (1885), in addition to other scholars in Europe such as F.A. Hayek (1944, 1960, and 1973), Michael Oakeshott (1983), Joseph Raz (1977), and John Finnis (1980), and in America in the writings of Lon Fuller (1964), Ronald Dworkin (1985), and John Rawls (1971).

4. The Contributions of Early Philosophers

The contribution of early philosophers to the principles and concept of the rule of law have increasingly been accepted by different sectors of the global judiciary and by international agencies interested in the integrity of the judicial process. Furthermore, the fundamental contributions of the early philosophers to the concept of the rule of law are seen more and more as a foundation upon which Governments of nation States can build (and have indeed built) their Constitutions upon because the heritage of this idea is so much a part of its modern application. The contributions of the early Philosophers are hereinafter mentioned.

4.1 Aristotle

The work of Aristotle on the Rule of Law is still influential. Though he formulated the question of whether it was better to be ruled by the best man or the best laws, he approached that question realistically, noting that it depended not only on the type of law one was considering but also on the type of regime that enacted and administered the law in question.⁶ But Aristotle did maintain that law as such had certain advantages as a mode of governance. Laws are laid down in general terms, well in advance of the particular cases to which they may be applied. Moreover, laws are made after long consideration, whereas decisions in the courts are given at short notice, which makes it hard for those who try the case to satisfy the claims of justice⁷.

There were, he conceded, some cases so fraught with difficulty that they could be handled by general rules - cases that required the focused insight of particular judges; he used the term *epieikeia* (sometimes translated as equity). But these cases should be kept to a minimum and legal training and legal institutions should continue to play a role in the way they are disposed of.

⁶*Politics* 1282b.

⁷*Rhetoric* 1354b.

Aristotle's discussion of the general desirability of rules and his treatment of *epieikeia* continue to influence modern jurisprudence.

4.2 John Locke

John Locke emphasized the importance of governance through “established standing Laws, promulgated and known to the People”⁸. He contrasted this with rule by “extemporary Arbitrary Decrees”⁹. Now the term “arbitrary” can mean many different things. Sometimes it means “oppressive”. But when Locke distinguished the rule of settled standing laws from arbitrary decrees, it was not the oppressive sense of “arbitrary” that he had in mind. In this context, something is arbitrary because it is extemporary: there is no notice of it; the ruler just figures it out as he goes along.

It is the arbitrariness of unpredictability, not knowing what you can rely on, being subject, as Locke put it¹⁰, to someone's sudden thoughts, or unrestrained (and till that moment unknown) Wills without having any measures set down which may guide and justify their actions.

In Locke's story, one of the things that people wanted to get away from in the state of nature was being subject to others' incalculable opinions- even when those others were thinking as hard and rigorously as they could about natural law. In John Locke's postulations, he opined that Your thinking might be different from my thinking, and it might turn out that your view of the relation between your interests and my interests and your property and my interests might be quite different from my view of the matter and quite different again from the view of the next person I come across. The whole point of moving from a state of nature to a situation of positive law was to introduce some predictability into this picture.

Unfortunately, having laid down this requirement, Locke complicated matters by adding a substantive principle of respect for private property where he stated thus: “The Supreme power cannot take from any man any part of his property without his own consent and any law that purports to do so is of no validity.”¹¹

But then there is a difficulty. Though Locke gave us his own theory of pre-political property rights - the so-called “Labour Theory” in Chapter Five of the *Second Treatise*¹² - it was itself far

⁸ John Locke emphasized this position in the second of his “*Two Treatises of Government*” which he wrote and published in 1689.

⁹*Two Treatises of Government*; Locke [1689]; PP.135–7.

¹⁰*Ibid*, page 137

¹¹*Ibid*, page 138

¹²*Ibid*.

from uncontroversial. People in our day, as in his, disagree about the rival claims of labour and occupancy; they disagree about the background of common ownership; and they disagree about how much anyone may appropriate and how sensitive his appropriation must be to the needs of others. We disagree about all that- in ways that were made evident, for example, in the debates about the *Lockean* theory of Robert Nozick. And Locke and his contemporaries disagreed too; Locke knew, and signalled in a number of places that he knew just how controversial all this was.

By insisting therefore that positive law is subject to this substantive constraint, Locke subjected the legislature to a discipline of uncertainty. Because the natural right of property was controversial, so the administration of any substantive constraint along these lines was bound to be controversial and because the substantive constraint was supposed to affect the validity of positive law¹³, the effect would be that some people- let's say those who disagreed with Locke about the claims of labour over occupancy- would disagree with him about which positive rules of property are valid and which are not.

4.3 Montesquieu

Montesquieu's work on the rule of law is best known in connection with his insistence on the separation of powers particularly the separation of judicial power from executive and legislative authority.¹⁴ The judiciary has to be able to do its work as the mouthpiece of the laws without being distracted from fresh decisions made in the course of its considerations by legislators and policy-makers. Montesquieu's views on the separation of powers had a profound effect on the American founding, particularly in the work of James Madison.¹⁵ Elsewhere in *The Spirit of the Laws*, Montesquieu developed a theory of the value of legalism. Noting that despotic governments tend to have very simple laws which they administered peremptorily with little respect for procedural delicacy, Montesquieu argued that legal and procedural complexity tended to be associated with respect for people's dignity. He associated this sort of respect with a monarchy ruling by law, as opposed to despotism. He said:

In monarchies, the administering of a justice that hands down decisions not only about life and goods, but also about honour, requires scrupulous inquiries. The

¹³ *Ibid*, Locke 1689: p.135.

¹⁴ See Montesquieu 1748: Bk. 11, Ch. 6.

¹⁵ *Federalist Papers*, p.47.

fastidiousness of the judge grows as more issues are deposited with him, and as he pronounces upon greater interests.¹⁶

This emphasis on the value of complexity- the way in which complicated laws, particularly laws of property, provide hedges beneath which people can find shelter from the intrusive demands of power- has continued to fascinate modern theorists of the rule of law.

In the modern debate we also hear echoes of the doctrine propounded in *The Spirit of the Laws*¹⁷ that “things that depend on principles of civil right must not be ruled by principles of political right”.

“Civil right” which is Montesquieu’s word for what we call private law- is, he said:

....the palladium of property”, and it should be allowed to operate according to its own logic, not burdened with the principles of public or political regulation. A failure of the Rule of Law in this regard is likely to lead to the impoverishment of an economy, as expectations collapse, and owners’ incentives for production and enterprise are undermined.¹⁸

4.4 Albert Venn Dicey

In the United Kingdom, the doctrine of parliamentary sovereignty was almost entirely the work of the academicians of the University of Oxford in England. It was Thomas Hobbes¹⁹, in his masterpiece of political philosophy that explained to England, which was a country weary of civil wars that its sole hope of salvation lay in complete submission of Leviathan. This tale was taken up by Blackstone, also of University of Oxford, who, like other academicians, devoted his talents to “draping the attorney’s mantle about the shoulders of arbitrary powers.”²⁰

He said: “what the parliament doth, no power on earth can undo²¹.” His successor as Vinerian Professor, Albert Venn Dicey, developed these two points in a manner which generations of undergraduates never forgot. He said, “Parliament can do anything, and there is no person or body in the kingdom with the power to set its Acts aside.²²”

¹⁶Montesquieu 1748: Bk. VI, ch. 1, p. 72

¹⁷1748: Bk. 26, ch. 15, p.510

¹⁸Montesquieu 1748: Bk. V, ch. 14, p. 61.

¹⁹See “*The Courts and Legislative Privilege*”, a paper delivered by the Honourable Chief Justice of Nigeria, Hon. Justice M.L. Uwais, GCON, at the All Nigeria Judges Conference of Superior Courts, 2003; p.1.

²⁰ *Ibid*,p.1

²¹*ibid*

²²*Ibid*.

However, the proponents of this theory were not always consistent with each other or even themselves. Blackstone was obliged to express doubts concerning the effect of statutes which are contrary to the law of God²³ or which are “impossible to be performed”, or with “absurd consequences manifestly contradictory to common reason”, and reprobated those who talk about “the omnipotence of parliament” for using “a figure rather too bold”.²⁴

Dicey having emphasised the full scope of parliamentary sovereignty with all his clarity and eloquence, then tried to explain why Parliament did not enact legislation utterly at variance with the decent feelings of Victorian Englishmen of the upper middle class. Leslie Stephen²⁵ then asked: “Why did not Parliament command all blue-eyed babies to be killed?”

Dicey answered him thus;

Because there are both internal and external limits to Parliamentary sovereignty.

The internal limit is the fact that members of Parliament are not usually men of outrageous views; the external limit is the possibility that the English electorate would not obey such a statute.²⁶

Writing in the second half of the 19th Century, Albert Venn Dicey bemoaned what he saw as a decline in respect for the Rule of Law in England.

The Rule of Law used to be a proud tradition that distinguished governance in England both from the executive domination of *droit administratif* in France and also from the fatuous and abstract certainties of paper constitutions in countries like Belgium etc. For Dicey, the key to the Rule of Law was legal equality: “[W]ith us no man is above the law [and] every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals”.²⁷

Attractive as this is in the abstract, it exhibited a certain naivety so far as the legal position of state officials was concerned. The immunity granted certain government officials in countries such as Nigeria (for example; the President, Vice-President, Governors and Deputy Governors) therefore proposes a question to Dicey’s position in reality and in practice.

Officials are and often need to be treated differently in law than the ordinary citizen: they need certain extra powers and they need to be hemmed in by extra restrictions, so that they can be held

²³ *ibid*

²⁴ *Ibid p.2*

²⁵ *Ibid, p.2*

²⁶ *ibid*

²⁷ *ibid*

accountable for the actions they perform in the name of the community. For the ordinary person, the rule of law generates a presumption in favour of liberty: everything which is not expressly prohibited is permitted. But for the state and its officials, we may want to work with the contrary presumption: the state may act only under express legal authorization.

Dicey had a knack of expressing the rule of law in terms of principles whose eloquent formulations belied their deeper difficulties. His first principle of the rule of law was: “[N]o man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary Courts of the land”²⁸.

This seems fine if we are talking about the imposition of criminal sanctions. But “made to suffer in ... goods” can also be read to connote the imposition of restrictions on the use of personal or corporate property, or the giving or withholding of licenses, grants, and subsidies. It can be read as precluding any form of discretionary regulation. Dicey was indeed inclined to disparage all administrative discretion, particularly where it seemed to be superseding what had traditionally been regarded as judicial functions. But can we really do without discretion in modern governance? Some modern scholars of administrative law have denounced Dicey’s account as an “extravagant”, “absurd”, and pernicious version of the rule of law.

4.5 Lon Fuller

Lon Fuller believed that government in accordance with the forms and procedures of law had a distinctive value that could help close the gap of separation between positive law, on the one hand, and morality and justice on the other. The conventional wisdom of the legal positivists held that laws could be impeccably drafted and even-handedly administered and still be hideously unjust: *Antebellum Slave Law* in the United States and *Apartheid Law* in South Africa were often cited as examples. But Fuller believed, as a matter of political psychology, that there would be reluctance to use the forms of law- general and public norms - to embody and inscribe injustice. He believed that “coherence and goodness [had] more affinity than coherence and evil”, he thought bad things happened in the dark as opposed to the sunlight of legality, and he maintained that “even in the most perverted regimes there is certain hesitancy about writing cruelties, intolerances, and inhumanities into law”.

Fuller acknowledged that this link between legality and justice was tentative. It was certainly controversial. But whether this connection held or not, he also wanted to insist that the complete

²⁸ Dicey [1885]: 110

absence of respect for formal criteria of legality might deprive a system of power of its status as law:

When a system calling itself law is predicated upon a general disregard by judges of the terms of the laws they purport to enforce, when this system habitually cures its legal irregularities, even the grossest, by retroactive statutes, when it has only to resort to forays of terror in the streets, which no one dares challenge, in order to escape even those scant restraints imposed by the pretence of legality—when all these things have become true of a dictatorship, it is not hard for me, at least, to deny to it the name of law.²⁹

In his 1964 book *The Morality of Law*, Fuller formulated principles of what he called “the inner morality of law” - principles requiring that laws be general, public, prospective, coherent, clear, stable, and practicable- and he argued that these were indispensable to law-making.

Reviewing Fuller’s book, H.L.A. Hart (in 1965) asked in what sense these principles could be called a “morality”. They seemed to be more like instrumental principles for effective legislation, and on Hart’s view, they were only as moral as the enterprise they made possible.

Fuller responded by denying that the significance of his eight principles was purely instrumental. They also constituted a morality of respect for the freedom and dignity of the agents addressed by the law: what they made possible was a mode of governance that worked through ordinary human agency rather than short-circuiting it through manipulation or terror. This thesis was separate from the connection between law and morality intimated by Lon Fuller. But the two accounts of the moral significance of law were connected in a way that John Finnis explained:

A tyranny devoted to pernicious ends has no self-sufficient reason to submit itself to the discipline of operating consistently through the demanding processes of law, granted that the rational point of such self-discipline is the very value of reciprocity, fairness, and respect for persons which the tyrant, ex hypothesis, holds in contempt.³⁰

Fuller’s work on the Rule of Law had one last nuance. He understood that law constituted a distinct kind of governance that might not be relevant for every task of the state.

²⁹*The Morality of Law*, Lon Fuller; 1964,p.660.

³⁰*Op.cit.*

He contrasted it not just with a Nazi-style reign of terror, but with the sort of managerial administration that might be necessary for allocative decision-making in a mixed economy like the United States in the 1960s. In modern political economy, said Fuller, we face problems of institutional design “unprecedented in scope and importance”. Focusing more on the procedural side of the Rule of Law, Fuller insisted that we lawyers acknowledge that although “[a]djudication is a process with which we are familiar and which enables us to show to advantage our special talents”, still it may be “an ineffective instrument for economic management”).³¹

4.6 F. A. Hayek

F.A. Hayek was by training an economist, but he also nurtured an interest in the relation between legal structures and forms of national economy. Hayek’s work on the Rule of Law proceeded in two phases: (1) from his wartime book *The Road to Serfdom* (published in 1944) through to *The Constitution of Liberty* (published by Hayek in 1960); and (2) the somewhat different account presented in his trilogy, *Law, Legislation and Liberty* (published in 1973), an account which is more congenial to the spirit of common law and hostile to the role of legislation.

Governance during wartime necessarily required total mobilization and management of all of the society’s manpower and resources. Hayek warned in 1944 against the retention of anything like this mode of administration in peacetime. He made an eloquent argument that in normal times a society need not be managed but should be governed- and its people largely left to their own devices- within a framework of general rules laid down in advance. These rules would operate impersonally to protect people from one another, not being aimed at any person or situation in particular and not being dependent for their operation on any expectation on the part of government as to what the particular effects of their application would be. But this lack of particular knowledge on the part of the government would be offset by the fact that rules would provide a framework of predictability for ordinary people and businesses. They would know that they would not be molested by the state, provided they operated within the parameters of the general and impersonal rules. Human freedom, on Hayek’s account, did not preclude all state action; but it does require that state action be calculable.

In the 1970s, Hayek began to rethink all this. The attention was still on the implications of Rule of Law for liberty. But now Hayek began to wonder whether the texts of clear general legislated

³¹*Ibid*, Fuller 1964: 176.

rules would really provide an appropriate framework for freedom. It was, he said, a mistake to think that “by confining the judge to the application of already articulated rules we will increase the predictability of his decisions”. Articulated rules are “often a very imperfect formulation of principles which people can better honour in action than express in words”.³² He favoured something more like a common law model of predictability, with principles and solutions emerging from a series of judicial decisions in an almost evolutionary way.³³

The evolution of principles that distinguished themselves by their reasonableness was superior, Hayek thought, to the deliberate imposition of rules by a legislator. According to Hayek, the legislative mentality is inherently managerial; it is oriented in the first instance to the organization of the state’s own administrative apparatus; and its extension into the realm of public policy generally means an outward projection of that sort of managerial mentality with frightful consequences for liberty and markets.

5. Rule of Law and Rule by Law

Some theorists draw a distinction between the Rule of Law and what they call rule *by* law³⁴. They celebrate the one and disparage the other. The Rule of Law is supposed to lift law above politics. The idea is that the law should stand above every powerful person and agency in the land. Rule by law, in contrast, connotes the instrumental use of law as a tool of political power. It means that the state uses law to control its citizens but tries never to allow law to be used to control the state. Rule by law is associated with the debasement of legality by authoritarian regimes, in modern China for example.

Thomas Hobbes may be seen as a theorist of rule by law. In a society whose members disagree about property, he thought it conducive to piece for the sovereignty of a society: “...to make some common Rules for all men, and to declare them publicly, by which every man may know what may be called his, what another’s”.³⁵ But Hobbes also thought that it would undermine peace- indeed it would undermine the very logic of sovereignty- for the ultimate law-maker to be bound by the laws he applied to his subjects.³⁶

However, the distinction may not be so clear-cut. Even rule by law seems to imply that rulers accept something like the formal discipline of legality. Unless the orders issued by the state are

³²Law, *Legislation and Liberty*, Hayek, 1973; p.118.

³³See <https://plato.stanford.edu/entries/rule-of-law/notes.html> accessed on 10th April 2017.

³⁴See for example *Tamanaha* (2004) p.3.

³⁵*Hobbes 1647: Bk. II, ch. 6, sect. ix.*

³⁶ *Hobbes* [1651]: 184

general, clear, prospective, public, and relatively stable, the state is not ruling by law. So this thin version of legality does still have moral significance in the respect it pays to the human need for clarity and predictability. Rule by law “can be a way a government ... stabilizes and secures expectations”.³⁷ Even if its use remains instrumental to the purposes of the state, it involves what Fuller called a bond of reciprocity with the purposes of those who are governed: the latter are assured that the promulgated rules are the ones that will be used to evaluate their actions.

Some jurists who maintain the contrast between the rule of law and rule by law have a more ambitious agenda. They take seriously the ancient idea that we might be ruled by laws and not by men. One may ask: how is that supposed to happen? After all, all law is made by people and interpreted by people and applied by people.

It (that is; the law) can no more rule us by itself, without human assistance, than a cannon can dominate us without an iron-monger to cast it and an artillery-man to load and fire it. The jurists who contrast the Rule of Law with rule by law believe they can make this work by focusing on laws whose human origins are in some way diffuse or immemorial.

We are not necessarily talking here about natural law, but perhaps about something like customary law or common law - law that is not so evidently a top-down product of powerful human law-makers. Common law grows and develops under its own steam, and need not be conceived as a device by which some identifiable humans rule over others. No doubt there is a lot of mythology in this. A more realistic view of common law identifies it with the deliberate and arbitrary rule of an entity that Bentham³⁸ called “Judge & Co”. But it remains true that the human element is diffuse in this sort of system, and at any given time the law that emerges is a resultant of the work of many people rather than the intentional product of a domineering majority ruling us from the legislative centre of a state.

As we saw in the discussion of Hayek (in his work published in 1973), the other side of this coin is a disparagement of legislation, precisely because its enactment seems patently and undeniably to represent the rule of powerful officials. Legislation is a matter of will. The legislative process produces law simply by virtue of a bunch of people in an assembly deciding that a given law is to be produced. And this is done by the very men -powerful politicians - to whose power the rule of law is supposed to be an alternative.

³⁷Goodpaster(2003) p: 686

³⁸The aphorism “Judge & Co”, may be seen in Bentham’s writings of 1792.

However, most people who value the rule of law do not accept this approach. If a statute is properly drafted (if it is clear, intelligible and expressed in general terms) and prospectively enacted and promulgated, and if it is administered impartially and with due process- they will call this an entirely appropriate exercise under the rule of law. Indeed that is what many scholars mean by the rule of law: people being governed by measures laid down in advance in general terms and enforced equally according to the terms in which they have been publicly promulgated. The argument that it should be put aside because it does not contrast sufficiently with the rule of men seems perverse.

No one doubts that legislation can sometimes undermine the rule of law, by purporting for example to remove legal accountability from a range of official actions or to preclude the possibility of judicial review of executive action. But this is not a problem with legislation as such; this is a concern about the content of particular enactments. Rule by judges, too, can sometimes be seen as the very sort of rule by men that the rule of law is supposed to supersede.

6. Opposition to the Rule of Law

No account of the Rule of Law is complete if it does not mention the ways in which this ideal is deprecated. The laudatory history of the Rule of Law in the work of thinkers like Aristotle, Locke, Dicey, Hayek and Fuller has been matched by opponents of legality such as Plato (in *The Statesman*), Thomas Hobbes (at least if the Rule of Law is supposed to take us beyond rule by law), and Carl Schmitt-(1923) (in his attack on parliamentarism and on the liberal assumption that rules can prevail even under conditions of endemic crisis).

The criticism by Plato (c. 370 BC) has been the most enduring. From his perspective, which extolled the application of focused intelligence and insight by those in power, insistence upon the use of law in government was like a stubborn, stupid person who refuses to allow the slightest deviation from or questioning of his own rules, even if the situation has in fact changed and it turns out to be better for someone to contravene these rules³⁹.

To Plato, Rules themselves were part of the problem: “People and situations differ, and human affairs are characterized by an almost permanent state of instability”⁴⁰ One would use them, only as a (distant) second-best, if one felt one couldn’t discern or trust the appearance of expertise in political life. These concerns are echoed in the work of modern legal pragmatists who place

³⁹*Statesman* 294b–c

⁴⁰*Statesman* 294b.

much more faith in insight of judges into new situations than in the application of established rules or strained analogies with ancient precedents. Such modern pragmatists include, Posner, Schmitt and Vermeule.

Echoes of the Platonic critique are also heard in those who are privileged to decisive executive decision-making in times of crisis, especially if the crises seem to be successive and unending. Someone's will has to prevail and, it is said, the Rule of Law does us no service by pretending that the element of will can be eliminated from politics or that decisiveness matters less than the "long deliberation" that was extolled in Aristotle's Rhetoric.

The sense of what good law-making and ordinary legal administration require (as conveyed by the principles of the Rule of Law) is sometimes criticized as archaic. Partisans of the Rule of Law often think in terms of clearly drafted and prospective measures promulgated as norms that can stand in the name of the whole community and form a publicly acknowledged framework for their actions and transactions.

But this is not really how law operates in the modern world. What may amount to a violation of law in Nigeria may be an acceptable norm in another country for example homosexuality and lesbianism is criminalised in Nigeria but accepted in countries such as the United States of America. Thus the question may be asked; are some principles of the rule of law archaic.

A great deal of modern legislation consists simply of a frame-working statute authorising agencies to develop much more detailed rules which are conveyed to the public - to the extent that is necessary- by modes of communication much more complex and nuanced than those envisaged in traditional models of the rule of law. For example, the principles comprised in Fuller 1964's inner morality of law⁴¹ are recipes perhaps for the production of legislation that looks congenial to legalistic concerns about clarity and predictability. But it has little or nothing to do with the way law actually operates or the way legislatures communicate with agencies and agencies in turn communicate with those whose actions and businesses they supervise.

At the same time, there are concerns about the mentality that is fostered by an excessive emphasis on the rule of law. In its most extreme form, the rule of law can have the effect of closing down the faculty of independent moral thought in the officials (the judges, for example) or in the ordinary members of a community, making them anxious in the face of uncertainty and distrustful of their own or others' individual judgments. Sometimes it is important, for the sake

⁴¹*Op.cit.*

of clear and courageous moral judgment, not to exaggerate the importance of something being required by law. Other concerns about the mentality fostered by the Rule of Law include concerns about legalism and the tendency to over-formalize or over-bureaucratize relationships that are more healthily conceived in terms that are more informal. This is not just a matter of legalizing the personal realm; it is also a matter of understanding, for example, the damage that can be done to relations between officials (like social workers) and vulnerable clients by bringing in rigid rules to replace relatively informal professional norms.

7. The Rule of Law and Separation of Powers in Nigeria

The Constitution of the Federal Republic of Nigeria, 1999 categorises the powers of the Federal Republic of Nigeria into three:

- i. Legislative powers;
- ii. Executive powers;
- iii. Judicial powers.

Legislative powers are vested in the legislatures at the Federal and States' levels, executive powers are vested in the President and the Governors of the States, while judicial powers are vested in the Courts established for the Federation and the States by the Constitution, and pursuant thereof. This point is underscored by the provisions of section 6 (6) (b) of the Constitution, which provides that the Judicial powers vested in the courts:

..shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person.

7.1 Constraints to the Rule of Law in Nigeria

All arms of government are subject to law. However certain constraints hamper the proper operation of the Rule of Law in Nigeria; for example:

- i. Bribery and Corruption- this is a monster that requires no further description; corruption simply destroys the nerve system of any organisation. To put in a nutshell, the effectiveness of courts relies on their fairness and impartiality. Inequality of influence affects the courts in their fairness. Once impartiality and efficiency is undermined the users of the system will not go to the courts to settle disputes so long as the playing field is skewed. In this situation, the more powerful and influential court users invest in bribing

- of individual or small group of public officials. At times they go to the extent of acquiring media outlets or some authoritative connections to pervert the course of justice.
- ii. Limited Access to Justice- apart from corruption, there are also the problems of ethnicity, linguistic, geographic, social and other forms of bias which makes the Rule of Law in many developing countries like Nigeria incomprehensible. Factors such as delays in the justice system, high cost of litigation and unfair proceedings marginalises the poor class.
 - iii. Interference by the Executive Arm of Government- it is fair to say that with regard to Nigeria, cases of direct (or indirect) interference by the Executive with the work of the Judiciary has not been eliminated. The more worrying phenomenon is the indirect interference, which manifests itself at State level, where a number of Governors simply refuse to comply with the Constitutional provisions of the Nigerian Constitution regarding release of funds to the Judiciary particularly with regard to capital expenditure.
 - iv. Remuneration of Judges and Supporting Staff- it can be validly argued that the remuneration of the Nigerian Judges even though comprehensively improved over the years is still unsatisfactory; particularly having regard to the volume of work and the environment under which they operate. This is particularly more compelling with the judges of the lower courts. Low income and poor working conditions usually lead to poor work output especially in Nigerian courts. So many cases remain in court due to poor working conditions of judiciary staff. In other developed jurisdictions, the court system works excellently well. In the American case of *Bush v. Gore*⁴², the election petition in that case against President George Bush was disposed off before he was even sworn in for his first term in office. That indeed exemplifies a working judiciary. The underfunding of the Nigerian judiciary is such that ensures injustice is done to the masses. This in no way assures justice and the rule of law is shunned.
 - v. Training and Manpower Development- the efforts of the National Judicial Institute must be appreciated and commended for all the year round programmes for the purpose of Induction courses and refresher courses for the various levels of the Judiciary in Nigeria. However, the world is moving too fast. Innovations are being introduced in all sphere of life. Communications is taking the centre stage. Modern technologies are rapidly taking over activities hitherto being handled by the manual method. There have been spirited

⁴²1531 U.S.1 (2000).

efforts to put in place modern technologies to assist the Judiciary to move with time; but there are still some hurdles to jump to be able to utilise these facilities fully.

- vi. Politicians and their antics- politicians are willing to do anything to acquire power, they are willing to pay bribe to judges, they are also willing to write callous and baseless accusations against Judges in the event that their offer of bribe is not accepted.
- vii. Ability of Courts to enforce judgments and orders- this leaves the question whether the Judiciary in Nigeria is respected at all. Even when a court gives judgment against another arm of government in Nigeria it is disobeyed; hence the rule of law in practice in Nigeria is not followed to the letter.
- viii. Police and Prisons- these two agencies are part and parcel of the machinery for the administration of justice, and the maintenance of law and order. As we know too well, the Police in Nigeria is even involved in the prosecution of cases. Thus where the Police prosecutor chooses to take bribe, the party unable (or unwilling) to pay bribe suffers in court and vice versa. It appears that the Rule of Law cannot function in such scenario. The Police structure in Nigeria has numerous loopholes. In addition, many prisoners are unable to get speedy trials due to the fact that the Nigerian Prisons Service is underfunded, thus they lack funds to maintain vehicles which are to convey prisoners to court. Thus many prisoners languish in jail perpetually due to the inefficiency of the Prisons system.

7.2 The Rule of Law in Nigeria and the Fundamental Right of Fair Hearing and Bail

A fair hearing or a fair trial is determined by the procedure followed and not in the correctness of a decision.⁴³ The rule of law guarantees the Fundamental Right of Fair Hearing as enshrined in the Constitution of the Federal Republic of Nigeria 1999. The Constitution of the Federal Republic of Nigeria 1999 provides that in the determination of the civil right and obligation, a person shall be entitled to a fair hearing within a reasonable time by a court established by law and constituted in such a manner as to secure its independence and impartiality.⁴⁴ The decision of the court shall be held in public.⁴⁵

⁴³*UBA Ltd v Achoru* 1990 6 NWLR P. 156

⁴⁴ Section 36 (1)

⁴⁵ Section 36 (3).

Whenever any person is charged with a criminal offence, he shall be entitled to a fair hearing in public within a reasonable time by a Court.⁴⁶ The person accused shall be presumed to be innocent until he is proved guilty.⁴⁷ He shall be entitled to be informed promptly in the language he understands, the nature of the offence⁴⁸ and shall be given adequate time and facilities for the preparation of his defence⁴⁹ as well as defend himself or by legal practitioner(s).⁵⁰ He has a right to examine witnesses called by the prosecution and he may also call his own witnesses to testify on his behalf under the same conditions as those of the prosecution.⁵¹

The accused person is also entitled to a free assistance of an interpreter if he cannot understand the language used at the trial.⁵² At the end of the trial, he is entitled to obtain copies of the judgment within seven days after the judgment.⁵³ The accused shall not be guilty of an offence which was not in existence at the time it was alleged to have been committed⁵⁴ and he shall not be tried twice on the same offence unless on the order of a Superior Court.⁵⁵ If the person is pardoned, he shall not be tried again for that offence.⁵⁶ Where the person is being tried of a criminal offence he shall not be compelled to give evidence at his trial⁵⁷ and shall be convicted of the offence only where the offence and punishment are defined and prescribed under a written law.⁵⁸ A fair trial or hearing must therefore consist of a substantial compliance with the Constitutional provisions safeguarding the right of the accused in the trial as a whole in line with the rule of law. Thus, no unbiased person watching the trial will have the impression that injustice has been done to the accused.

One of the most important impediments to the rule of law in Nigeria is the violation of the fundamental right of fair hearing. It is manifested in the awaiting trial phenomenon. So serious is this problem that it seems to defy solution. In practice, accused persons are held for long periods in police cells without regard to the provisions of Section 35 (4) and (5) of the 1999 Constitution

⁴⁶ Section 36 (4)

⁴⁷ Section 36 (5)

⁴⁸ Section 36 (6) (a)

⁴⁹ Section 36 (6) (b)

⁵⁰ Section 36 (6) (c)

⁵¹ Section 36 (6) (d)

⁵² Section 36 (6) (e)

⁵³ Section 36 (7)

⁵⁴ Section 36 (8)

⁵⁵ Section 36 (9)

⁵⁶ Section 36 (10)

⁵⁷ Section 36 (11)

⁵⁸ Section 36 (12)

that mandates they be brought to trial within 24 hours where a court of competent jurisdiction exists within a radius of 40 kilometres and, within 48 hours or such other reasonable time as the court may decide in other cases. It also provides for commencement of trial within 2 months of arrest in respect of non-bailable offences and 3 months in respect of accused persons on bail; who if not tried, shall otherwise be released either unconditionally or upon such terms and conditions as may be reasonably necessary to ensure that the accused appear for trial at a later date. This provision of the Constitution has been mostly observed in the breach.

7.3 Abuse of Power

The simple truth of the matter is that the Nigerian Police have deliberately chosen to ignore the procedure to adopt in order to comply with Section 35 of the Constitution in cases where investigation is not completed within 24 hours. This has resulted in persons accused of non-bailable offences taken to courts that have no jurisdiction to try the offence on what is often called a ‘Holding Charge’, which is unknown to our Laws.

The result is that suspects are remanded in prison custody by courts that lack jurisdiction to try the offences of which they are accused and are often forgotten for periods of up to 8-10 years.

This problem of awaiting trial inmates can be broadly categorised into two:

- i. Those already in prison custody awaiting trials, and
- ii. Those that are daily arrested for non-bailable offences that would eventually be sent into prison custody as awaiting trial inmates.

The question here is; is the Law absolutely silent on accused persons accused of non-bailable offences where investigation cannot be completed within the constitutionally provided period of 24 hours of which they are required to be taken before a court of law? The answer is No. In the case of Police Officers, sections 129 and 225 of the CPC adequately provides for the Procedure. But the Police choose not to follow same. Sections 143 sub- section (c) and 255 of the CPC provide a procedure to be followed by Attorneys-General. For the sake of clarity, some of these sections are reproduced to wit:

S.129 (1) Whenever it appears that an investigation under section 118 cannot be completed within twenty four hours of the arrival of the accused or suspected person at the police station, the officer in charge of the police station shall release or discharge him under section 340, or send him as soon as practicable to the nearest court competent under Chapter XV to take cognisance of the offence.

(2) The court may from time to time, on the application of the officer in charge of a police station, authorize the detention of the person under arrest in such custody as it thinks fit for a time not exceeding fifteen days, and shall record its reasons for so doing.

(3) If the court refuses to authorise detention of the accused under arrest, it shall make an order of discharge under section 45.

(4) If the police investigation is not completed within fifteen days and the court considers it advisable that the accused should be detained in custody pending further investigation, it shall remand the accused as provided in section 255.

S.255 (1) “If from the absence of a witness or any other reasonable cause it becomes necessary or advisable to postpone the commencement of or adjourn any inquiry or trial, the court may if it thinks fit by order in writing stating the reasons therefore from time to time postpone or adjourn the same on such terms as it thinks fit for such time as it considers reasonable and may by a warrant remand the accused if in custody.

(2) Notwithstanding the provisions of subsection (1), no court shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.”

It is hereby submitted by virtue of section 129 of the CPC that the police should release any person arrested and discharge him if they are unable to take him to a court. Furthermore, if the accused person must remain in police or prison custody, such order must come from a court of competent jurisdiction not by use of force as is seen manifested by the Nigerian Police today in total disregard for our laws. This is contrary to the rule of law. The rule of law thrives on the principle that laws must guide the agencies of government which include the Police; and that the liberty of any person in society must be guaranteed. Where such liberty must be restricted, it must be by the order of a competent court which has given such a person fair hearing and such liberty must be restrained where there is concrete proof that a law has been violated. Indeed abuse of power is glaringly manifested by the Nigerian Police Force.

Whereas the C.P.C of the Northern States have provided a procedure to prevent the indefinite detention of an accused person without trial, and the Constitution has provided for his trial to commence within two months of his arrest in the case of non-bailable offences, a similar

comprehensive procedure does not exist under the C.P.A. applicable to the Southern States in Nigeria and the Federal High Court.

8. Conclusion and Recommendations

This paper has attempted a discourse on the historical development of the Rule of Law as well as the contribution of early philosophers to the rule of law. Subsequent opposition to the doctrine of the Rule of Law has also been highlighted in the paper.

Indeed one can safely arrive at the conclusion that the rule of law is quantum times better than a rule of arbitrariness or outright anarchy. Therefore we all have one form of duty or another to see to it that as much as possible, the Rule of Law in Nigeria should be free of constraints. Then, we may lift our heads with satisfaction and pride that our own judicial system and our legal process is neither artificial nor a parody of the ideal situation.

The recommendations which to my mind, reflect actual facts on the ground in Nigeria, and are necessary to tackle the impediments to the smooth operation of the Rule of Law as experienced by operators in the system are as follows:

a) Government

- i. Leadership should live up to expectation with a view to providing jobs for the jobless and eradicate poverty, which is presently considered as the reason for crimes.
- ii. There is need to enlarge the monetary and sentencing powers of lower courts to entertain more serious offences.
- iii. Laws of the criminal justice system should be amended to allow for restitution and compensation for victims of offences as an alternative to automatic prosecution, conviction and imprisonment or fine.
- iv. There is need to enact a law to prevent formal prosecution of minor offences; thus non-custodial prosecution should instead, be encouraged with a view to decongesting the Courts and Prisons.
- v. Parole system for some offences should be introduced thereby allowing the offender limited freedom while continuing to earn a living and at the same time serving a sentence.
- vi. Open prisons system should be adopted as a means of decongesting the prisons.
- vii. Remand Homes should be built for children and young persons.

- viii. The gender discriminatory practices of disallowing women⁵⁹, as sureties to criminal suspects should be discouraged.
- ix. Funds should be made available for specific purpose of purchase and maintenance of “Black Maria”; or in the alternative other vehicles for the conveyance of detainees/awaiting trial to and from Police stations and Prisons.
- x. Judicial Officers, Prosecutors and the Police investigators should be motivated for a more effective discharge of their duties to further guard against compromising their position.
- xi. There should be training and retraining of all Judicial Officers and Prosecutors to enhance efficiency.
- xii. Steps should be taken to stop unnecessary interference by high profile personalities to influence the administration of criminal justice.

b) Office of the DPP

- i. Prosecutors must be diligent in prosecuting cases whilst long adjournments should be discouraged.
- ii. The Office of the DPP should improve the coordination of activities between all agencies involved for example DPP, the Police, Prisons and Courts to better the administration of criminal justice.
- iii. A liaison mechanism should be introduced to assist the office of DPP and Police Prosecutors in the co-ordination of investigation and prosecution activities in serious offences.
- iv. The Director of Public Prosecutions of the Federation should embark on random visits to prisons and courts with a view to discovering for himself the nature and number of pending cases and how to improve on prosecution.
- v. Prosecutors’ forum is a welcome development and therefore should be encouraged to take place quarterly.
- vi. DPPs should ensure the delivery of prompt legal advice/opinion by their offices and strive to ensure that such advice/opinion is rendered within Fourteen (14) days on receipt of duplicate case diary from the Police.

⁵⁹ Although it may appear that the Administration of Criminal Justice Act (ACJA) contains provisions which seek to discourage this practice, in so far as some States in Nigeria have not passed their own Administration of Criminal Justice Law, this practice still pervades the criminal justice system in Nigeria and this harsh practice is contrary to the Rule of Law.

c) Judiciary

- i. Criminal Divisions should be established in all States High Courts and Federal High Court.
- ii. More Courts should be built and more Judges/Magistrates should be properly trained by the National Judicial Institute after being appointed by the National Judicial Council.
- iii. The Chief Judges should ensure that promotion and transfer of Magistrates do not affect matters handled by them to the detriment of both the accused and the criminal justice system.
- iv. Suspended sentences should be imposed for minor offences so long as the accused does not commit the offence again.
- v. Imprisonment/remand for minor offences should be used sparingly.
- vi. Either the Chief Judges or Committees set up by them should visit Prisons from time to time to ensure that persons awaiting trial do not stay in prison longer than the term they would serve if convicted.
- vii. There should be well-equipped law libraries for all Judges for ease of reference so as to enhance speedy trial.
- viii. Certain minor criminal offences should be assigned to Area Courts for quick adjudication.
- ix. Funds should be created from which allowances would be paid to prosecution witnesses to encourage them (witnesses) come to court and testify considering the fact that witnesses are so vital to criminal matters in Court.
- x. Bail should be granted to persons awaiting trial with less stringent conditions in non-capital offences unless it is not possible to guarantee the person's attendance at the trial.
- xi. The practice by some Magistrates to refuse signing documents from the Police, especially on bail matters should be discouraged.
- xii. Prolonged delays in delivering rulings by some Magistrates should be discouraged.
- xiii. Unnecessary adjournments should be discouraged.
- xiv. There is need for better understanding between the Prosecutors and the Magistrates for fair and quick dispensation of Justice.
- xv. Magistrates should not succumb to unethical practices by some private legal practitioners.
- xvi. Need for prompt sittings by Magistrates and Judges.

- xvii. A pilot project should be started whereby Courts are built next to Prisons to observe the positive effect on logistics.

d) Police

- i. There should be provision for well-equipped and functional Libraries, photocopying machines and other equipment to facilitate and ensure prompt response to matters that require the advice/opinion of the Director of Public Prosecutions.
- ii. The issue of “**Holding Charge**” in capital offences taken to the Magistrates Courts should be discouraged and that such matters should be referred to office of the DPP for immediate and appropriate action.
- iii. Police Prosecutors who are lawyers should be allowed to prosecute in the High Courts.
- iv. More specialised units of the Police such as a forensic laboratory unit and fingerprints analysis unit, should be established to hasten trials that require the use of such facilities.
- v. Police Prosecutors should be motivated, encouraged and trained.
- vi. IPOs (Investigating Police Officers) should be encouraged by the provision of adequate and necessary tools and facilities in the discharge of their duties.
- vii. Police Prosecutors should be exempted from other routine duties, except where absolutely necessary, so as to avoid stress and fatigue for the purposes of concentration and better performance.
- viii. Appointment of IPOs should be on merit and indiscriminate transfer of IPOs should be discouraged to allow for continuity with regard to prosecution of cases.
- ix. The method of serving court processes by private legal practitioners on the Police should be reviewed to stop the unwholesome practice.
- x. The cost of duplicating case diaries should be borne by the appropriate authority and not individuals.
- xi. All Police Prosecutors should be pooled under the State C.I.D. for proper coordination, monitoring and better performance.

e) Nigeria Correctional Service

- i. The Prison Service should stop the practice of rejecting suspects legally ordered by courts to be remanded in prison, as this unnecessarily leaves the burden of the Police to abandon such suspects in police cells.
- ii. More prisons of international standard should be established.

- iii. There should be better funding of the Prisons and provisions of equipment and machinery for their work.
- iv. Courts should be built close to the prison yards to avoid logistical problems. In fact, if introduced as a pilot scheme their performance can be compared with courts presently far from prisons.
- v. There is the need to re-activate the judicial committee comprising of Judges, Magistrates, Prosecutors, the Police and the Prison Service to enhance service delivery in line with the Government Policy.
- vi. There is the need to also resuscitate Juvenile Courts/Borstal Homes to try and keep Juvenile offenders.
- vii. Welfare of inmates, rehabilitation of inmates and monitoring of ex-convicts should receive increased attention.
- viii. There is need for improved coordination of activities between all agencies involved in the administration of criminal justice, such as the office of the DPP, the Police, Prisons and courts.
- ix. Rehabilitation and Reform centres should be established to assist the homeless and less privileged convicts upon completion of their prison term.
- x. Supervised community service should be introduced for some category of offences.
- xi. Prisons should be effectively funded for the provision of staff welfare, training for officers/inmates, provisions of logistics and provision of libraries.
- xii. Legislation that impede the media or the general public from having access to prisons should be amended in order to allow the media/general public to have first-hand information about the prisons.
- xiii. There should be functional Medical Clinics in all prisons formation nationwide. Also, adequate feeding, clothing and medical facilities should be provided for all prisoners.
- xiv. There should be provision of instructional materials in prisons for education of prisoners.
- xv. Adequate care for children born by female prisoners while serving prison terms.
- xvi. Training of prisoners in handiwork and skills or crafts to prepare them for life after imprisonment and prevent them from going back to crime.
- xvii. In addition to the establishment of more prisons, all prisons should be constantly maintained.

With the foregoing recommendations, the rule of law will be a conventional concept in Nigerian criminal justice administration and guide society at large.