African Social Science and Humanities Journal (ASSHJ)
https://journals.jozacpublishers.com/asshj

Research Article

This article is published by **Jozac Publishers** in the ***African Social Science and Humanities Journal (ASSHJ)***. Volume 5, Issue 3, 2024.

ISSN: 2709-1309 (Print)
2709-1317 (Online)

Article detail
Received: 12 April 2024
Accepted: 14 June 2024
Published: 26 June 2024

Conflict of Interest: The author/s declared no conflict of interest.

Preserving African customary laws from the dangers of legal positivism

Godwin Adinya Ogabo[1*]

[1]*Department of Philosophy, St. Albert Institute, Fayit, Fadan Kagoma, Kaduna State, Nigeria, domgodwins@gmail.com*

https://dx.doi.org/10.4314/asshj.v5i3.5

*Corresponding author: domgodwins@gmail.com

Abstract: From earliest times, various societies have been known to evolve patterns of social control. Approved behavioural patterns are encouraged while disapproved behavioural patterns are discouraged. Within this sphere, offenders are punished and disputes are resolved. Prior to the incursion of the colonial powers into Africa, the various chiefdoms and fiefdoms had their customary legal systems. The colonialists introduced the legal positivist traditions, which in most cases have almost completely obliterated the customary law system. There is no doubt that the wave of legal positivism and moralities of expedience have characterized the human society from the 20th century and beyond. As a result, reference to essential and universal value-judgments seems to have been relegated to the background in most spheres of life. Such ethical principles which possess universalistic character and are founded on the fundamental human nature are waning quickly. This study therefore calls for the preservation of wholesome customary law practices from going into extinction. The study employed the qualitative research design. Data were gathered from secondary sources and analysed with the expository and comparative tools. The findings of the study reveal that the positivistic spirit has affected the field of law in Africa and exposed customary jurisprudence to serious dangers and errors. In addition, it has caused a dislocation between what law actually is and what it ought to be, thereby placing the interest of African jurisprudential institutions in a dilemma of veering between the positivist stand and the maintenance of African customary laws. The study recommends that concise efforts should be made by all relevant agencies towards preserving African customary laws from the onslaught of legal positivism.

Keywords – Africa, Customary law, Jurisprudence, Law, Legal positivism

1. INTRODUCTION

Most traditional African societies were basically administered by means of customary laws and legislations. According to Ndulo (2001: 24), "customary law guided the activities and behaviours of various individuals and groups in traditional African societies". Suffice it to say that the average African's life was enormously influenced by the customary law. The personal and social life of an African was determined by these laws. Among the issues that were also influenced by African customary laws included the requirements for traditional marriage, the roles and responsibilities of traditional leaders, community services as well as conduct of bequeathal of inheritance to members of a family in their succession. The advent of colonialism and subsequent introduction of positivist legal system has led to an enormous dwindling of the customary legal system. Some basic questions spring from this

situation, such as: what is distinctive of the laws operational in various societies and their native laws? Is the law always what it is supposed to be? Must laws have a moral character? Is the legal positivist legal system superior to African customary laws? This is because, even though a proper understanding of the spirit and letters of any law requires an explanation of the ingredients that render such a law unique, there is also need for a good understanding of its common grounds with other means of social control.

While not glossing over salient function of legislation within the framework of any reform and vice versa, many scholars have continually contended that the reformation and development of African customary laws rest squarely on the courts. It is within this ambience that aspects of customary laws would be revised to be in tandem with contemporary human rights norms and situations (Elias, 1956: 61). This is in conformity with the assertion that the customary law ought to be a law that is ever evolving rather than stagnant and static. It needs to constantly be reviewed and construed with necessary cognizance of the actual worldview of the indigenous people it is meant to serve. It is in the light of this that it has become pertinent to make a comparative analysis of legal positivism and African customary laws so as to garner lessons for proper customary legislations in contemporary Africa. In what follows therefore, there will be an exposition of the concept of legal positivism in relation to African customary laws as well as the dangers posed by the former towards the development of Africa in general.

2. CONCEPTUALIZING LEGAL POSITIVISM

Legal positivism is one of the schools of thought of jurisprudence developed by some legal thinkers of the eighteenth and nineteenth centuries. The political philosophical expositions of Thomas Hobbes and David Hume form the base of legal positivism in modern times, even though its first most comprehensive explanation is attributed to the philosopher Jeremy Bentham. It is this Benthamian account that Austin would later adopt, modify, and popularize. Scholars afterward weaved out a combination of their variant but interrelated views into a synoptic definition of the law as "the command of a sovereign backed by force" (Austin, 1995: 12). This definition has remained a classical dictum of legal positivists and other philosophical reflections about law in succeeding decades. However, Gardner (2002: 219) observes that "H.L.A. Hart remains the most towering proponent of legal positivism as far as its history and evolution are concerned". For him, Hart's major work *The Concept of Law* is the revolutionary proposition that redirected and re-energized the positivist principles and tenets as well as defined its correlation to other theories of jurisprudence.

Whatever definition one adopts, it is apt to note that legal positivism is tied around the argument that the existence, content and practice of law ought to depend on social factors and realities rather than on the morality or merit-position of such law. One of the major proponents of legal positivism, John Austin, aptly proposed thus: "The existence of law is one thing; its merit and demerit 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" (1995: 157). This means that for the legal positivists, the availability of a legal system in any society is basically dependent on such factors as the availability of certain composition of governance apparatus; it is not necessarily a function of, or dependent on how much or how well the system fulfills the demands and requirements of social justice. It does not even wring from the tenets of democracy, neither must it conform to dictates of the rule of law. In other words, it is the social standards that officials recognize as authoritative that determine the operational laws of such a system. This is why O'Hear (1999: 122) asserts that "there is a possibility of a policy being laden with perceived justice, wisdom, competence and prudence and not being law in actuality…contrarily, what might pass for law could be perceived as imprudent, unproductive, unjust or unfair…these factors are not enough to make the law less lawful". Stated differently, for the legal positivists, law could be rightly construed as a social convention or a societal construct, irrespective of the ethical or moral standard. Once it is posited or decided, it holds sway.

For legal positivists, only such norms that are formally laid down or technically incorporated through legislative or judicial processes can qualify as law, notwithstanding any moral criteria or other considerations. Thus their main concern is with the law as "it is" (as laid down) and not as "it ought" to be. In the positivist perspective,

therefore, the 'ought' of legality is inconsequential, only the 'is' is relevant. It is the above that has forced proponents of legal positivism to earmark the yardsticks for the validity of a law. Green (2000: 17) for instance says:

> It is the availability of a functional governmental structure that guarantees a society's legal status. Whether such a society promotes justice or not, practices democracy or not, or adheres to the rule of law or not are irrelevant for legality. Whatever the governmental officers of the system identify as authoritative and legal represent the laws in force in such a society. These could emanate from enactments of the legislature and other such decisions and extant customs. No matter how fair, judicious, competent, or wise a policy might seem or be, cannot be outright justification for it to be qualified as the law. Similarly, whether a policy is adjudged incompetent, unfair, or imprudent it is not enough to conclude it as illegal. Law is law once it is posited.

Notwithstanding the basic assertion of proponents of legal positivism that the validity of the law is dependent on governmental sources, it must not be mistaken that they insist that these laws must be followed. Instead, there is the window that permits that the legal system could have unjust legislation just as there could be some level of illegitimacy of the state. There may be no outright responsibility to obey such laws as opined by some legal positivists. In the same sphere, even when a court has averred the validity of any law does not guarantee or mandate the court the court to apply same in any specific case. Gardner (2002: 91) corroborates this by stating that "legal positivism is in the final analysis a theory of law; it must not be mistaken for a practical theory of law, neither is it an overt adjudication; it does not even command absolute political obligation in every case". It is the opinion of legal positivists that the best channel of attaining logical intelligibility involves subjecting these issues to a different round of inquiry. Positivist thinking and tenets contain a whole gamut of teachings which cannot be easily explained in a brief piece; but it could be concluded that the essential position of majority of legal positivists could be summed up in the following words: "it is the sources rather than merits that define the legality and validates such legality of any given legal system, and thereby, the law" (Gardner, 2002: 93).

No doubt, such a radical conception of law as proposed by logical positivism above cannot go without stiff criticisms. First and foremost, many scholars radically criticize legal positivism of being devoid of moral content. Such critics feel that legality devoid of morality becomes draconian and authoritarian; in essence, morality must always be given its due place in morality. There is also the criticism from the language of law itself. Proponents here observe that the language of law generally is laden with morality. To behold a theory therefore that murders morality at the expense of facticity of law is antithetical to the very spirit of the law. It deviates from the reality of law being necessary for the wellbeing of the individual and social system.

There are also those who argue from the ambience of the common good. Critics of legal positivism here contend that legal positivists neglect the core characteristics of law which include such elements as honesty, human rights, integrity and the common good. The source-based orientation of legal positivism creates no room for the common good of the citizenry. It also does not demand integrity that is required of those in authority. From these criticisms, it becomes obvious that jurisprudences heavily carries the weight of moral and political considerations. Perhaps this is why Finnis (1996: 204) concludes that, "moral reasons are of the most essential considerations for the establishment, reformation and maintenance of any law…legal precepts of all societies ought to be shaped with moral considerations".

Even more dangerous, the tenets of the positivists pose the danger of legal authoritarianism or tyranny. If anything that pleases the sovereign or the will of the state automatically conveys the force of law, then who would save citizens from the whims and caprices of power maniacs in the exercise of their sovereign legislative power? This empties the concept of rule of law and social justice of their meanings. It is in realization of the above factors perhaps, that some lawyers today often employ the word "positivist" with some derogation that puts a formalistic doctrine in bad light, describing a situation where law is always clear and, irrespective of the rightness or wrongness, must be executed to the letters, without taking cognizance of the spirit of the law which seeks to better the human lot. This system according to Finnis (1996: 202) "amounts to legality without morality". This is true

because the positivist scheme law exists in as much as there are facts of the law. The merits are given no consideration in such a circumstance.

Finally, the definition of law by the positivists as a social phenomenon leaves much to be desired. The mere stamp of legality cannot represent the true character of legal norms. In the view of Ago (1957: 732), "legality is not conterminous with law as laid down, for experience shows that positive laws as legally laid down can be illegal". An example of such law is the unfair positive laws of Nazi Germany which were shown to be illegal by the Nuremberg War Tribunals.

3. AFRICAN CUSTOMARY LAWS

African customary laws in this study refer to "the laws derived from observances together with the conventions of native peoples of African societies and their cultural worldviews" (Kuruk, 2002: 57). From this definition, it is apparent that customary laws are native to the life-patterns and traditions of various indigenous African peoples. They include those customs that have been accepted as essential rules of conduct for the people. They are practices and beliefs that are considered fundamental and inherent parts of the socio-economic and cultural fabrics of the society. Such laws define how both private and public natural resources are put to use. Even rights and responsibilities concerning land, the acquisition of inheritance and bequeathal of property, adherence to cultural values and heritage, safeguarding of knowledge systems and other related matters.

Prior to the forceful taking over of the administration of the various countries of the African continent by the colonialists, the various ethnic groupings had their systems of administering justice, basically through what has been called today the customary laws. In Nigeria, for instance, when the Royal Niger Company established its courts of justice, it had regard for these laws. Sir James Marshal who was director of the said company in 1886 passionately admired the customary law policy and pleaded for its maintenance. Balonwu (1975: 31) presents his passion in the following words:

> He gives beautiful testimony of how efficient and strikingly the African natives oversee their own laws. Sitting often together with native judges and witnessing with keen interest their direction of justice was nostalgic. These are a people with their laws bordering on different aspects of life, together with functional customs that define their identity and social milieu, and to which they are more conversant than the jurisprudential technicalities of the new world.

It was perhaps in realization of the above recognition that the following significant clause was inserted in the charter of the company:

> When the Royal Niger Company administered justice within the confines of her jurisdiction, and in its territories round-about, there must be adequate consideration of the cherished customs and laws of the people. Consideration must also be given for the classes, tribal affiliations and nationalities of the different parties under adjudification. This has to be considered, especially with matters related to land and its transfer from party to party, as well as marriage contracts, issues of divorce and legitimacy, not excluding other property and personal rights (Balonwu, 1975: 32).

Even during the period of amalgamation and indirect rule, successive administrators continued this policy. Equally, from 1956 when the struggle for self-independence became rife in Nigeria, championed by the various regions, the policy was not changed. However, Balonwu (1975: 35) reports that "upon attainment of independence in 1960, the Supreme Court of the Federation of Nigeria under section 16 (e) of the Supreme Court Act, 1960, came to be authorized with the enforcement authority of the rules of customary law".

In Nigeria today, there are thus two systems of courts, that is, the customary courts, determined by the cultural norms of the natives and the British-established courts, determined by positive laws. In the customary courts, native law and custom is exclusively administered as law. These customary laws are creatures of statute, with defined jurisdiction and authority. The primary jurisdiction of the customary courts range from land ownership,

land interests, land tenure system, land inheritance to other matters relating to rites of marriage, regulations for divorce, position of children in the family, and properties are to be disposed upon the death of a family member (Balonwu, 1975: 36).

In any case, the customary laws have equally passed through various criticisms. The major criticism against them is that they are characterized by gross lack of uniformity in substance and form. This is due to the fact that customs vary from place to place as to the system of land ownership, dowries paid on marriage, inheritance, etc. This situation is clearly captured thus: "customary law is not steady; rather, it is relative… it varies from place to place. Its content is dependent on the lad where it operates… it could, in civil circumstances be concerned with the individual laws of the parties concerned; at other times, it revolves around the juridical area of the particular court" (Aniagolu, 1975: 105). This makes many people to question the credibility of such a system.

On another note, Begho (2007) describes customary law as simply ridiculous. He reports that, "there are certain rules that a court must follow in dealing with cases in criminal law; there are certain ingredients of an offence which must be proved to establish the guilt of an accused person; customary courts deal with offences under the Criminal Code but do not look at the sections defining the offences they are dealing with…. Many people have been sent to jail in the customary courts without proper proof of their guilt" (Begho, 2007: 335). This entails that there is discrepancy in the administration of the same section of some laws between the High Court, Magistrate Court and Customary Court, and this is inimical to the idea of justice. In essence, there is need for a revision of these laws to reflect contemporary realities.

4. A COMPARATIVE ANALYSIS

There are various similarities and dissimilarities between legal positivism and African customary laws. An intricate element of a positivistic system of law is "the reign of a supreme ruler whose authority is acknowledged by the majority of constituents of a given society… such a ruler enforces his authority through the use of sanctions; however, the sovereign is not bound by any human superior. The yardstick for measuring the legitimacy of a legal rule in such a society is by ascertaining the justification of the sovereign and the enforceability of the sovereignty of its authority and its driving force" (Austin, 1995: 42). This seems to accord with several African communities where sovereigns have no human superiors but are only answerable to the deity and the gods of the land. In such a case, the sovereign becomes like Austin John would call, "the uncommanded commander".

Also, a critical look at the two legal systems reveals that both of them make use of precedents. This implies that they refer to previous decisions in determining current cases before them. However, it is apt to state that due to lack of written records, it has not been possible for the African customary system to develop this doctrine of judicial precedent in accordance with the positivistic conception of the term. Elias (2011: 256) presents this lucidly:

> In traditional African societies, the existing and elastic nature of local laws make it always essential for the chiefs and elders in council to make references to preceding cases adjudicated by them, or by their forerunners or even by other notable contemporary legal personalities…however, due to the limitations in human memory, it is always cumbersome to recall legal details that are not recorded for over a long period of time, and sometimes in places that are far apart from each other.

Thus, even though African customary laws make use of precedents, it does so in a far limited scope as the memory can accommodate.

Jeremy Bentham and Austin are among thinkers who consider law as a phenomenon of large societies that have a ruler. Such a sovereign, or in some cases, group of persons possess utmost and unlimited actual power. Because of their supreme power, either all or majority of persons in the society pay them obeisance. As such, they are not answerable to anyone else. What constitutes law in such a society, as it were, are the dictates and commands of the ruler. The laws, which are backed up by various sanctions, or at least, threats of force, make prescriptions on actions and human persons. This positivistic theory places imperatives on the society concerned. What matters in such a system is the availability of systems of legality with command structures which foster obedience for them.

Thus, the moral justification of the sovereign as well as the whether the commands are meritorious are not relevant to the system. This is very different from the African customary rules. In the later, the leader(s) is bound to make rules that are meritorious and have moral contents. Some of the laws are even religion oriented and have the divinities for their source.

Another distinguishing factor between the duo is that legal positivism as a theory is one-directional. According to Kramer (1999: 73) "the theory focuses on laws as proceeding from the source to the roots… the obligations imposed by the law flow from the sovereign at the top to subjects at the roots; they are not binding on the sovereign himself". In the African setting however, the customary laws take various forms and more often than not the obligations are equally binding on the sovereign as on the subjects. One must equally note the rigidity and formalism of legal positivism which conflict with the flexibility of the African customary laws.

In many traditional African societies the "natural law" permeates the legal contents. These natural laws are laden with moral doctrines and the belief in a sacrosanct, given, universal and objective morality, which they hold to be naturally imbued in human nature. This is obviously contrary to the tenets of legal positivism. Whereas legal positivism gives no consideration to the morality of a law, African customary laws have ethical principles at the base of their existence. The laws and morality of the people cannot be divorced in this African setting as it is done in positivism.

On the whole, one must note here that the relationship between legal positivism and African customary laws is that of prey and predator. The danger that legal positivism poses to African customary laws is serious and immense. Following the logic of the positivists, customary laws would be no laws at all, since behind customary law lies not the will of the lawmaking authority.

5. EVALUATION

Even though various arguments and criticisms have been levied against legal positivism, its importance cannot be glossed over. No wonder it has been diversified beyond the shores of philosophy of law which is its original domain. In modern discourse, almost all notable social theorists such as Marx, Weber, Durkheim, Engels, among others have made seminal contributions in the area of legal positivism. Even many American realists and scholars of feminism across the globe have made contributions on legal positivism" (Harris, 2016: 72). From their divergent perspectives, these thinkers agree on the notion that law is essentially a theme that is woven around social facts. This means that the legal positivists have a good case when they insist on the formal technicalities and procedures of legislation, but the question that is left unanswered is whether this should totally negate the morality of laws.

Equally, the legal positivist school of jurisprudence must be praised for legal certainty, precision and accuracy. These legal qualities no doubt help to remove ambiguities and afford greater clarity in the system and sources of law. One must note too that there is an incidental advantage deriving from their separation of the legal 'is' from the 'ought'. Iwe (1975: 238) opines here that "the error and dangerous attitude of confusing the wide sphere of ethics with the specific and formal boundaries of law are clearly avoided and adequately forestalled in legal positivism". Here, legal positivism saves the legal system from legal moralism; but the question arises: to what extent?

Finally, one must appraise the thesis of the legal positivists that laws should proceed from authoritative sources and be endowed with the stamp of legality, sanctions and enforceability. Given our contemporary human condition where terrorism, crime and other social ills have become rife, how could a sovereign who has no means of enforcing obedience to his commands stay on in power? Unenforceable positive laws would be compared to only toothless bull dogs, but this must not degenerate to tyranny either.

Despite the above seemingly positive points about positivist legal systems, many Africans such as Nwocha, Diala, Ogabo and others assert the dislocation between legal positivism and the African social justice system typified by the customary laws. These scholars hold their positions for several plausible reasons. Nwocha (2016: 1) highlights the importance and relevance of African customary laws when he states that "customary law is an encapsulation of all the customs and traditions as well as the behavioural patterns of the people. As a law, it is

driven by the people's worldview, belief patterns, philosophies and cherished value systems". The attraction here is because the laws belong to the people, borne out of their lived experiences and easily understood by them. Because of its acceptability, the people have a better sense of social justice emanating from such laws. Diala (2020: 7) corroborates that "their definition of the rights and responsibilities of indigenous Africans and salient components of their communities as well as their life, culture and worldview are in tandem with their sense of social justice." Suffice it to say the basic identity of African indigenous peoples in their various communities is hinged on these customary laws. They defined various aspects of their lives.

Furthermore, African customary laws flow from indigenous customs which are communal and welfarist in orientation. Kuruk (2002: 61) identifies three basic ideals behind customary law in Africa. The first of them is reciprocity. Here, African customary laws are embedded with the principle of impartiality as well as fosters good grounds for cooperation and substitutions between people and with the environmental system (the earth). The second is the idea of duality, which entails complementarity between individuals and the ecosystem. Finally, there is equilibrium. This is the concord and stability which characterize nature and the social system. It is obvious that the sustenance of African customary laws is a major feature of safeguarding the social, cultural, economic and legal uniqueness of indigenous Africans.

It is obvious that there are inherent complications in the borrowed positivist legal systems foisted on various African states chiefly because of the heterogeneous nature of the African society with multiplicity of ethnic groups having different cultures, languages and customs. Nwocha (2016: 1) advances several reasons why many Africans prefer customary laws:

> A higher percentage of indigenous Africans view the English system of law and its official judiciary as an institution that is elitist and far removed from the people…It is characterized by such intricate problems as prolongation in dispute resolution, costly lawsuits and litigations, endemic corruption and other bottlenecks that accompany unfavorable court judgments…this makes many members of the population feel alienated from this foreign law system, which estranges them. They are akin to, and prefer their more familiar customary laws in the adjudication of their everyday affairs.

In addition, the whole identity of a community is definable by the customary laws. That is why Swiderska (2006: 61) avers that "the abiding liveliness and strength of the rational, socio-cultural and even the spirituality as well as the cherished values of indigenous peoples is dependent on the maintenance of customary laws. In fact, the rate of development, observance and sustenance of a people's cultural heritage is largely enhanced by customary laws and protocols."

6. CONTRIBUTIONS TO SCIENTIFIC COMMUNITY AND FUTURE RESEARCH

This paper makes a clarion call for deserved reverence and recognition to be accorded to African customary laws as a veritable medium of protecting her cherished values and enhancing development. It is obvious that the practices and perceptions of indigenous African peoples are as diverse as there are ethnic groups and cultures. Thus, subjecting Africans to the Western legal systems foisted on them at independence has been counterproductive. African customary laws have a high potential for contributing to social justice in various ways that would eliminate the hiccups associated with legal positivism represented by the borrowed Western judicial system. In the final analysis, the import and relevance of African customary laws can only be adequately fostered through positive dialogue between indigenous customs and positive laws. It is only such a dialogue that can afford policymakers with a theoretical framework for legal progress in Africa.

7. CONCLUSION

The colonial regime superimposed on African English (positivist) laws which are tied up with the character, domestic habits and customs of Englishmen and women in their own evolutionary process which is quite different from ours. The above position does not however find a corollary with a preference for the positivist law. This would tantamount to driving a round peg into a square hole. It is thus high time for Africans to set up Law Reform Commissions to research into existing substantive customary laws and evolve ways of making them reflect the true character and accepted habits of Africans. It must be stated that law is not static; it grows as a society grows, revealing therein the evolution of the society. It is highly possible that African customary laws may not have grown concomitantly with the African society in terms of socio-economic pursuits, political drive and cultural resurgence. One must submit here that to make customary law in Africa have scope within which to grow, there should be a mechanism by the host communities for constant amendment to infuse life into it, thus making it a living organism which would grow together with the community. The law must not only be what it is, but also what it ought to be. It must not only have a positive foundation but it must also rest on sound ethical basis, especially in a developing society like Africa. Our valid customary laws here in Africa must be saved from the dangers of legal positivism.

8. FUNDING

This research paper received no internal or external funding

ORCID

Godwin Adinya Ogabo https://orcid.org/0000-0002-8876-2899

REFERENCES

Ago, R. E. (1957). Positive law and international law-art. *American Journal of International Law.* 51, 691 – 733.

Aniagolu, A. N. (1975). Aspects of customary marriage and divorce and their incidents upon family life." *African Indigenous Laws.* Eds. Elias, T.O., Nwabara, S.N. and Akpamgbo, C.O. Enugu: Government Printer.

Austin, J. (1995) *The Province of jurisprudence determined*. Ed. Rumble, W.E. Cambridge: Cambridge University Press.

Balonwu, M. O. (1975). The Growth and development of indigenous Nigerian laws as part of our heritage from the British colonial policy of indirect rule. *African Indigenous Laws.* Eds. Elias, T.O., Nwabara, S.N. and Akpamgbo, C.O. Enugu: Government Printer.

Begho, M. A. (2007). The mechanics of customary law. *Appraising African Customary Laws.* Eds. Elias, T.O., Nwabara, S.N. and Akpamgbo, C.O. Enugu: Snaap Press.

Diala, A. (2020). Understanding the relevance of African customary law in modern times. Retrieved from https://theconversation.com/understanding-the-relevance-of-african-customary-law-in-modern-times-150762

Elias, T. O. (2011). *Nature of African customary law.* England: Manchester University Press.

Finnis, J. (1996). The truth in legal positivism. *The Autonomy of Law*, Ed. Robert, P. G. Oxford: Clarendon Press,: 195-214.

Gardner, J. (2002). Legal positivism: 5 ½ myths. *American Journal of Jurisprudence*. 46, 199 - 225.

Green, L. (2000). Legal positivism. *The Stanford Encyclopedia of Jurisprudence.* Retrieved from http://plato.stanford.edu/entries/legalpositivism/

Harris, J. W. (2016). *Law and legal science: An inquiry into the concepts of legal rule and legal system.* Oxford: Clarendon Press.

Iwe, N. S. S. (1975). "The dangers of legal positivism to our indigenous values and remedy." *African Indigenous Laws.* Eds. Elias, T.O., Nwabara, S.N. and Akpamgbo, C.O. Enugu: Government Printer.

Kramer, M. (1999). *In defense of legal positivism: law without trimmings*. Oxford: Clarendon Press.

Kuruk, P. (2002). African customary law and the protection of folklore. *Copyright Bulletin*, 2(XXXVI), 25-37.

Ndulo, M. (2011). African customary law, customs, and women's rights. *Cornell Law Faculty Publications.* Retrieved from http://scholarship.law.cornell.edu/facpub/187. Retrieved 23/03/2014

Nwocha, M. (2016). Customary law, social development and administration of justice in Nigeria. *Beijing Law Review*, 7, 430-442.

O'Hear, A. (ed.) (1999). *German philosophy since Kant*. Cambridge and New York: Cambridge University Press.

Swiderska, K. (2006). Protecting traditional knowledge: A framework based on customary laws and bio-cultural heritage sustainable agriculture, biodiversity and livelihoods programme, IIED, Paper for the International Conference on Endogenous Development and Bio-Cultural Diversity, 3-5 October, Geneva.