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A Critical Analysis of the Concept of Law in H.L.A. Hart

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ABSTRACT

Man as a social and political being tends to live and interact with his fellow beings in the society. He organizes his existence which is life, liberty and happiness as common good in the society. In this paper, Hart's Concept of Law tries to argue for an accurate and concise legal positivism which brings the source of legal authority into acceptance by a system of rules which is grounded in a fundamental recognition that determines what is to be included among the legal rules. This seeks to offer an explanation to the concept of law differently from the popular utilitarian command which sufficiently describes criminal law, but is limited in describing legal system generally. It expresses the act of obligation which takes itself as a guide for behavior and holds the fact that law is to be followed than to be motivated by threat of punishment. To achieve this, Hart works out a form of legal positivism that reveals legal and moral connection at some points. In view of this, using the expository, descriptive, analytic and evaluative methods, the study established that, Hart's exposition on law is beyond mere sanctioning, which involves imposing obligatory rules that characterizes a political society built on democratic principles.

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Introduction

What moved us into the choice of this area of study is that social theorists through the centuries doubted if any society could be properly understood or explained without a logical conception of its law and legal doctrine; which are traceable to social, moral and cultural foundations. Various literatures are written to analyze what law truly is. What prompted our interest in Hart's concept of law, in particular, is his ability to attempt some questions of law such as: "What is this thing called law? Is positive law the only kind of law which exists? Do we have to accept that any rule enforced by any state is a law? Or, can the law be divorced from its social context? Must a rule, in order to be called a law, conform to a certain universal moral principles in accordance with nature? Or is it simply a collection of largely man-made, valid rules, commands, or norms? Does the law have a specific purpose or end, such as the protection of individual rights, the attainment of justice, or economic, political and other forms of equality?"¹ These are merely some of the questions that lie in wait for anyone attempting to uncover the meaning of the concept and the function of law.

Aquinas defined the concept of law as "nothing else than an ordinance of reason for the common good, promulgated by him who has the care of the community".² This definition, like all modern concise definitions, is explained by Aquinas in an attempt to show moral implication on the idea of law. This, of course, is rejected by the modern utilitarian who described law strictly positivistically. Legal positivism lay claims that only positive law which is simply a collection of largely man-made valid rules or commands that are undoubtedly made or chosen by the legislator exist. Legal positivism however noticeably rejects moral claim of legal rules, which until twentieth century had dominated other societies at most other times. The legal naturalism posits to the idea of the existence

of some kind of higher law not dependent on the actions of particular legislators. Typically, such laws are derived from religious revelation or from the requirements of reason; in the formation of Aquinas, which accepts reason as the mechanism whereby religious truth is revealed.

It is in view of the struggle between naturalism and positivism that a more complex version of positivism is offered by H.L.A. Hart in *The Concept of Law*. Law is characterized by Hart as a system of rules, which most basic types are primary and secondary rules. The primary rules impose rights and obligations which include criminal law, the secondary rules acknowledge how primary rules are formed and recognized. On an acceptable assumption, it is the rule of recognition that defines the legal status of a law. It is on this ground that the work seeks to evaluate H.L.A. Hart's complex idea of law which is on moral and legal rules and the functionality of law, which he designed for modern societies, to determine the formation, content, accuracy of liberal legal systems.

This article sets out to investigate if Hart's concept of law is a solution to instability found in our legal system.

The purpose of this study is to evaluate Hart's concept of law beyond mere sanctioning but to implying to obligatory rules that characterize a modern society built on democratic prinIt will be limited to the philosophical exposition and assessment of the complex rules by H.L.A. Hart as against the 'command' doctrine of John Austin in particular, which Hart argued for in *The Concept of Law*. It has both theoretical and practical significance. In its theoretical sense, the work will be a source of literature for future consultation in the field of social and legal philosophy. On the other hand, it is seen to be a source of practical significance that draws attention to the fact that there can be an improvement on Nigeria's legal system.

We used qualitative design. Data were sourced from books, journals, biographies and published documents. The Philosophical methods of descriptive, expository, evaluative and analysis were employed. The descriptive and expository methods were used to present Hart's concept of law as a set of complex social or legal rules. The analytic and evaluative approach was used to weigh the strengths and weaknesses of Hart's nature of legal rules. Both primary and secondary sources were used for the completion of this research work.

Scholars suggest that, no other writing of Plato (427-347 BC) shows so profound an insight into the world as his work on legal philosophy. Although the concept of law in Plato contains numerous passages which closely resemble that of Socrates, but there are points where he took leave from Socrates' idea. Plato in the text of *Laws* as well as of the *Statesman* and *Republic* states thus: "that cities will never cease from being ill until they are better governed; the principle that the balance of powers preserves states; the observation that people must be allowed to share not only in government, but in the administration of justice; the desire to make laws, not with the view to courage only, but to all virtue; etc".³

Plato in the *Republic* subdivided the political society into three distinct classes, namely: the guardians, soldiers and the artisans. The guardian corresponds to the rational part of the soul, the soldiers are the spirited part; the artisans on their part are the appetitive. Everyone, according to Plato, performs a duty for the harmonious existence of the state. He further recommend that "reason which corresponds with the guardian should rule the state, hence it can be recommended with the philosopher king".⁴ Plato's idea argues for the ideal government, and the ideal or perfect state remains the one ruled by the philosopher king as the height of reason and restricted by general legal principles or rules. Having outlined the details of an ideal state, Plato examined other forms of regimes: Timocracy, Oligarchy, Democracy and Tyranny. The worst of all regimes was tyranny that is the rule of one man. The next was Timocracy, a government of the people in which honor is the guiding principles and propertied class. Democracy, which was the rule of the majority, degenerates to anarchy or tyranny. Then, there is oligarchy or aristocracy, which is a state, ruled by a wealthy few. From the foregoing it is acceptable that Plato's legal thought, like the law of the Greeks, was never arranged as we have become accustomed to legal systems since the last century of the Roman Republic; yet we find in it a remarkable coherence in relation to his major philosophical ideas, because he isolated a range of legal ideas which have influence in both theorization of subsequent speculations and practicality in the modern societal organization. Indeed, Plato took the widest possible view of law than his teacher, Socrates who revealed that law was a product of reason being identified with nature itself. Though, he did not use the word 'law' consistently like Socrates, he rather used the concept of justice which he conceived to be a reflection of law and, at some points used them interchangeably. The Platonic corpus is captured thus: "the Republic is the best state, the laws are the best possible under the existing conditions of the Greek world. The legislator has taken the place of the philosopher, but a council of elders is retained, who are to fulfill the duties of the legislator when he has passed out of life. The addition of younger persons to this council is an improvement on the governing body of the Republic".⁵

In the *Republic*, Plato explained that the individual should subordinate himself to the state; this simply means that the individual could reach his most perfect development. The good of each man, Plato observed, was tied up to the good of the group. He expresses that laws were necessary only because some people refused to co-operate with the good state. "They served to bring these people in line and thus make whole good".⁶ Plato at this point developed a concept of law that is obligatory. Here, he fashioned out his idea according to how people ought to conform to the laws of the state, because they agree within themselves to set up laws for the regulation of their conduct; which is the origin of society and justice. The law, Plato said, "restrains us from doing what is morally wrong and gives us protection from injury by others since everyone is liable to suffer harm or to cause it; and we are obliged to obey the laws we promised in the social contract".⁷ This confirms what Hart describes as the simple rules of the society which can only be brought to a 'logical' legal system if only the secondary rules of power conferred are introduced.

Aristotle held in the *Politics* that man is by nature a social animal and, as such, can realize his true self only in the society and among his kind. However, anyone who lives outside of a polis is a savage or an outlaw. "The purpose of the polis is to ensure the best form of life for its citizens; it should secure the rule of law over the rule of men, that is, the polis should be rationally formed, and acceptable; however, the plurality of human pursuits to be reflected in a range of constitutions".⁸ This conforms with the modern realists' positivism where law is thought to be human artifacts, but however diverges slightly with Hart's composition of several rules (both primary and secondary) that builds up a legal system.

In the Aristotelian jurisprudence, law plays a key role in encouraging a virtual life. Aristotle observes this particularly with the young mind, "who have a tendency to be lacking moderation; as such, civil laws should particularly address their problems".⁹ Like H.L.A. Hart who extends the concept of law in modern fashion to cover political system, Aristotle used the concept of law spatially to include political system; where he inevitably relates it with the concept of justice. According to him, "such justice is termed 'political justice' because it only has meaning in the political situation. Hence, it is only found among those whose mutual relations are being controlled by law".¹⁰ Aristotle argues that:

Political justice is constituted by principles of natural law and is realized as civil law. In these terms, civil law is written to reflect the guiding principles of natural law, which direct us to act virtuously towards one another. Although natural law is constant, civil law can vary from one particular person to another; as, of course, does justice. Indeed, the definition of civil law is its mutability. If it did not change, it would not be civil law but natural law. At the same time, law is simply a means, not an end. Law is not an absolute good. It is justice which is an absolute good, and justice has priority. This distinction establishes the genus of natural law.¹¹

According to Aristotle, monarchy is the best form of government; for it is possible to have a virtuous ruler that could adhere to the rule of law. Hence, monarchy could develop into an aristocracy, which is a true form of rule by a few.

The third form of true government was polity, a mixed rule of many where properties were held in check by law. "When these forms of government are perverted, tyranny will be in the stead of monarchy, where arbitrary powers are exercised. The least perverted form of government is democracy which is the government of the mob".¹²

Thomas Aquinas sought to fuse the thinking of Aristotle with that of St. Augustine in his *Summa Theologica*. He railed on the same track of thought with Aristotle when he argues that, man is naturally a political being and seeks to be in society; and "the supreme purpose of the state, according to him, is for the good of those accepting to live in it."¹³ In the very first article of first question of the Treatise on Law, Aquinas argues out rightly that, "law (lex) can be seen as an ordinance of reason directing activity towards some goal, or purpose, and the highest end we have as humans is our ultimate fulfillment, the full realization of our nature which is meant to promote human happiness".¹⁴ The important point he made which probably heightened Hart's stand is that, law has common acknowledgement and usage of social function, and it as well directs to a common goal; it does this authoritatively. In other words, in as much as law recommends or suggests, it equally binds and commands. Andrea summarizes Aquinas' legal philosophy by stating thus:

Lawmakers in our familiar experience are thus recognized authority figures within a social community who address themselves to the reason of the certain specified ways. Because law has this essentially directive function, in order for an ordinance of reason from a recognized authoritative source to have the status of law, it must also be promulgated, or made public, so that it can perform its coordinating and directing work. Hence we have Thomas' famous definition of law in the Treatise: it is "an ordinance of reason for the common good, made by him who has care of the community, and promulgated."¹⁵

The argument above suggests that, Aquinas' idea of social function of law aligns with Hart's concept of law as political obligation, but differs with it in some respect when he trails on the path of Austin's doctrine of law as a 'command that is binding' which favors partly the modern utilitarian stand of the eighteenth century. According to Njoku, Aquinas however conceives law to be "the product of practical reason, coming from the leader who has concern for a perfect community, in which he exercises practical reasonableness of integral directiveness geared towards the common good of human in all its constituent parts".¹⁶ The concept of natural law lay at the centre of Aquinas' political thought. He accepts reason to be the link between the forms of law he himself categorized. Thus, he divides law into four categories, namely: eternal, natural, human and divine laws.

In Aquinas' view, the eternal law is seen as the plan of divine providence for governing the universe, which directs all actions and motions and other nature to the attainment of their end, that end is 'God Himself'. All laws, of whatever kind, in so far they conform to right reason, derive their source from the eternal law. Natural law is nothing other than the participation of the eternal law as a rational being or creature. Hence, the natural law is the law of nature, which is perceived through the exercise of their reason. According to Aquinas, human law too is derived by reason from natural law, and consists of two forms: the law of the peoples

(ius gentium) and the civil law (ius civile). Law in Aquinas' view has to be promulgated by the ruler, who could be one, two, or many, depending on the type of constitution. This form of law characteristically has a coercive force as against its subjects, and for such commands to be valid, it has to be in accordance with right reason. It would be invalid if it went against natural law. Aquinas concludes that "man requires more than just natural law and human law as his guides; because he has a supernatural destiny, and law directing him to his end".¹⁷ this is what he refers to as the divine law.

Thomas Hobbes in his major political treatise, *Leviathan* refers to the human society as a 'state of nature' to explain what life might be like in the stateless society. He however argues that from anarchy, people would be driven by self-preservation and the fear of death to band together to form a state; for there would be a time they would not want to continue with a life that is 'poor, brutish, and short'. Hobbes fears that "without government, we would chase the same values and inevitably end in conflict, that is, the war of all against all".¹⁸ He probably must have been inspired by Aristotle who refers to those who live without government as uncivilized or uncultured. Hobbes marks that the state is formed by engaging in a contract with one's fellow tending to obey the social contract and result to sovereignty. In other words, the citizens ought to give over powers absolutely to the government, "for it is only by delegating their subjective values and hence their reasons for conflict to an objectively motivated institution."¹⁹ When citizens delegate their subjective values to the government, that is, the laws of the government, Hobbes argues, whose "command is addressed to one formally obliged to obey him."²⁰

John Locke in his *Second Treatise on Civil Government* was influential in forming the political philosophy of the founders of the French and American Republics. They argue further that "a careful study of the Declaration of Independence and the American constitution reveals both documents to be replete with phrases such as "All men are created equal; life, liberty, and the pursuit of happiness, we hold these truths to be self-evident," and so forth, which are called almost literally from the *Second Treatise*."²¹

Like Hobbes in his *Leviathan*, Locke begins the *Second Treatise* with historical account of the origin of government by introducing social contract theory that was seemingly less intense; but, unlike Hobbes, Locke's version of the 'state of nature' in the social contract was thought to be peaceable since he understood men in the state that they were not selfish as Hobbes argued. Everything though Locke argues at some point that men sometimes act self-mindedly, but unlike Hobbes, the natural state of men were not nasty, poor or brutish, for they own private properties such as land, sheep, cattle and other properties, and sometimes work for the good of others and cooperate with each other. The law that governs them is what Locke calls "the law of nature". Locke however acknowledges that people at their natural state may wish to dispose such properties owned by them without asking the permission of anyone and, on the occasion when egocentrism leads them to transgress the law of nature, an attempt is made to kill someone in order to steal his property. When this happens, the injured party deserves the right to punish the transgressor. So, in an attempt to develop an institution with the purpose of correcting the problems that may rise, men enters into a social agreement willing to erect these institutions. "The imagined natural state of men in Locke's understanding of the state in which individual human persons

are free from any obligation derived from any human originator; it is what he refers to as a state of perfect freedom."²²

Jeremy Bentham in his work, *An Introduction to the Principles of Morals and Legislation* is "thought to be the father of utilitarianism";²³ and, during the late 18th and 19th centuries, utilitarianism became increasingly aligned. He defined law as "an assemblage of signs declarative of a volition conceived and adopted by a sovereign in a state, concerning the conduct to be observed in a certain case by a certain person or class of persons, who in the case in question are supposed to be subject to his power"²⁴. His definition of the concept of law is fitted using the triple theoretical prongs of sovereignty, power, and sanction that could be applicable to the political society which perhaps formed the basis of the Austinian doctrine of law squarely as command of the sovereign. Although, law differs from society to society, says Bentham, but "what law ought to be as in principle should everywhere be the same. That is, its content and application could assume to be the same, provided it is exclusively spelt out by the legislators and commanded by a sovereign; in this sense, law is thought to be complete and accurate".²⁵ Bentham's whole idea rests on the premise that, if political life is utility thereby making many people as possible happy or satisfied is that the role of law is determined politically.

John Austin in his major work, *The Province of Jurisprudence Determined*, is based on the idea of commands or orders, even though he is thought to have provided a less elaborate account of what laws are, unlike Hart who interprets them as sets of varied social and legal rules. Austin's definition is often thought by scholars to extend not very much further than the criminal law, with its emphasis on control over behavior. Perhaps, his identification of commands as the hallmark of law, his critics thought, leads him to a more restrictive definition of law than is adopted by Bentham who seeks to formulate a single, complete law which sufficiently expresses the legislative will.

Austin understood law as "a command, issued by a sovereign and backed by a sanction. From his argument we can be certain without any conceptual error that he accepts sanction as a credible threat of harm to a subject attendant on a violation of the order."²⁶ On an acceptable assumption, it follows therefore from Austin's view that there is no law that is not backed by a sanction. If Austin's view is found to be true, then, law without sanction is no law at all. In clearing up what law 'is' Austin argues that:

The existence of law is one thing; its merit or demerit is another. Whether it be or not be is one enquiry; whether it be or not conformable to an assumed standard, is a different enquiry. A law, which actually exists, is a law, though we happen to dislike it, or though it varies from the text, by which we regulate our approbation and disapprobation.²⁷

Austin, like Bentham, rejects any moral connection with legal rules. He argues that, "if human laws which conflict with the Divine law are not binding, that is to say, they are not laws, is to talk absolute nonsense."²⁸

The Austinian form of legal positivism, like scientific positivism, rejects the view held by natural lawyers which law exists independent of human enactment. Perhaps, it was this core idea that gave H.L.A. Hart starting point of law as political obligation in his book. *The Concept of Law*.

However, prior to the rejection of the utilitarian positivism by Hart, there seems to be a break from the traditional definition of law by legal realists. This indeed is seen in their general commitment differently from the analytical emphasis or description of the concept of law as a body of rules enacted by men. Although, their plan was latter described by Hart as conceptual extreme idea or ideas, the realists are committed on how law works in practice. To them, law is what is obtained in the courts as well as what the judges do.

H.L.A. Hart's Concept of Law

The purpose of this chapter is to expose H.L.A. Hart's attempt to introduce a complex idea of law as some sort of social and legal rules, which must ultimately be rooted not just on the strict sense of legal system, but in some account of the political system. Hence, Hart's book sought to offer an alternative explanation to the concept of law differently from the popular utilitarian command doctrine which sufficiently describes criminal law, but is limited in describing legal system generally. However, Hart's starting point aims at explaining such limitations of the positivists stand as a preparatory ground towards building better legal ideas for modern legal systems.

Many writers wonder why there was silence in political philosophy throughout the first half of the twentieth century and many reasons have been advanced from various sources which are cogent. Whatever seems to be the reason, it could be seen that there was a break in silence with the books published in the second half of the twentieth century.

"In the late 1950s and through the 1960s when the contemporary political philosophy was re-emerging from a period of inactivity, Hart amongst other social writers made a commendable attempt to write a book on jurisprudence. Unlike Rawls on *The Concept of Justice*, and many others, Hart did not align completely with figures like Jeremy Bentham, John Stuart Mill and Henry Sidgwick."²⁹ These thinkers are credited to have established a broad utilitarian consensus, "which the measures in assessing political institutions are politically variable and the happiness of the people are affected by those institutions, in particular those who live under the institutions."³⁰

At a methodological level, scholars assert that Hart's views are somewhat less easy to discern. However, his main concern, as contained in the preface of his book, is summed up to: For greater insight; the concept of law, coercion and morality are as conveyers but related to social phenomena. Apart from the huge contributions made to political philosophy, Hart is considered to have developed a sophisticated theory of legal positivism within the frame work of analytic philosophy.

In the preface of *The Concept of Law* Hart describes his own theory as "an essay in analytic jurisprudence, for it is concerned with clarification of the general framework of legal thought, rather than with the criticism of law and legal policy."³¹ Hart goes on to add in the next paragraph that, "the book may also be regarded as an essay in descriptive sociology."³²

His method here seems to rest on two aspects - first as being conceptual and, second as being descriptive. This method is further clarified in his postscript. In this regard, Hart explains that the aim of his book *The Concept of Law* "was to provide a theory of what law is, which is both general and descriptive".³³ General in the sense that his theory of law does not join on any particular legal system or social culture, rather, it "seeks to give an explanatory and clarifying account

of law as a complex social and political institution with a rule-governed aspect” in this sense it is normative. In its descriptive sense, Hart emphasized that his account is morally neutral and has no justificatory aims; by implication, “it does not seek to justify or commend on moral or other grounds the forms and structures would appear in his general account of law.”³⁴

Hart's project was primarily to drive away all sorts of possible misconceptions that will tend to produce confusion in jurisprudence generally, doing that would help in bringing about a full grasps of legal concepts or issues.

The Earlier Legal Theories.

Considering the whole idea of law closely, we might be fascinated with the basic idea that the concept of law frequently stimulates controversies in modern times than any social issue that one can think of, and this spans the landscape of philosophy of law with its generous frontiers. Many scholars recognize law as a vehicle for social change, but, some others doubt the central role of law in our social, political, moral, and economic life or its intrinsic nature (i.e. what law really is). This generates several questions through the few past centuries, but central to legal philosophy is profoundly three basic questions: Does law consists of a set of universal moral principles in accordance with nature? Or is it simply a collection of largely man-made, valid rules, commands, or norms? Can the law be divorced from its social context? Whatever seems to be the general disposition there is indeed a philosophical look to such beliefs. Hart's complex idea of law cannot be understood without looking into the principle ideas of the modern positivists, starting with Hobbes, whose origin of political society becomes an introduction to the general ‘command’ theory of the modern positivism; in other words, the background provided by Hobbes (and perhaps his admirers) routinely needs to be clearly made.

As it is stated elsewhere in this chapter, Hart's brand of positivism indeed has its root in the political philosophies of Hobbes, Bentham and Austin. Thomas Hobbes’ *Leviathan* is known basically to have been based on the natural law theory. But most profoundly, the command elements of Hobbes legal doctrine must have influenced other positivists’ line of thought; such as Bentham, Austin and Kelsen. These actually aided in shaping Hart's legal philosophy.

Hobbes in the *Leviathan* posits the fact “that under the social contract, law and government are required; if we are to ensure order and security, we must therefore surrender our natural freedom in order to create an orderly society.”³⁵ He acknowledges the fact that every act we perform is actually self-serving. Hobbes understands that, from human self-interest and social agreement, there lies some unchanged fixture of nature, in order to escape the horror of the state of nature. Peace is sought which is the first principle of nature. The second law of nature is that we undo ourselves of certain rights so as to achieve peace. The mutual transfer of rights is a contract between members of the society, as such; it is the basis for moral duty.

H.L.A. Hart's Concept of Obligation

Hart starts his version of obligation in *The Concept of Law* on a very interesting mode. Even though he rejects the positivists’ errors concerning *coercive order*, but their starting point which states that, “where there is law, human conduct is made in some sense obligatory seemingly accepted by him while building a new account of law.”³⁶ The first instance where conduct is no optional is when a man is forced to do

what other compels him to do, he is forced not because his body is forcefully compelled or pushed against his will, but because he is threatened with unpleasant sanction or consequences if he dare not carry out the duty. Notably Bentham and Austin focused on the idea that “a law was a command (typically a threat) issued by the sovereign and backed by force.”³⁷ Although, the idea of law contain in some situations elements of command and habit but it cannot be reduced to a mere gunman situation, for such commitment of legal description of law is thought by Hart to be reduction in nature. Hart's dissatisfaction is based on the simple assumption of the facts of legal realism where there is “a general belief on the part of those to whom the general orders apply that disobedience is likely to be followed by the execution of the threat not only on the first promulgation of the order, but continuously until the order is withdrawn.”³⁸

There is however a glaring difference between issuance of order on one end and receiving of order on the other. Presumably, giving an order suggests having or possessing some kind of authority. Hart likens the obligation of Austin command theory with a gun-man situation that compels the other to surrender his purse to avoid impending evil. In the predictive stand, obligation is defined in terms of the impending danger that something unpleasant may happen to one whom the command is addressed. By implication, if the chance of punishment is high, and obligation may be said to exist; if it is nil, one may be right to think that there is no such obligation.

Austin's model makes conduct obligatory, because an obligation arises automatically from a command, as the ‘victim becoming liable to evil’ in case of non-compliance. On an empirical assumption, if A threatens B, B would only be assumed to calculate the chances of incurring punishment or evil by A for him to develop the feelings of being obliged; and to Austin, likelihood of punishment defines the nature of obligation. Hart's exposes Austin's doctrine here; for instance, Austin might have not thought of the fact that members of organized crime could bribe most of the police force and judiciary as well, who may not be liable, or whose action may not be predictable due to the supposed contract bribe is concealed between them. By so doing, the gang may not be said to be “liable” and as such, not be said to have obligation to obey the law not on any ground of social or moral factor, but on the basis of the concealed deal (bribe which they offered) with those in authority. Too many contemporary scholars, especially Hart, the claim of Austin's model violates common sense, for if we accept Austin's view of obligation, we must admit that the only reason that individuals follow law is external to them.

Following his argument closely, Hart believes that, the fear of sanction does not adequately explain the idea of obligation, for Austin confused two issues here: ‘being obliged’ and ‘having obligation’. “The citizen who accept what the law says internally may not have done that out of fear, but because they are obligated.”³⁹ In other words, people do not merely follow the rules because there is an impending danger, they do follow because they have civil responsibility towards keeping the law; that is, and something becomes a reason for moving it. As rational beings, citizens have some moral obligation to obey the law.

In the first persistent question, Hart considers the doctrine to be insufficient to describe law. While it adequately described criminal codes or penal statute, it does not encompass many areas of what is called ‘law’.

Hence, Hart replaces command with system of rules to be the key science to jurisprudence.

Towards a Better Legal System

Hart's starting point hinges on the fact that the idea of law or legal concepts generally is not reducible to extra-legal facts. This basic idea is traced to his early articles: "Definition and Theory in Jurisprudence" (1953) and "Problem of the Philosophy of Law" (1967). Hart asserts that, "certain legal words or phrases cannot be clear in just a simple statement. Such words, like law, right or state can only be explained beyond ordinary definitive terms."⁴⁰ Hart observes that the tradition held by many scholars which appear to be an unending theoretical debate seems misleading. The question 'what is law?' appears simple, but its essential nature is self-contradictory than most areas of specializations, including the ones we find in the sciences; for instance, 'what is chemistry?' or 'what is medicine?' Hart added that, "few lines on the opening page of an elementary textbook is all that the student of science is asked to be considered, as such, no vast literature is dedicated to altering these questions."⁴¹ But, concerning issues on Law to explain it as all-embracing concept in jurisprudence, it must be analyzed in a deeply complex social approach that lacked detailed account in the modern positivist's theory; which forms the basic foundation for Hart's argument.

It is however believed that legal positivism has a long history and a broad influence. It has orders in ancient political philosophy which was introduced in the medieval legal thought. But it is important to note that the modern doctrine however, owes little to the forbears; as observed above, its most important roots lie in the conventionalist political philosophy of Hobbes, of which full elaboration is due to Jeremy Bentham (1748-1832). And, it is on Bentham's account Austin adopted, modified, and popularized his concept of law as a 'Command' (which at that time dominated legal positivism and English philosophical reflection on jurisprudence).

Austin starts by sub-dividing the scope of law generally. The concept of law can either be applied in a proper or improper sense. He divides it into "four classes: a) the divine law - law set by God to his creatures, b) positive law - law that is squarely human concepts with legal sanction, c) positive morality - law set by opinion of the people free of any legal sanction, and, d) laws in a metaphoric or figurative sense."⁴² The other three senses "which law is applied are improper manner because they enforce morality (that is, people practice them) without legal sanction - they are positive morality, and are not qualified as subject matters of jurisprudence."⁴³ However, the ones set by men for men who have legal sanctions for them to obey are laws in proper sense, "they are the essence of law and the key to the science of jurisprudence."⁴⁴

According to Austin, law in its strictest sense, is purely made by sovereign person(s) who is binding through the use of command or prediction of sanction or punishment. People are in the habit of obeying the command of the sovereign who does not pay a regular obedience to a determinate person or a body. Unlike Hart, he does not think it compares to right, and where such a law noticeably compares right, it only does that merely to impose duty. In his view, "right is expressly a creature of positive law."⁴⁵ To Austin, law is law and exists whether or not we adhere to it. He states thus:

The existence of law is one thing; its merit or demerit is another. Whether it be or be not is one

enquiry; whether it be or be not conformable to an assumed standard, is a different enquiry. A law, which actually exists, is a law, though we happen to dislike it, or though it vary from the text, by which we regulate our approbation and disapprobation.⁴⁶

To examine his concept of law, Hart developed a critique on Austin's idea which became a point of departure on the theory concerning the nature of law. In an attempt to build a better legal concept of law differently from the modern utilitarian, Hart attempts to examine the concept of 'law' that is compatible with every modern liberal society by extending it to have a political implication rather than employing a dictionary meaning on them. Hart argues that:

Notwithstanding the considerable area of indeterminacy in their use, the expressions 'law', 'legal system', and a wide range of derivative and interrelated expressions ('legislation', 'courts of law', 'the application of law', 'legal adjudication') are sufficiently determinate to make possible general agreement in judgments about their application to particular instances. But reflection on what is thus identified by the common usage of such terms shows that the area they cover is one of great internal complexity; laws differ radically both in content and in the ways in which they are created, yet despite this heterogeneity they are interrelated in various complex ways so as to constitute a characteristic structure or system. Many requests for the definition of law have been stimulated by the desire to obtain a coherent view of this structure and an understanding of the ways in which elements apparently so diverse are unified. These are problems, therefore, of the structure of law.⁴⁷

Legal systems as social phenomena relate to other social phenomena, like justice, morality, command etc, yet at various points, "law differs from them, for they are not applied in one meaning."⁴⁸

Hart openly portrayed that *The Concept of Law* is an analysis of the relation between law, coercion, and morality; here, he sought to examine the question whether all laws can be properly conceptualized as coercive orders or as moral commands. From the foregoing, it is certain that Hart saw no logical connection between law and coercion, or between law and morality. When law is strictly classified as either coercive order or moral commands is to oversimplify the relationship between law, coercion and morality. Doing so may amount to imposing a misleading appearance of uniformity on different kinds of laws and on different kinds of social functions which laws perform. In other words, "to describe all laws strictly or as mere coercive order is to characterize the purpose and the function of some laws, and hence, to understand their content; mode of origin, and range of application."⁴⁹

Hart however conceives law as a system of rules, more specifically, as both primarily imposing rules and secondarily rules of change, adjudication and recognition. Duty imposing rules are interpreted to be the concepts of rules which guide human conduct by giving reasons for action, and normative systems seemingly cannot operate without them. The secondary rules on the other hand are about the primary rules, which identify, create, change or extinguish primary rules. This equally sets up legal institutions that apply the primary rules. Specifically, the rules of change, discussing legal

powers on persons, enabling them change their positions. Rules of adjudication constitute courts and other law applying organs that regulate their activities; on the other hand, the rule of recognition lays down criteria for the identification of the rules of the system. In an attempt to redirect the positivists' thought, Hart briefly puts it that:

... If we are to do justice to the complexity of a legal system, discriminate between two different though related types. Under rules of the one type, which may well be considered the basic or primary type, human beings are required to do or abstain from certain actions, whether they wish to or not. Rules of the other type are in a sense parasitic upon or secondary to the first; for they provide that human beings may by doing or saying certain things introducing new rules of the primary type, extinguish or modify old ones, or in various ways determine their incidence or control their operations. Rules of the first type impose duties; rules of the second type compare powers, public or private. Rules of the first type concern actions involving physical movement or changes; rules of the second type provide for operations which lead not merely to physical movement or change, but to the creation or variation of duties or obligations.⁵⁰

By implication, Hart's legal theory posits the fact that legislative act short-change the command if of a sovereign command while rules substitutes fear of sanctions. Meaning, the duty imposing rules of obligation replaces the fact of simple habit of obedience of commands, while the power rules which is a conventional rule replaces the idea of the supreme commander who I take no order from anyone; for in Hart's version, officials too do comply with the rule of obligation. This is consistent with what Lon Fuller accepts to be the basic feature of law. Fuller believes that, "what characterizes a good law is the fact of exchange between the officials and the ordinary citizens. Leaders who issue rules should equally comply with the rules."⁵¹

Hence, not all laws are coercive in Hart's version; some are easy, allowing individuals to create contracts and other legal relation. Njoku supports this idea by stating that, "there are many ways of stating rules: by necessity, indicative, imperative, legality, ought, moral statements, probability, sanction and so on. There is no one way of reporting or stating a rule."⁵²

Hart's commitment is anchored on the basic idea that rules are made to guide both the ruler and the ruled; this error in the theory of law are championed by Bentham and Austin. For the command doctrine fails, in Harts understanding, to bring out the features of a municipal system. If laws are reduced to mere criminal law, it will lack the propensity to explain those aspects that concern other stipulated conditions of changing legal statues such as when one wants to marry or engage in contract, or those involving interpersonal relation that are not under threat to act or not to act.

Hart asserts that, the introduction of the three types of secondary rules into lie set of primary rules of obligation may be considered "the step from the pre-legal to a legal rid."⁵³ It is on this ground therefore that Hart considers the positivists' inclination towards description of the concept of law to be inaccurate.

Critique of Hart's Rule

Hart's concept of law reveals that he took a stand between the two conflicting schools of thought, namely:

naturalism and positivism. The schools seem to implore an unending strive resolutely against each other on what the idea of law could mean. Hart treats the concept of law according to the naturalists' tradition on one hand, and that of the positivists on the other as separate doctrines; but blends them at some point where he implores the idea of the minimum content to show where they connect. This was designed undoubtedly by him to emphasize on the concept of legal laws as body of rules with a normative art which specifically explain them as both legal and political ideas; having an obligatory undertone than limiting them to a mere command as projected by the modern era utilitarian. Having discussed Hart's conception on law, there is the need to evaluate it to determine his strengths and weaknesses as pointed by other scholars. This will bring us to the final conclusion.

Hart's concern was to address the inadequate concept in John Austin's 'command theory', where Austin and the positivist school viewed statements of legal laws of obligation not as psychological statements of social rules, but as predictions of chances of incurring punishment or evil. However, his (Hart's) postulation is not sacrosanct; his idea has been fiercely criticized by his critics, even his admirers too challenged some aspects of his scheme. Among some of his critics are his students and associates. They either challenge Hart corpus or some aspects that seem inauspicious to them.

Ronald Dworkin, a prominent lawyer and political philosopher, was one of Hart's critics. He wasn't contended with Hart's version of law as a set of rules, he wondered if law was merely a system of rules on which Hart based his model of positivism, Dworkin pointed out that a legal system cannot be conceived merely as a code of rules in a legal system because a legal system is recognized primarily as an institution based on certain norms, standards, principles and policies. It is in view of this that Dworkin drew a distinction by contrast between rules and principles.

In Dworkin's understanding the idea of law as a system of rules fails to take into account of what he calls principle. His argument starts with conceptual clarifications of what rules and principles are.

According to him, "rules are thought as detailed while principles are general. Principles are broad reasons that lie at the foundation of a rule of law; they are wide formulations of reasons which underlie and comprehend particular rules. The principles are wider than rules and the rules are categorical precepts attaching a definite, distinct and detailed legal effect; they are more specific and detailed than principles".⁵⁴

Rather than creating complex rules, Dworkin argues that Hart should have thought of making the concept of law more relevant to the officials and more applicable or functional in terms of acceptability by differentiating rules from principles. It appears as if Hart let these challenges go unanswered until, after his death in 1992, his answer to Dworkin's criticism was discovered among his papers' which were subsequently included in his postscript, the second edition of *The Concept of Law* edited by Penelope A. Bulloch and Joseph Raz. Hart wondered in the postscript what precisely he could be charged with ignoring in his theory of law as a collection of rules; for principles, as used by scholars which are relevant to the issues which Dworkin meant to raise.⁵⁵ For Hart, principles and rules are not the same, and cannot be used interchangeably, for at least there are two features which distinguish them. The first is a matter of degree: here, principles are used only relatively to rules; they are broad,

general and unspecific “in the sense that often what would be regarded as a number of distinct rules can be exhibited as the illustrations of a single principle.”⁵⁶ Secondly, Hart asserts that:

The second feature is that principles, because they refer more or less specifically to some purpose, goal, entitlement, or value, are regarded from some point of view as desirable to maintain, or to adhere to, and so not only as providing an explanation of the rules which shows them, but as at least contributing to their justification.⁵⁷

According to Hart, these are two uncontroversial features that account for explanatory and justificatory role which principles have in relation to rules. He however added at some point the third distinguishing feature that implies a matter of degree, which Dworkin ignored. In this case, Hart saw Dworkin stand as restricting the functions of rules to the reasoning of those who apply them in an ‘all-or-nothing manner’, its validity and applicability in a given case conclusively necessitates the legal result or outcome. Hart asserts that:

I see no reason to accept either this sharp contrast between legal principles and legal rules, or the view that if a valid rule is applicable to a given case it must, unlike a principle, always determining the outcome of the case. There is no reason why a legal system should not recognize that a valid rule determines a result in cases to which it is applicable, except where another rule, judged to be more important, is also applicable to the same case... So law for Dworkin comprises both all-or-nothing rules and non-conclusive principles, and he does not think that this difference between them is a matter of degree. But I do not think that Dworkin's position can be coherent.⁵⁸

Hart thought Dworkin's claim is a legal system consisting both of all-or-nothing rules to be incoherent; Hart wonders if principles can lie at the foundation of a rule of law, or can serve wide formulations of generalization that comprehend particular rules. It could be recalled that Hart makes linguistic functionality of legal language central to his masterpiece, because his work employs a far reaching analytical philosophy with the aim of making clear legal concepts as they ought to be rather than giving commitments found among modern legal theories. Therefore, rather than eluding oneself with incoherent legal idea that laws are more applicable in terms of acceptability by differentiating rules from principles as posited by Dworkin, Hart remarks that such non-conclusive principles may be cured if we admit that the distinction is a matter of degree.

Two powerful criticisms have been made to challenge Hart's idea of the internal aspect of rules. The first challenge is posed by John Finnis. Finnis seems discontented with Hart's idea of primary and secondary rules which were meant to distinguish a developed legal system from a primitive legal system. According to Finnis, Hart is perceived to be using a philosophical tool called the central case. The central case is understood to be one which, within a certain pattern, best fulfils its characteristics. According to Finnis, Hart should not have stopped at the existence of the internal aspect of rules as a means of differentiating the central case from other, peripheral case. He should have further differentiated the notion of the internal aspect itself. Finnis is of the opinion that there are several reasons behind the people accepting or

viewing rules as standards (using the internal point of view), which includes self-interest, a detached interest in the well-being of others etc. He added that all these are “watered-down” notions of the internal aspect of rules. Gautam Bhatia supports the idea of internal aspects of rules by rejecting Finnis' criticism of Hart's. Gautam argues that the central case is the viewpoint of the moral man. According to him, Finnis' criticism of Hart is a limitation that is glared to some scholars; he fails to explain why the moral man's standard is to be the central case for legal systems.

The second is the one made by Joseph Raz, Hart's most committed student, fiercely criticized the idea of aspects of law. He argued that:

Hart's internal and external aspects of rules commits him to a position where either one must be a detached observer commenting on the effects of the legal system, or an internal actor who is endorsing the law's moral authority... there is a third category of statements, that of lawyers, or law teachers explaining the law to others. This allows an internal statement to be made without espousing it as a normative standard; for instance, I may be an opponent of capital punishment, but within the framework of my country's legal system, I may end up writing a legal opinion with the statement, “Given the law on this point, he ought to be hung.” The use of the word ‘ought’ in this sentence does not commit me to an endorsement of the moral content of the rule itself.⁵⁹

It would be seen that Hart understood the internal aspect of rules as providing the reasons, for criticism as opposed to the external aspects, which merely predicts consequences. Neil MacCormick responded to the contradiction as pointed by Raz. MacCormick explains that “understanding, and not will, determines the internality of a statement. It is possible to understand a norm, to be able to frame judgments in terms of it, and yet remain hostile or indifferent to it”.⁶⁰ He opined that there is a need to further classify the internal aspect into two categories: merely an understanding of what the rule requires, and commitment to upholding the rules. MacCormick sums up his argument with “reasonable assumption that no legal system can exist without at least some persons who do care about the maintenance of patterns of conduct, who always have commitment towards the rule.”⁶¹

Hart aimed at redirecting what he conceives as Austinian legal fallibility, for Austin's brand of legal reasoning is understood by Hart to be a reductionist's account of the normativity of law. His fundamental objection of Austin's idea “lies on the predictive interpretation of the concept of law, which obscure the fact of moral implications of legal law as some species of social rules; and, deviating from them are not merely legal grounds for predictions, but the reasons are for obeying them.”⁶²

Hart's claim of legal laws as some species of rules is another aspect that Raz criticized without showing possible signs of reconciliation. The reason for Raz's objection is based on the fact that, law's functions in various cultures are more closely related to their coercive aspect than Hart seems to have assumed. For the ‘game theory’ employed by recent legal and political philosophers tends to show the rationale of variety of legal arrangements, explained loosely by the function of law while solving some legal problems. Raz at this point implores legal realism in his approach to the concept of legal law. Neither Austin's predictive theory nor

Hart's legal theory built on multiple social rules that must be recognized are sufficient enough to explain what legal law is.

Raz accepts his concept of authority as a promising approach to the idea of legal laws. He thus:

Raz argues, however, that the law is autonomous: we can identify its content without recourse to morality. Legal reasoning, on the other hand, is not autonomous; it is an inevitable, and desirable, feature of judicial reasoning. For Raz, the existence and content of every law may be determined by a factual enquiry about conventions, institutions, and the intentions of participants in the legal system. The answer to the question 'what is law?' is always a fact. It is never a moral judgment. This marks him as a 'hard' or 'exclusive' positivist. 'Exclusive' because the reason we regard the law as authoritative is the fact that it is able to guide our behaviour in a way that morality cannot do. In other words, the law asserts its primacy over all other codes of conduct. Law is the ultimate source of authority. Thus, a legal system is one of authoritative rules. It is this claim of authority that is the trademark of a legal system.⁶³

Following Raz's argument closely one would understand he built his argument on three pronged premises: first on 'semantic thesis'; second on 'moral thesis'; and thirdly, on 'social thesis'.

The 'semantic thesis' that implores the idea of legal law, especially that of the soft naturalists which content elements of morality (including Hart's project), are dispelled by him; for Raz believes that the normative terms like 'right' and 'duty' do not apply to both moral and legal contexts in the same way. Raz argued that "the moral merit of law is neither absolute nor inherent, but contingent upon the content of the law and the circumstances of the society to which it applies. And, the third and most important prong leans on his 'social thesis', where law, so to speak, may be identified as a social fact, without reference to moral consideration."⁶⁴ Raz thought to have postulated a stronger version of 'social thesis' as "the essence of legal positivism; where upon its acceptance and the rejection of the semantic and moral theses he assembles a stand against a general moral obligation to obey the law. The whole argument of his was to build an idea of law on the concept of authority, for Raz contends that there is no obligation to obey the law."⁶⁵

Strength of Hart's Concept of Political Obligation

Hart's discourse on the concept of law puts authors at high risk on where to categorize him whether as a naturalist or a positivist. But, a careful consideration of his idea admittedly places him on a tradition in analytic jurisprudence and logical positivism.

Hart took his stand in legal philosophy in a complex fashion than those that preceded him. He implored the use of language at the start to explain the complex idea of law that was never thought before, which is understood to be more meaningful in both content and in style than any social issue one can think of. Hart introduces the tool of linguistic legal theory which clears some misguided tradition in legal philosophy and certain misconceptions in the realm of law, especially, those in complex situations.

As earlier stated in chapter three, Hart's starting point appears to be the key phrase to the use of language which emphasizes the significance of linguistic philosophy in legal studies. Hart explains that:

Linguistic philosophy thus conceived as an explanation of multiple forms and diverse functions of language knew no boundaries of subject-matter: its insights and illumination were available for the clarification not only of discourse of everyday life but of any discipline at the points where there were reasons for thinking that a failure to grasp the differences between one form of discourse and another, which were often concealed by identical grammatical forms; have produced confusion.⁶⁶

Hart's further works on semantic jurisprudence asserts that the characteristic aspect of legal aspect is the fact that they have a core of establishing meanings surrounded by uncertain meanings. This posits an idea that, the use of different words in law-related discourse implies the existence of different kinds of rules which in turn signals the existence of different social functions that each performs.

Joseph Raz, who appears to be the major critics of Hart's whole idea of the concept of law in both attitude and in belief, has found Hart's linguistic dialectics logically convincing. "Raz argues for the need of inspecting legal concepts, because he believes that the meaning of the concept of law lies in its nature and context."⁶⁷ He added that "theory of law provides an account of the nature of law and a theory of law is successful if it meets two criteria: first, it consists of propositions about the law which are necessarily true, and, second, it explains what the law is."⁶⁸

Like Hart in linguistic philosophy, Raz admits that "we rely on context, linguistic and non-linguistic, to determine whether we are talking of the right sort of law when talking of law, or whether we are talking of scientific or other laws."⁶⁹ He however implores a contextual implication of legal concepts where Raz, like Hart, argues however that, "the availability of context to determine reference establishes that there is no need for concepts to be identified by the use of specific words or phrases."⁷⁰ Raz made certain assumptions about concepts or statements; he states thus:

I will make two assumptions about concepts: first, I will assume that we can explain what they are by explaining what it is to have and understand them. That is, we explain a particular concept by setting out the conditions under which it is true of people that they have and understand that concept. Second, I will assume that concepts differ from each other by the information required to have and understand them, and by the skills and abilities involved in their possession. I call these assumptions, for in making them I am deviating from the ordinary meaning of 'concepts', narrowing it down, and fashioning it in accordance with the way it is normally used in philosophical writings. Normally, rather than always, for the philosophical use is not uniform, and because in any case we should keep the freedom to deviate from philosophical usage where it would make sense to do so.⁷¹

It has been argued that the problems of language in law and the preoccupation of lawyers with words stem from the fact that many legal disputes are loosely owed to the fact of imperfection of language or some misleading prejudices. In another sense, the problem of semantics in legal studies is perceived to be connected to the fact of non-static nature of some legal terms which change their meanings in the course

of time, and also due to non-reliability of concept that are found to be vague or equivocal. This argument makes Hart's language sting to gain credence from most of the world's contemporary legal system, particularly the English language jurisprudence.

As one of the greatest analytic philosophers of the contemporary era, Hart tried to articulate a concept of law that is completely different from the ones that preceded him; he sought to make legal law a political concept by given it first social and moral standing. Legal law in Hart is not reducible to a mere legal concept where it could be treated as purely science of tort, it is found in Benthamite-Austinian tradition. He painstakingly starts by "describing law as legal rules, having certain social features, which are procedural social contract that could be recognized, modified or changed; and those that are conferring or defining legislative and judicial powers, public or private."⁷² And what makes legal rules efficacious, valid and binding, Hart thought is its spatial acceptability or recognition amongst the citizenry. And, it is these basic features of what rules are which the Laws of Nations lack that makes him to reject the International Law as legal laws. Hart gives analytic approach to the idea of law as a political concept in view of making it obligatory; the reason behind this was to systematically and coherently build a conception of law that would be acceptable in all modern municipal societies of the globe. Dissecting the concept of law to aspect of rules (of making, of recognition, and acceptance) makes Harts stand to be democratically inclined which arises to it a political interpretation.

On the separation of law and morals, "Hart rejects the tactics of the eighteen century positivists who thought such separation is necessary in other that legal law, like other sciences, should have its positivistic standing."⁷³ Although, Hart treats law and morals as separate concepts, but he argues that the two concepts connect at some point where at least they share minimum content. This means that, there are some conjunctions in Hart's stand, where law and morality overlap and co-exist, and even compliment at some point. It is on this basis that "Hart structured the stand of natural law with that of legal positivism and terms it simple version of natural law."⁷⁴ This he argues in view of some legal situations that manifest as borderline cases, the judge possesses some permissible powers which could have moral undertones, provided it does not violate the legal process. Hart argues that, the judge is allowed to use legal precedent or presided cases which are 'like-cases' to clear such complexities. His connective thesis is believed to have dispelled the command doctrine of the eighteen century utilitarian which dominated legal philosophy for almost two centuries and ushered a new outlook of the concept of law since the second half of the twentieth century; which is practically sought for by realists, and enormously influences the Anglo-American legal system.

Contemporary Implication of the Study

Despite series of criticisms that were leveled against Hart's conception of law by various scholars, we still find his theory applicable in several relevant ways, and its compatibility cannot be denied in theory and in practice especially, in the liberal democracy which are the hallmark of the contemporary political reasoning. As we can see, the new wave of political and legal philosophy centers on analytical reasoning which implores the use or function of language dialectically in elucidating the nature or content of such social issues or concepts to give them spatial, and not restricted,

explanation. This, of course, points out to the fact that the linguistic or analytic philosophy has taken precedence in inquiries for the satisfaction of human 'happiness' or a well ordered human society that characterized modern complex society. The liberal democracy implies human autonomy, which expresses the pursuit of a people's happiness and independence rather than authoritarian interests since the "society exists for the benefit of individual people, who must not be constrained by government interventions or made subordinate to collective interest."⁷⁵ This is the basic idea that Hart appear to have against John Austin and other utilitarian strands, which must have influenced Rawls's concept of Justice as fair play (especially, the three egalitarian principles) and his idea of political liberalism; these great works by Rawls appear to be more compatible in many relevant ways with Hart's concept of law as a set of legal rules, both in style and content, except for the contractarian approach and the egalitarian principles Rawls employs.

Legal Rules and the Nigerian Society

While addressing the principal issues in 'The Concept of Law' Hart started with the argument that, "the most prominent general feature of law at all times and places is that its existence means that certain kinds of human conduct are no longer optional, but in some sense obligatory."⁷⁶ As seen in the previous chapters, Hart though at variance from the commands of the sovereign. The simple reason for this rejection is that, the law of any given modern society is defined by its constitution; and a modern constitution is not like a tyranny. "Normally, the officials and the citizens often follow the law even when there is no one around to guard them."⁷⁷ Hence, the fear of sanction, as Austin thought, cannot in any case be seen as most important role in people's practical reasoning. Hart, however construed legal law to be a complex social concept that consists of varied ideas of rules; and, he conceived rules to be some kinds of complex social practices that consist of general regular pattern of behaviour, together with a wide attitude within a group or groups which are common standards of conduct to which all members are required to conform.

The ordinary person in Nigeria and elsewhere conceives law in a very wide sense — like Hart does. Laws means more than mere rules of conduct; it is generally seen as an institution, because in its widest sense it represents or comprises both rules themselves and the entire machinery of justice set up by the government namely: the police, the ministry of justice, the law courts as well as the general acceptability or recognition of Legal rules among the populace which ascertains its value or its validity.

The definition of law is persistently controversial even among Jurists. But the general purpose of law, however it is defined, expresses the idea of ensuring legal order and the due administration of justice in an organized society such as ours. It is within this line of thought that we accept the saying, "whatever else law may do or be, it contains the rules for the employment of the state machinery."⁷⁸

Owing to the accident of history, the Nigerian legal system derived its source from the English Common Law at the time she was a facilitating tool in the hands of her colonial masters whose sole aim was to enrich themselves materially. "These laws were perhaps adopted by Nigeria at independence without much questions, and the subsequent law-making by our legislators appear more or less a carbon copy of the English Common Law, which in effect failed to reflect the Nigerian culture; and, of course, the level of

development.”⁷⁹ The seeming confusion brought by such adopted legal praxis culminates into legal pluralism of which even United State of America, which has more complex laws, does not suffer. And, our legislators keep enacting laws both at the Federal, State and Local Government levels which are valid in their respective area of jurisdiction; the subordinate legislation, the Nigerian Common Law, the customary laws, the Sharia laws, etc., are all examples of the multiplicity in the application of Nigerian law which makes our legal system much more complex. “Although, legal pluralisms are not bad in so far they are not repulsive to natural justice, equity and good conscience, but the bugging question which has puzzled minds is that: why is it that in spite of all laws, there is lawlessness? The law made by whom and to be respected by whom? etc.”⁸⁰

The attitudes of Nigerian towards laid down legal provisions are largely that of observer which Hart referred to the external point of view. Charles Iroegbu decried the situation in Nigeria as so bad to the extent that the “citizens of the nation behave as if there is rule of law guiding them. So, they appear to be observers who do not necessarily have to accept the rules of the legal system.”⁸¹ Several reasons are offered by various frontiers of our jurisprudence and legal scientists for lack of recognition of law in general and the basic sensibilities in relation to the realities of the Nigerian values and cultural experiences or the antecedents of our legal statutes (as against Hart's general assumption about legal law); these include: artificiality of laws, redundancy of laws, non-reform of laws, and poverty of credibility in the enforcement of laws.

Conclusion

By way of conclusion, Hart presents to us an account of what distinguishes systems of law from other systems of social rules, rather than an account of how people apply the concept of law. He argued it out that his theory of law is a descriptive account of the distinctive features of law in general as a complex social phenomenon. H.L.A. Hart however was conscious of the fact that, a complete legal theory does not merely identify the rules of a legal system, but also interprets and evaluates them, thus, he implores the linguistic analysis in an attempt to bring together logical approaches and methodologies which draw on multiple principles in an effort to provide a satisfactory theory of political obligation. Nevertheless, Hart employs morals into the concept of law where he weaves together a concept of legal rules that derive their source from 'ought', a device of minimum content, with the aim of building a complex legal theory that is compatible to all modern municipal societies; that are not reducible to a mere command of the sovereign - as thought by the eighteen century utilitarian. It is in this simple recognition of fact that the idea of legal theory must ultimately be accepted and rooted, not just on the strict sense of legal system, but in some account of the political system; where it flows from the decisive criterion and supremacy of the rule of recognition, that expresses the idea of legal law as imposing obligation rather than possessing a coercive character.

At this point, Hart's explanation of the nature of law is found to be a veritable tool in evaluating complex legal systems of the modern municipal societies such as Nigeria, where legal systems have been killed by wide range of factors likenon-reforms and redundancy of laws, the artificiality or non-recognition of laws, non-enforcement of law, etc.

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