EXAMINING THE ROLE OF THE MARRIAGE BETWEEN LAW, ARTS AND CULTURE TO THE SOCIETY

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Abstract

The trio of law, arts and culture together constitute an area of hot discourse in any inquiry into making a distinction between humans and the species of the wild. This paper discusses law, arts and culture, reason being that law reflects the culture of a society which it governs and the society's arts is in-built in the culture of the society. These issues are examined in the perspectives of law and arts, arts and culture; and culture and law with the authors' aim of bringing the diverse literatures on this topic into coming to a common ground that can lay to rest the existing controversies and divergent views of researchers prevalent in this area of study. Using doctrinal research approach, it was found that law, arts and culture are inseparable and nourishing to one another like a baby and umbilical cord. It concludes that the conflicting views of prior literatures among researchers are peripheral. The paper offers recommendations for future research in the field, bearing in mind the involving nature of this subject since the ages past.

Keywords: Law, Culture, Society, Arts, Literature.

Introduction

It is no small wonder that till date there is still this notorious denial to accept the fact to see law as culture and culture as law; or that law and arts have various interplay that exist between them. The origin that gave rise to the denial is based on the fact that, perhaps the interplay of the trio of law, arts and culture is still understudied in the humanities. This oversight continued to weigh heavily until in the second half of the twentieth century. It was at this time that scholars in the social sciences and the humanities as well as legal scholars began to employ the concept of culture as an important instrument for gaining insights in their research areas[1]. However, not-withstanding the late attention given to the study of this area, it will not be inappropriate to assert that the connection between law and culture has been a concept of long standing.

On the other hand, the paper attempts to provide the reassessment of the interplay of law and arts and the impact of the "law and literature movement in legal academic discourse'. The different areas of connection between law and arts which the paper investigated did not just end at literature but also extended to other areas of arts such as performing and artistic arts. This will be discussed in the paper in the nature of law and arts, rhetoric and legal interpretation or legal hermeneutics.

In the final analysis, this article explores and explains the above two propositions; namely; Law and arts, law and culture and culture and arts, made possible through the adoption of doctrinal

methodology and using both the American Psychological Association (APA) 7th edn. and Nigerian Association of Law Teachers (NALT) Uniform citation styles.

The organizational layout of this paper is six parts. The first part is the introduction, followed by the theoretical framework in part two and then part three which is law and arts. Part four is law and culture, while part five is the legal protections of arts and culture in Nigeria. Part six is the conclusion and recommendations.

Theoretical Framework

The theories adopted to support this paper are the chain novel theory and the constitutive theory of law. These two theories were explained below as well as the role they play as it relates to the objective of this paper.

Chain Novel Theory

Ronald Dworkin is credited as the originator of the chain novel theory. The theory emerged as a metaphor to judicial precedent which Dworkin[2] applied to literary creation that a collaborative work involves the contribution of many as there are that are collaborating. While applying the theory as a metaphor, he states that in this enterprise a group of novelists writes a novel seriatim; each novelist in the chain interprets the chapter he has been given in order to write a new chapter, which then added to what the next novelist receives and so on. The theory aligns with the context of this paper which is finding the connection of the theory in application of judicial precedents and the dual task of a judge in deciding cases in court. This points to the duty of a judge to fulfill the dual role of creating and interpreting.

Constitutive Theory of Law

This theory developed from the cultural theory of law which states that law and culture co-constitutes one another. It cut across sociology, anthropology, literary studies and legal scholarship, all of which catapulted it to be seen as a multifaceted area of study. The inquiry that concerned the theory rests in finding out how cultural values, beliefs and practices affects the development, application and interpretation of laws. The conceptualization of the interplay of law and culture as one of co-constituting one another brought about a new nomenclature to it now known in sociological studies as constitutive theory of law. By this Mezey emphasized that law is not only recognized as constituting but also being constituted by social relations and cultural practices just as Hunt observed that constitutive theory rejects law's claim to autonomy and its tendency toward self-referenciality[3].

Law and Arts

In every definition of law there is a nexus that always connects it to a body of rules and regulations, either arising from people's beliefs and practices or made in a formal nature to regulate people's conduct in a given societal setting and enforceable by the authority of the sovereign. Law is one of the major tools that differentiates human society from the wilds of the animal kingdom. Thus it is said that in every society there is a law and translated in Latin as *ubi societias ibi ius* [4].

There is no straight jacket form by which law can be defined. However, it is important to note that any definition of law must satisfy the rule of clarity and be amenable to interpretation. This is where the role that arts play in law begins to manifest to enhance the functionality of law. However, it is not expected that the drafters or interpreters of law must become artists of any kind in order to play the role. With particularity to the drafting aspects of law, knowledge of language and literature are important to law practitioners to ensure clarity of the law's correct interpretation.

According to Duong[5] certain language theories when applied to law point to the overlapping and interdependent zone of interpretation that exist in both law and arts irrespective of whatever incompatibility that may exist between law and arts. This is to the effect that an aesthetic approach to legal interpretation may change the outlook toward the function of persuasion in the law and may strengthen the role of social activism in the law.

The interplay between law and arts is clearly x-rayed by the nature of judicial interpretation in court. Courts apply the literary rule of interpretation, so however that when faced with two competing interpretations of literary text the literary reader chooses the one that makes the work better to him. In relation to court's interpretation, regardless of what the legislators or drafters of a statute may mean when drafting the statute, courts interpret statutes using the plain, ordinary and grammatical meaning of the words of the statute. This is one of the key precedential rules that governs courts' interpretation of statutes and this rule has the additional effects of reinforcing the rule of *stare decisis* (as it was done before). It is just as it is known that literary work must be critiqued in relation to its literary genre.

The nexus between law and arts goes beyond law and literary art to visual art. For example, the spark in art could be likened to what obtains in law where there is always constant quest to think creatively which is a notable attribute for which artists are very well known. The submission of a lawyer during trial of cases may be taken as the strokes of the brush of an artist across a canvas. Lawyers' submissions are restricted to the case before them and they know when to rest their case and stop talking in like manner as an artist has to know when to stop painting. So lawyers should be creative like artists in order to remain alive inside them without which they become ineffective inside them. They need to be creative and be able to tell a story during every part of a trial[6]. Nugent has described this phenomenon as one of inner passion which goal is to achieve creativity and the more passionate one becomes the more creativity one has.[7] Amplifying this attribute, Bader states that if one is passionate about art, about life, then such passion and the creativity that results from it cannot be compartmentalized in one area of an attorney's life and it cannot be harnessed and overflows to all other areas that make up that person.[8] Art has a deeper value for an attorney and not just an outlet from a world filled with pressure. It can teach skills that are invaluable in legal world and nourishing to the soul of an attorney and jurist. This indeed serves as an endorsement of the definition of arts in the dictionary[9] as a trilogy of three components namely: visual, literary and performing arts. It states that art is the expression or application of human creative skill and imagination, typically in a visual form such as painting or sculpture primarily for their beauty or emotional appeal. One could see that this definitions covers the various branches of creative

activity such as anything that is created with imagination and skill and that is beautiful or that expressed important ideas or feelings.

Law and Culture

The earlier discourse of this paper has been able to make a clear identification of what law is but, that notwithstanding, people still think of law as culture but culture is not necessarily so even as there are areas of interaction which both culture and law share between them. The beliefs and customs and the totality of way of life together with all the embodiments of a society's social life form the culture of that society.

Custom of a society could be identified in several ways such as in dressing, writing, customary rules and regulations of the society. Laws are formal rules enforced by state institutions while custom encompasses the shared values, beliefs and practices of the society. When law is adapted to the existing culture and the existing laws are made, the culture of the society the tendency of their becoming any form of conflict between the duo of law and culture hardly exists.

Embodying the shared views and values that reflect the beliefs, tradition, norms of the society in the laws can serve as a framework for social order often reflecting and reinforcing the dominant cultural priorities within the society. In Nigeria, for instance, the Supreme Court of Nigeria had delivered a judgment in the case of *Asiyet Adulkareem and Others V Lagos State Government* [10] decided in favour of allowing Muslim students to wear *hijab* to public and private secondary schools. The apex court anchored its decision on the ground that deciding otherwise would amount to denying Muslim students their right to freedom of religion which is a constitutional privilege enshrined in the Constitution of the Federal Republic of Nigeria. The reasoning behind the judgment is for no other thing but to accommodate Islamic culture in the national law. It is worth noting that wearing hijab by Muslim women forms part of the dressing culture of Islamic women. On a similar note, this judgment brings to mind the case of *Ukeje and Ukeje* [11], where the Supreme Court was privilege to pronounce on the denial of Igbo women from inheriting their father's estate. The case arose from the age old custom called *oli ekpe* in Nnewi in Igbo land, which denied women the right to inherit their father's property. It was this custom holding sway in Igbo land that the Supreme Court had to weigh on the imaginary scale of justice and found it in conflict with the provision of the Constitution of the Federal Republic of Nigeria[12] and did not hesitate to pronounce it repugnant to natural justice, equity and good conscience.

In *Agbai V. Okogbue* [13] court warned that the essence of the doctrine of repugnancy affords courts the opportunity to fine-tune customary laws to meet changed social conditions when necessary. The significance of the foregoing is a stark reminder of the stand of Bourdieu [14] who simply summarized it to mean that law creates the social world, but only if we remember that it is this social world which first creates the law. This assertion by Bourdieu is not different from the stand of other constitutive scholars like Sarat and Kearns. Sarat and Kearns[15] like Bourdieu state that to think about law in the framework of the constitutive approach is to see that social practices are not logically separate from the laws that shape them and that social practices are unintelligible apart

from the legal norms that gave rise to them. Meze[16] puts it succinctly to mean law as culture and culture as law.

Ukeje V. Ukeje and similar cases delivered by courts bearing similar reasoning will continue to serve as examples of how law can be applied as an instrument for legal reform and shaping behavior to promote cultural change or changing cultural attitudes and practices. And also according to Ogbu, to eliminate obstacles to equality of male and female human being[17].

One important point worth noting is that it is not all customs of Igboland that does not recognize women's right that are repugnant. It is only when such customs repugnant to natural justice, equity and good conscience that the repugnancy test applies[18].

Customs of a community give rise to the native law of the community since it has been established that it is difficult if not practically impossible to invoke a customary law that deviates from the practices of the people of the community. Customary law is a regulation which is simply the practice, norm and custom of a given society. According to Bourdieu as earlier stated law creates the social world, but only if we remember that it is this social world which first creates the law,[19] and on a clearer and more succinct note Naomy Mzey (2001) 920) sees law as culture and culture as law.

Legal Protection of Arts and Culture in Nigeria

One major area that connects law, art and culture is that of functionality. Law plays a major role in safeguarding artistic work in several ways including to preserve the people's culture. In Nigeria, for instance, several laws and regulations have been put in place for actualization of that purpose. Some of these laws include but not limited to the Sale of Goods Act, the Copyright Act, and the Value Added Tax Act, etc and including the Constitution of the Federal Republic of Nigeria 2004 as amended.

1) Section 21 of the Constitution of the Federal Republic of Nigeria by its provision empowers the State to protect, preserve and promote the Nigerian cultures which enhance human dignity[21] and shall encourage development of technological and scientific studies which enhance cultural values[22]. The acquisition of movable property in Nigeria is also guaranteed by the constitution and such property includes the purchase and ownership of an artistic work[23].
2) Nigeria's Copyright Act 2022 – This Act makes provision for the protection of artistic work. The Act still remains the major legislation for the protection of the rights of original creators and authors of artistic work in Nigeria[24]. Certain artistic works that qualify for protection by the Act are specified by the Act and this includes literary works, artistic works, among others[25]. The nature of the protection provided by the Act covers the creators' exclusive right to do and authorize the doing of any of the items stated in the Act[26], provided the copyright is registered.
3) Value Added Tax – Transaction in artistic work is also governed by the value added tax. This is a consumption tax levied on the value of goods and services at each stage of

production or distribution. For artwork to benefit from effective management of its financial transaction, it must ensure compliance with tax levies in place.

4) Trademarks Act (270. 3 Laws FN 2004) – Trade marks Act protects the intellectual property rights of artists and creators for their works. Such things distinguishing the work from others like symbols, logos among others are protected for the artistic work meaning that only the creator has exclusive use of them.
5) Right of Action – The right to institute an action on a breach of copyright of a creator's work rests in the owner of the copyright[28] and an assignee[29], and a licensee[30], as has been identified by the Court of Appeal in *Multichoice (Nig) Ltd V.M.C.S.N. Ltd Gte* [31].

Conclusion and Recommendations

The primary objective of this paper which is to explain how law, arts and culture intermingle to achieve societal benefit has been x-rayed using their respective lenses. This was rendered in three dimensions; namely: law and arts, culture and law and arts and culture.

In addressing the first dimension, law and arts, different scenarios were given effects to attain the desired goal through the exploration of what obtains in the arts world and the rigorous demands in a court room environment. Both scenarios share similar approaches to reach their expected end. As for the law and culture dimension, the paper explained how law cannot be divorced from culture nor can culture divorce itself from law. Law does not develop in a vacuum so too cultural views and practices can hardly exist on its own without the assistance of a regulator like law.

Another side of this paper which is the third dimension is arts and culture. This particular dimension was not discussed separately in the paper as it is expected that its message can be captured by anyone while perusing the first and the second dimensions. Bearing in mind that a society's culture is defined by its arts, the need to go at it all over again would amount to over flogging the issue. Different societies have their individual distinctive arts that distinguish the culture of one society from another. With all forces that have been responsible in bringing law, arts and culture together to join forces and united in a harmonious marriage of no mean fit for good, it is the society that takes the benefit in no small measure of such joint force.

Having fully examined the prior literatures in this subject, it was found that there was not much divergent views to raise cause for concern in the conclusion reached by earlier researchers nor by these researchers. None of them has offered strong reason to tear apart and write off the inevitable interplay between law, art and culture. In every two or more things, for instance, of different specie or otherwise, there is the likelihood that something peculiar to each one of them exists that preserves their individuality, however much they may be identical. We often talk about identical twins. Does the fact of the twins being identical stop them from bearing different name, be of different height or have different complexion or even exhibit different character? This paper answers the questions in the negative. Yet they still remain twins.

The foregoing analogy appears to be more peripheral from the real question in issue. Thus is because they cannot be regarded strong enough to deny the twins of their identical affinity. Note

that this is exactly how it is with law, arts and culture which prompted many a scholar to consider them as a part of one another.

Granted that law properly so called is not arts neither is culture law, the reason for this is because, irrespective of the affinity present between them, each one of them still has an identity peculiar to it. Dworkin's chain novel theory which he used as a metaphor quite adumbrated how judges reach their decisions precedentially as if it was a novel writing and vice versa. This is a vivid explanation that no one can have it any better.

In the final analysis, this paper stands firm in upholding, at least metaphorically as Dworkin did, that it is not improper taking law as arts or culture; arts as culture so long as they continue to complement each other and create a synergy and function optimally under that nomenclature.

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References

1. Mautner, M., (2011). Three Approcahes to Law and Cultures, *Cornell Law Review* 840
2. Dworkin, R (1996). Leona Ledwon (ed.). How Law is Like Literature in Law and Literature: Text and Theory.
3. Hunt, A (1991) Exploration in Law and Society: Toward a Constitutive Theory of Law.
4. Obeagu, C.C., (2020). Model Questions and Answers on Introduction to Nigerian Law for Higher Learning. Grand heritage Global Communications, Enugu. P 1
5. Duong, W. N., (2005). Law is Law and Art is Art and Shall the Two Ever Meet? Law and Literature: the Comparative Creative Process. Southern California Interdisciplinary Law Journal, Vol. 15 issue 1 at p.14.
6. Badar, D., (2008). Art and Law: Is there a Connection. Available at https://plaintiffmagazine.com/recent.issue/item/art-and-law-is-there-a-connection visited on 18th May, 2025.
7. Ibid
8. Ibid
9. Hornby, A.S., (10TH edn). Advanced Learners Dictionary.
10. Appeal NO: SC/910/2016; Eze, P.O Examining the Legal Protection of the Right to Freedom of Religion in a Multireligious Nation with Special to Nigeria, Seahi Publications 2024 International Journal of Business and Law Research vol. 12 issue 1 pp 13-25
11. (2014) Law Pavilon Electronic Law Report 22724 (SC)
12. Constitution of the Federal Republic of Nigeria 2004 as amended, section 42 (1) (3).
13. (1991) 7 Nigeria Weekly Law Report (Part 204) 391
14. Bourdieu, P (1987). The Force of Law: Toward a Sociology of Juridical Field,38 UC Law SF Law Journal 814 Available at: http:///repository.uclawsf.edu.journal/vol38.1ss5/3 visited on 18th May 2025.
15. Sarat, A. and Kearns, T. R., (ed.) (1998). The Cultural Lives of Law in Law in the Domains of Culture.
16. Mezey, N., (2001). Law as Culture, Yale Journal of Law and Humanities. Vol 13 issue 1
17. Ogbu, O. N., (2013). Human Rights Law and Practice in Nigeria. Snaap Press Ltd, 387.
18. (1931 (AC) 1621.
19. Op cit, note 14
20. Op cit, note 16
21. Op cit, note 12 section 21
22. Ibid
23. Ibid, section 44 (1)
24. Copyright Act (Cap C 28) Laws of the Federation of Nigeria 2004 as amended, section 1
25. Ibid, section 2
26. Ibid, section 10
27. Trade Marks Act (Cap T13) Laws of the Federation of Nigeria 2004 as amended

28. Op cit, note 24, section 37 (1)
29. Op cit, note 24, section 30, 37 (1)
30. Op cit note 24, section 37
31. (2020) 13 NWLR (part 1742) 415 at 523