



## THE IMPACT OF THE ORIGIN OF ENVIRONMENTAL LAW TO THE PRESENT-DAY SOCIETY

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### Abstract

*Law on environmental cleanliness, protection and preservation has ever since dominated the academic discourse for decades. It is trite to say that man is as old as his environment. Suffice it also to say that you cannot completely define man separately from his environment. The environment on its own solely depend on man for its preservation, protection etc. Thus, the researcher in order to appreciate the extent of man's effort in carrying out the supposedly stated duties as well as the difficulties and challenges in realisation of same embarked on this research. This work traced the origin of environmental law deploying both local and international perspectives. It unearthed the fact that environmental law owes some of its origin to the ancient practices, customs, traditions and norms of the indigenous inhabitants of this planet. Also, the roles played by certain religions in the world in the evolution of environmental law were considered. Recommendations were made stressing how the application of certain old standards could help the modern-day government of the contemporary human societies in the formulation of environmental laws to soothe the clamour for sustainable development. It is hoped that the recommendations made in this work would wriggle its way into the society and re-orientate the stance of the common man and societal leaders on environmental preservation.*

**Keywords:** Environment, Law, Society, Preservation, Protection etc.

### Introduction

The environment plays a pivotal role in the survival of man. To ensure the virility of the environment, there is a yawning need to engineer measures that would safeguard the environment. Hence, the need for laws that regulate and protect the environment. These laws essentially constitute what we know as Environmental law. It is pertinent that the definition(s) as well as a review of this body of law be undertaken. A critical look at the phrase, environmental law, shows that there are two root words worth deciphering to wit: environment and law. Hence, it has become glaring that no meaningful discussion of the definition and origin of environmental law can be undertaken without first nibbling at the concept of law and the environment. The preliminary questions begging for answers are: what is law and environment?

### Meaning and Definition of Law

The definitions as given by a random selection of choice scholars have a central theme, albeit with some nuances. Below are some of the classical definitions of law.

A law is a rule of conduct which differs from other rules of conduct, such as those of ethics, good manners, or of sport, in that it is supported by sanctions administered by the state. Laws are amoral – that means that they are binding irrespective of whether they are morally just.

*Dada T.O.* adopted a descriptive stance, rather than a definitive stance. He opined that there are some observable features that are unique only to law. Thus, the set of rules are usually designed to regulate human conduct and the main setting for the operation of law is the society. Laws once made is meant to be obeyed and this goes on with the act of enforcement; above all, there is usually a reproach or sanction for any act of violation or defiance. Citing *Mohammed v. Knott* he concluded that law varies with society and with the cultural traits of the people.

*C.A. Oputa* declared that law is the rule of action. He traced the meaning of law to *Latin* – which is *lex* and the verbal form which is *ligo-are-avi-atum*. It is the bond of law that produces the uniformity of action among those subjected to that law, dictating what should be done and what should not be done.

From the international sphere, *Malcom Shaw* mused that law is that element which binds the members of the community together in their adherence to recognized values and standard. It is both permissive in allowing individuals to establish their own legal relations with rights and duties as in the creation of contracts; and coercive, as it punishes those who infringe its regulations.

*John Austin*, in his usual terse disposition, defined law as a ‘command set by a superior being to an inferior being and enforced by sanctions’.

The question has become a controversial issue, giving rise to different schools of thought in law. Hence, the existence of jurisprudential schools such as *positivist school*, *natural school*, *historical school*, *utilitarian school*, *sociological school*, etc. Odike thus gave a working definition thus: “For our present purpose, law is a body of rules enacted by those legally mandated to make law so as to guide human conduct: a transgression of which entails punishment in form of fine, award of damages, imposition of terms of imprisonment or even death sentence.... It is a mechanism of social control, which is out to shape human behaviour so as to bring about order in the society or through social pressure, backed up by force, in such a society”. In summary, law is a body of rules guiding the conducts of people in a society which imposes duties and/or confers rights/privileges with a propensity of sanctions in the event of breach.

### ***Meaning and Definition of Environment***

The environment comprises the air, water, land or earth which can be harmed by man’s activities. It also means the natural features of a place, for example its weather, the type of land it has, and the type of plants that grow in it.

Others define it as: the place of human, plant and animal existence; a place where we live and develop, our natural habitat, a lot of creatures and crops of diverse flavours surround us... All these form what is called the “environment” in its natural state’.

According to *Rau and Wooten*, environment is ‘the whole complex of physical, social, cultural, economic, aesthetic factors which affect [sic] individuals and communities and ultimately, determine their form, character relationship and survival’. Deducing from *section 20 of the 1999 Constitution of the Federal Republic of Nigeria* and allied sources the ‘environment’ means – the water, air and land, forest and wildlife, all layers of the atmosphere, all organic matters and living organisms, and the interacting natural systems.

Some other defines it as the physical, chemical, biological and spiritual components, activities and the inter-relationships in the nine planets, including land, water, and atmosphere, places of special importance, plant and animal life.

In the final analysis, an essential comprehension of what the meaning of environment entails, as can be sieved from the above definitions is that environment constitutes man, alongside the animate and inanimate creatures, biological and the spiritual components that surround and/or encompass him. Similarly, one can make bold to say that man is an integral component of the environment; take man away from his environment, you emasculate him and blot him out of existence.

### ***Definition of Environmental Law***

Environmental Law ‘... is a collective term describing the network of treaties, statutes, regulations, common and customary laws addressing the effects of human activity on the natural environment’. Environmental Law has equally been defined as a ‘[c]ollective body of rules and regulations, orders and statutes, constraints and allowances that are all concerned with the maintenance and protection of the natural environment of a country’.

It is a ‘[b]ody of rules and regulations, and orders and statutes, concerned with the maintenance and protection of the natural environment of a country’. It provides basis for measuring and apportioning liability in cases of environmental crime and the failure to comply with its provisions. It has equally been defined as ‘the laws that regulate the impact of human activities on the environment’. C.A. Omaka gave a comprehensive definition of Environmental Law, as it relates to Nigeria, when he thus “Generally, environmental law includes the legislation and the received English Common Law of general application, which can be used to protect the environment and address environmental concerns. Such laws include the legislation passed at Federal, State and Local Government levels to address the problems caused by ... pollution, toxic chemical use and waste management. Environmental law also encompasses the law of torts – nuisance, strict liability, trespass, negligence, damages, property law, riparian rights and other related areas”.

Notwithstanding the above definitions, suffice it to say that environmental law is a body of rules that compel and spur human beings to relate favourably with their surrounding environment. Simply put, it is a body of laws designed to protect, preserve and policy the environment.

### ***Origin of Environmental Law***

It is trite that all over the world, there are certain traditional practices, customs, norms and traditions that had and still have bearing on the evolution of documented contemporary environmental law. Many writers lend credence to this incontrovertible assertion. The customs and way of life of certain indigenous, nay, rural dwellers have environmental significance and helped shape contemporary environmental laws. Even though these customs and traditions are not codified nor legislated upon, they are still renowned. For instance, there is a three-day ritual in the village of *Irabere*, in the remote highlands of the *Uato-Carbau* district of East Timor geared towards safeguarding the ecosystem of the village river. The thrust of this ritual called *tara bandu* which uses local knowledge of conservation to protect the environment is to proscribe fishing in the water bodies of *Irabere* village for a definite period of time. This ritual invariably allows the rivers, lagoons, lakes, etc. to restore themselves. In fact, only small-scale subsistence fishing sanctioned by village elders is permitted in *Irabere*. This laudable ritual played an overbearing role in the enactment of various laws guiding the marine bodies of East Timor.

In India, there are examples of sacred ponds attached to temples in many parts of India. Some of these have been responsible for the protection of certain endangered species of turtles, crocodiles, and the rare fresh water sponge.’

The customs, traditions, ethos and religious beliefs of ancient Nigerian communities have helped shape the texture of environmental legislation in Nigeria. Some of the practices dates back before colonization while some are still being carried out today. In certain regions for example the Igbos, they have certain way of life which regulates the sweeping of streets, pathways, walkways etc. This is carried out by men both old and young and according to kindreds. The sweeping takes place every morning with a special type of broom made by them. The same also goes for cleansing of the streams, ponds etc. They are mapped out according to functions example, there are portions for bathing, washing of cloths etc, another for fishing while the one for drinking water like a spring is carefully well preserved. Nobody whatsoever is allowed to do otherwise. Due care is also ensured in burning of bushes, disposal/burning of refuse. The inhabitants of these places are however enlightened on the importance of this excise. It became part and parcel of them hence inculcating in them the spirit of collective responsibility.

It is pertinent to note here that one major thread that runs through all these is the issue of enforcement and sanctions. These customs, traditions and ways of life though not a codified law is strongly backed by strict enforcement rules and sanctions meted out to defaulters. The belief is also hinged on preservation and sanctity of life of the environment vis a vis the community.

On the religious angle, Bergstrom encapsulated the Biblical perspective on environmental concerns. He posited that the Bible teaches that although God allows people to utilize elements of the environment, He retains ownership of all His

creation. The Lord God gave some specific instructions pertaining to the management of the environment in Genesis Chapter 2. When God created Adam, He made it explicitly clear that his primary purpose was to give care to the Garden of Eden. The purport of Genesis 1:26-28 is that man should cater for his environment and all other creatures in the lower echelon. That was the origin of the stewardship of man as per his environment. There are innumerable provisions in the Bible which have environmental undertone. One of such provisions that readily come to mind is Leviticus 25:1-4 which reads:

The LORD said to Moses on Mount Sinai, 'Speak to the Israelites and say to them: "When you enter the land I am going to give you, the land itself must observe a Sabbath to the Lord. For six years sow your fields, and for six years prune your vineyards and gather their crops. But in the seventh year the land is to have a Sabbath of rest, a Sabbath to the LORD. Do not sow your fields or prune your vineyards".

On the other hand, an Islamic scholar, Bagader, *et al*, opined that 'God has created everything in this universe in due proportion and measure both quantitatively and qualitatively.' In Islam, it is believed that man and the universe (the environment) share an intricate relationship as per the Quran and the Prophetic teachings which include a 'relationship of sustainable utilization, development, and employment for man's benefit and for the fulfilment of his interests'. Islam recognizes that the earth (including the environment) belong to God; and that man is only a steward ordained to manage the earth in accordance with the will of God. Thus, man is enjoined to utilize the environment for his own benefit and the benefit of other creatures as an environmental trustee. Hence, 'the aim of both the conservation and development of the environment in Islam is for the universal good of all created beings'.

The foregoing leaves no one in doubt that religion, traditional norms, culture, ethos and native ways of life contributed immensely to the evolution of contemporary environmental law.

### ***Legal Origin of Environmental Law***

There are diverse perspectives about the origin of codified and or legislated environmental law. Many writers have proffered some credible account of the evolution of such environmental law. We shall appraise some of the accounts recounted by the said authors forthwith.

Commenting on the origin of environmental law as it were, C. A. Omaka opined that the policing of the environment had a comparatively recent history, even though 'the environment is as old as nature and therefore as old as the world' He made that assertion because he perceived that in the early days of man's inhabitation of the planet, there was no need for law as an instrument of social control. However, in the course of time, he stated that because of global technological and economic advancement, man became engrossed with the environment and its rich resources. Interestingly, *he* conceded that it is difficult to pinpoint the exact time man became concerned about the welfare of the environment. Nevertheless, his account of the origin of environmental law began from the establishment of the United Nations Organisation in 1948. Specifically, via the Geneva Convention of 1949, the United Nations expressly recognised and acknowledged man's inherent right to environment.

Continuing the discourse, *he* revealed that sequel to the Geneva Convention of 1949, the United Nations formulated new principles aimed at protecting and improving the environment via the instrumentality of an additional protocol in 1977. He took a fascinating detour when he showed how sovereign nations, including Nigeria, took a cue from the United Nations in catering for the environment under their authority.

Coming home to the origin of environmental law in Nigeria, he asserted that Nigeria had no properly defined and articulated policy on the environment before 1988. He believed that the Criminal Code was the first indigenous legislation which had anything to do with the environment. Given that the Criminal Code was a general statute covering diverse crimes, *he* posited that Federal Environmental Protection Agency Decree was the first major statute on the environment in Nigeria. Shortly after the arrival of the above Decree, the Harmful Waste (Special Criminal Provisions, etc.) Act came into being. Two years later, the Federal Military Government promulgated the Environmental Impact Assessment Decree in 1992.

This narration would be inchoate if the sacrosanct provision of the 1999 Constitution of the Federal Republic of Nigeria is left out. Thus, Chapter Two of the Constitution dealing on Fundamental Objectives and Directive Principles of State

Policy is non-justiciable, section 20 of the Constitution recognized the importance of environmental safety for the very first time.

*Adebola Ogunba's* contribution to this discourse is remarkable. He gave a trajectory of Nigeria's environmental legislation which was classified into four distinct stages. Quoting him verbatim:

The first stage is the Colonial Period (1900–1956). This stage is known for its dearth of environmental legislation, except for brief provisions in public health legislation and in torts and nuisance law. The second stage is the Petroleum-Focused Environmental Legislation Period (1957–early-1970s). This stage followed the discovery of crude oil, the commercialization of that discovery, and sector-specific legislation that reflected a national preoccupation. The third stage is the Rudimentary and Perfunctory Legislation Period (1970s–pre-1987 crisis). The final stage is the Contemporary Period (post-1987–present). This stage has seen the start of serious legislation and is characterized by increased environmental awareness and sophistication.

Deploying an international perspective, *Wikipedia* gave a crisp account of the origin of environmental law. It is of the view that history is replete with legal enactments specifically designed to protect and preserve the environment. One of the earliest instances of such laws was the common law. Under the common law, nuisance provided the primary protection for the environment even though this protection 'only allowed for private actions for damages or injunctions if there was harm to land'. However, private enforcement was found to be grossly limited and inadequate to confront the 'major environmental threats, particularly threats to common resources.'

Interestingly, it was observed that in spite of the early existence of laws that had environmental bearing, the twentieth-century marked the development of environmental law as a distinct body of law. Precisely at about the 1960s, there was a widespread recognition that the natural environment was fragile and in need of special legal protection; which recognition was translated into legal structures and later metamorphosed into 'a larger body of "environmental law"'. It was equally observed that some factors influenced the establishment of environmental law as a component of the legal landscape in all developed nations of the world, many developing ones, and the larger project of international law by the end of the twentieth century. The factors included *inter alia*: increased public concern over the impact of industrial activity on natural resources and human health; the advent and success of environmentalism as a political movement – coalesced to produce a huge new body of law in a relatively short period of time, *etc.* Furthermore, still on the common law doctrine of nuisance, environmental law has deep roots therein. However, the only remedy for a nuisance under the common law was the payment of damages. Fortunately, the remedy of injunction was subsequently introduced with the development of the courts of equity. Even though the common law, as it relates to nuisance, is a straight forward manner of dealing with problems that cross median lines (i.e. air, water or land) it encountered overwhelming problems both in judging liability and in providing remedies if used solely to enforce environmental issues. Because of these problems inherent in the use of nuisance in tackling environmental issues in the United States of America, the government resorted to the use of zoning.

On their part, *Campbell-Mohn* and *Cheever* were convinced that '[t]hroughout history national governments have passed occasional laws to protect human health from environmental contamination'. One of the notable examples of such laws cited by them include the 1681 Order of the Quaker leader of the English colony of Pennsylvania, William Penn, that one acre of forest be preserved for every five acres cleared for settlement. A similar example were the regulations passed by the British government to reduce the deleterious effects of coal burning and chemical manufacture on public health and the environment in the midst of the Industrial Revolution of the 19th century. According to them, in the early 20th century, conventions to protect commercially valuable species were reached. They further surmised that environmentalism became an important political and intellectual movement in the West in the 1960s. A critical landmark attained in the fight for the well-being of the environment was the adoption of the Convention on Wetlands of International Importance Especially as Waterfowl Habitat in 1971.

*Campbell-Mohn* and *Cheever* also noted that aside Conventions; there were also some far-reaching declarations on the environment such as European Community's (EC) declaration that 'the goal of economic expansion had to be balanced with the need to protect the environment'. These seasoned authors further traced this history to the formulation of the Convention on the Prevention of Marine Pollution by Dumping of Wastes or Other Matter (1972) as well as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973). These two conventions were the fallout of



the United Nations Conference on the Human Environment, held in Stockholm in 1972 wherein the United Nations Environment Programme (UNEP) was also established. Finally, *Campbell-Mohn* and *Cheever* drew our attention to the fact that the effects of the 1986 accident at the nuclear power plant at Chernobyl in Ukraine spurred the emergence of two international agreements: the Convention on Early Notification of a Nuclear Accident and the Convention on Assistance in the Case of Nuclear Accident or Radiological Emergency, both adopted in 1986.

### **Conclusion and Recommendation**

The definition of environmental law is basically a function of a person's background, orientation and life perspective. It is as multiple as the hairs on a person's head. This truth notwithstanding, environmental law is basically a body of rules that protects, preserves and regulates the use of the environment. The origin of environmental law in our society today remains a function of history with little or no impact. Its origin is such that is capable of inculcating in the society the preservation and protection it craves for. It is of primary importance that certain measures be taken by the government to bring about these. Consequently, the following recommendations are hereby put forward:

- Enforcement mechanism to be given top priority. Specialised regulations of enforcement to be put in place or activated for effective delivery.
- Grassroot enlightenment program on how individuals, groups, communities etc can be actively involved in the protection of the environment. This will in turn draw from the rich historical background/origin of rules and ways of environmental preservation.
- The various cultural practices of the indigenous people of Nigeria should be harnessed and be considered favourably in making future environmental policies in Nigeria.

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