

# **TOWARDS JUSTICE WITH A HUMAN FACE**

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## **Introduction**

The subject – “*Towards Justice With A Human Face*” is not only intriguing but also highly challenging. As lawyers, we belong to a great profession, bound together in fraternal brotherhood, and as servants of the law, we are all devoted to a great ideal, namely, the promotion of the orderly progress of civilisation and we have also thereby undertaken the difficult task of furthering the attainment of justice in an imperfect world. As lawyers and judges, it is surely within our power to make human relations run much more smoothly and to see that atrophied rules are lopped off before dangerous putrefaction sets in. Is it too much to claim that we lawyers are the surgeons of society, the physicians of the body politic? And that is why the subject I am to treat is vitally important and indispensable to the proper understanding of our roles as ministers in the sacred temple of justice.

The object of the Bench and the Bar equally should be not only the attainment of justice, but also the attainment of justice with a human face. My only apology is my inadequacy either as a scholar or as a jurist to be entrusted with so weighty an assignment. I will however do my incompetent best and crave your generous indulgence for any apparent deficiencies. Let us start by analyzing our terms:

## **Towards**

Law is part of life and law and justice are inseparable. The health of the law requires that it be constantly related to the rest of life. Life is motion; it is movement, it is activity. We lawyers innured in the *status quo*, worshipping at the altar of precedents, may not easily discern the reality of the changes that are taking place around us. We must however not allow our conservatism and our failure to discern the reality of change to make the law “the government of the living by the dead.” And so it is with justice. The choice of subject demonstrates clearly that we have adverted to the danger of treating law and justice as static concepts. “Towards” means in the direction of. In other words, there is a progression, a movement from *a terminus a quo* to *a terminus ad quem*, from the *fiat justitia ruat coelum* of the notorious Piso to justice with a human face. Now let us look at Piso’s justice. He sentenced a soldier to death for the murder of Gaius and ordered a centurion to execute the sentence. When the soldier was about to be executed, Gaius came forward himself alive and well. When the centurion reported this to Piso, that Gaius was alive and well, Piso immediately sentenced all three to death – the soldier because he had

already been sentenced, the centurion for disobeying orders and Gaius for being the cause of the deaths of two innocent men. Piso excused his action by the plea of – *fiat justitia ruat coelum*<sup>1</sup> If this be called justice at all, it is certainly not justice with a human face. Any wonder then, that justice is usually depicted as a blind folded goddess? One reason for this is that she is utterly ashamed to see the amount of injustice often perpetrated in her name.

There should therefore be a conscious and discernable movement towards better laws and towards better administration of justice. The book of life changes and the values revealed to us today. Law and justice should both be at home with these changes in order to enable them regulate and order the progress of civilisation. Lawyers are the custodians of civilisation than which there can be no greater duty. In the gory past, when justice was measured by ordeals – ordeal by water, ordeal by battle, ordeal by fire, among others, there was no fair trial. What transpired was at best a mockery of fair trial. Freedom from slavery, from child labour, from inhuman treatment, from torture – all these were progressive steps forward towards justice with a human face. The right to religious freedom, the right to vote and be voted for, in short, the right to social justice, are late arrivals in this grand procession. Historically, there has been a slow but steady movement towards better laws and towards better justice. The key word: “Towards” was therefore well chosen. In 1790, Sir William Scot in *Evans v. Evans*<sup>2</sup> asserted:

The humanity of the Court has been loudly and repeatedly invoked. Humanity is the second virtue of Courts, but undoubtedly the first is justice.

In 1985, the Nigerian Bar Association wants a happy marriage between justice and humanity, the offspring of which should surely be “justice with a human face”. What about Human? What does it mean in terms of justice?

## **Human**

Human simply means belonging to man. What is it that belongs to man? As human beings, we all are created out of the slime of the earth. We derive from humus, and six feet of earth will, at the end of the day, make us all of one size. We all share humanity of Adam with its stresses and strains, its joys and sorrows, its glories and ugly pitfalls. But we have something attaching to us as human beings, the dignity and the worth of the human person. It is because each human being has intrinsic worth that we talk of fundamental human rights or the inalienable rights of man. Why are these rights inalienable? The simple answer is that they attach to man as man, because of his humanity and, therefore, cannot be taken away. Its simple logic that he who gives can also

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1. Seneca 1 Dialogue III, 18.  
2. (1790) 1 Hagg Con. Rep. 36.

take away. If these rights were conferred by the State, then the State can take them away. The founding fathers of the American Constitution were at great pains to find the origin of these inalienable rights of man. They sought for the basis of these rights. They found it and set it down in the Second Paragraph of the Declaration of Independence:

It is a self evident principle that the Creator – the Creator – has endowed man with certain inalienable rights – Life, Liberty and the Pursuit of Happiness.

Every human being is thus a subject and object of certain rights and duties. Everyone today has a new awareness of himself. Everyone today knows that he is a person; he feels that he is a person – that is – an inviolable being, equal to others, free and responsible, a sacred being (if you please). He will no longer accept, willingly, the status of slavery or subjection to oppression and repression.

Also the Preamble to the *United Nations Charter*, 1945 spoke eloquently of these rights:

--- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women and of nations large and small, and to establish conditions under which *justice* and respect for obligations - - - can be maintained: to promote social progress and better standard of life in larger freedom...

Coming nearer home, Chapter IV of our 1979 Constitution guarantees to every Nigerian (every human being of Nigerian origin) right to life, right to the dignity of the human person including right not to be subjected to torture or to inhuman or degrading treatment, to slavery or forced labour; right to personal liberty; to private and family life; to freedom of expression; to peaceful assembly and association; right to freedom from discrimination. In Nigeria, obviously and judging from the impressive array of rights entrenched in Chapter IV of our Constitution, one thing stands out in bold relief – that is, we are becoming more human, more sensitive to the value of persons and we are travelling on the right road towards justice with a human face. From the above, it can be deduced that all human beings have rights, dignity, worth, equality, freedom. We are created equal; we are born free but held in chains by our fellow men.

Another consequential result of our humanity is sociability. Man is intrinsically social. This does not merely mean that he likes company. No. The real meaning is that the conservation and propagation of the human species requires the family and the fulfillment of the individual requires society. Living together is an essential and necessary corollary of our humanity. Martin Luther

King, Jr made this point in his speech after the award of the Nobel Peace Prize to him:

Modern man has built gigantic bridges to span the seas and gargantuan buildings to kiss the skies and yet, in spite of the spectacular strides in science and technology and still unlimited ones to come, there is a poverty of the spirit which stands in glaring contrast to our scientific and technological abundance. We have learnt to fly the air like birds and to swim the seas like fish but we have not learnt the *simple art of living together as brothers*.

Living together will necessarily entail an acceptance of each other's existence; respect for each other's rights' and rendering to one another his or her due. And this is what we call justice. This is what justice is all about.

## **Justice**

When we speak of justice, we are reaching for the very foundation of human existence. Justice is the cornerstone of human togetherness. To try to define justice is thus to address the most profound question ever to agitate and challenge the human mind, for in our definition of justice is contained, also, our definition of person, of society, and of the relationship between the individual and the state, the individual and society.

Before we discuss "justice with a human face" it is necessary to sound a note of warning – that is that justice is not just one single idea. It may mean different things in different contexts. It also has many attributes. Let us have a peep into classical and modern literature.

1. The *Roman jurist* gave us the famous "*fiat justitia ruat coelum*" which was prostituted by Piso to defend the indefensible. This means let justice be done even though the heavens fall. If justice is done with a human face the heavens will not fall.
2. Fuller (1732): "Much Law, but little justice: In one pound of law there is not an ounce of love"
3. The great *Lord Colridge*, the *Lord Chief Justice* in a hurry to get to the Court called a cab and requested the driver:

Colridge: "Take me as quickly as possible to the Courts of justice."

Driver: "Where are they? Asked the perplexed, agitated and expectant driver.

Colridge: “What! you, a London cabby, and don’t know where the Law Courts are?”

Driver: “Oh! the Law Courts! I thought you said the Courts of Justice.”

(*Question: Are the Courts of law courts of justice?*)

4. *Balfour*: The place of Justice is a hallowed place.
5. *Bacon*:<sup>3</sup> So when any of the four pillars of government are mainly shaken or weakened, (which are *religion, justice, counsel and treasure*), men had need to pray for fair weather.
- 6 *Shakespeare*:<sup>4</sup> The sad eyed justice, with his surly hum delivering over to executors pale the lazy yawning drones.
7. *Milton*:<sup>5</sup> Yet shall I temper so justice with mercy as may illustrate most.  
Them fully satisfied and thee appease.
8. *Shakespeare*:<sup>6</sup> And then the justice  
In fair round belly with good capon lin’d,  
With eyes severe and beard of formal cut.  
Full of wise saws and modern instances;  
And so he plays his part.<sup>7</sup>
9. *Shakespeare*<sup>8</sup> And earthly power doth them show likest God,  
When mercy seasons justice, therefore Jew  
Though justice be thy plea, consider this –  
That in the course of justice none of us  
Should see salvation, we do pray for mercy  
And that same prayer doth teach us all.  
To render the deeds of mercy.  
Justice has no two weights and measure.

I have quoted at random from literature to show the different attributes of justice and the different contexts in which the expression may be used.

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3. Of Sediton and Troubles  
4. King Henry V. Act. 1. Sc. 2, 187  
5. Paradise Lost Bk. 10, 77  
6. As You Like It.  
7. As You Like It (The 7 Ages of Man) 2, 7, 109.  
8. Merchant of Venice 4, 1, 179

Since this paper is being presented to lawyers, one would naturally concentrate on those aspects of justice more pressing for the lawyer's understanding of his role as a minister in the sacred temple of justice. We may therefore consider generally the machinery of the law as a means to justice. Justice to the lawyer may also mean an inquiry into whether a decision though legally correct achieves a fair result. That will introduce us to equity which gives a human face. As the lawyer is also a social engineer, he must, necessarily, be concerned with social justice and distributive justice. I have not mentioned individual justice because the preponderating part of the litigation lawyer's role is concerned with individual claims to individual justice.

## **The Courts; Law; And Justice**

### *The Courts*

The human instinct for justice finds ready expression in the administration of law in our courts. The establishment of the court system and the emergence of the legal profession are two very significant landmarks in humanity's search for justice. Before courts were established, every man went armed and was law unto himself. The mighty suppressed and expropriated the weak with impunity. That was an age of quest and conquest; of kill or be killed, reminiscent of *Hobb's Leviathan*, when man was wolf to his fellow man. But with the establishment of courts, men laid down their arms and carried their causes to these courts in the fervent hope of obtaining justice. Courts soon became tribunals for the public administration of justice; for the punishment of offences against the peace and dignity of the State; and for the settlement of controversies and disputes between individual members of the society.

### *Law*

Man is a social animal. He lives in society, never in isolation. He is not only rational but also gregarious. To be able to live in society, man has had to fashion out for himself some rules, some norms of behaviour, some laws to govern and regulate the various familial and societal relationships; social intercourse; and social interaction. If these rules of conduct are made and imposed by the sovereign authority in the state, they are known as positive laws, i.e., laws capable of judicial enforcement. The courts, as a necessary part of the machinery of government in every organized society, administer and enforce these laws (positive laws) of that particular state. But there are other laws – natural law, moral law, etc.

Positive law may not always ensure justice for it is a truism that states constantly violate true justice. The laws of a state are merely expressions of

relative justice. They occupy the unenviable position of never being able to reflect pure justice and indeed they are often highly coloured by the reverse, but still because the law aspires to justice, it is to be preferred to a life without law. The courts, therefore, have a duty to make the law approximate as far as it is humanly possible to justice and hence the court's continued and sustained appeal to "natural justice, equity and good conscience." Pure law stresses the strict rendition of what is due. Under constitutional provisions guaranteeing the right to justice, the justice to be administered by the Courts is not an abstract justice as conceived by the *judex*, but justice according to law. Having seen the imperfections of strict law as a handmaid to justice it follows, that to have justice with a human face, the rules of equity must form part of the entire social experiment.

## Equity

Equity is justice with a human face. *Aristotle*<sup>9</sup> defined the function of equity as follows:

Equity bid us be merciful to the weakness of human nature: to think less about the law than about the man who framed them; and less about what he meant; not to consider the actions of the accused so much as the intentions, now this or that detail, so much as the whole story, to ask not what a man is now, but what he has always been; it bids us remember benefits received rather than benefits conferred.

## History

In England, from where our courts derived much of their equity-jurisdiction, equity arose out of the practice of petitioning the King in the *curia regis* for relief when a person has suffered a wrong for which the technical courts of law afforded no adequate remedy. This jurisdiction was later transferred from *curia regis* to the Chancellor's court. Soon it was discovered that the ends of justice will be better served by investing every court with jurisdiction to administer law and equity. With the fusion of law and equity the administration of justice in every court became the determination and enforcement of rights according to law and equity.

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9. Rhetoric Book 1.

## Humanity And Justice

Today the consciousness of justice is increasing. Every man today has a new awareness of himself. Every man today knows that he is a person, an inviolable being, equal to others, free and responsible, with certain rights due to him because of his humanity. Justice thus expresses this inward and outward flow of the personality of man; his two fold moral movement of rights and duties. Justice is just born of the heart of man. Man is social by nature. This is not because he enjoys company, but because the conservation of the race requires the family, and the fulfillment of the individual requires society there are many relationships and it requires justice to harmonise these various relationships. Justice is thus the permanent passion of public life. Every policy maker claims it. It is the terminus *ad quem* of private life as well. Every litigant claims it. Everyone points to it to justify his or her claim, his or her actions.

### Face

Having defined “Towards”, “Justice”, “Human”, one has also to define “Face” to complete the equation. In the verb form, it may mean – not to shrink from, but rather to meet confidently, and maybe defiantly. In that sense, we have to face the problems and the demands of justice with a human face, with confidence and determination and carry the struggle through in spite of all odds. “Face” may also mean – looking towards. In that sense again, we are looking towards justice that has a touch of the divine from where humanity derived its face.

This naturally leads to the meaning of “face” in its noun form. In the noun form “face” means countenance, including its appearance and expression. From Christian theology we learn that we human beings are made in the image and likeness of God. We were to have a face like unto His. That was our pre-destiny. Hence St. Paul was able to write in his Letter to the Ephesians.<sup>10</sup>

For in Christ, He chose us before the world was founded, to be holy, to be dedicated, to be without blemish in His sight and to be full of love. He likewise pre-destined us through Christ Jesus to be His adopted sons.

Now sons look like their fathers. We were created to look like our Creator – holy, without blemish, full of love. But there was the fall of man and

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10. Ephesians 1: 4



in that fall we humans lost our dignity. Justice is just one of the ways of recognising and may be reviving that lost dignity. Justice, however, is the least we can do for persons in view of the human value and the dignity of the human person. It is the minimal. More than that is friendship and still higher is love. St. Augustine was therefore right when he asserted:

1. “Remove justice and what are kingdoms but gangs of criminals on a large scale.”
2. “We should be ruled not by the love of law but by the law of love.”

And St. Paul when he wrote:<sup>11</sup>

“Love does no wrong to a neighbour:  
therefore love is the fulfilling of the law.”

Since we fell from our predestined and exalted position our face changed. It became merely a human face but it is still a face that strives to regain its lost glory in the joy of the resurrection. The struggle towards restoring the face of man is beautifully reflected in the last stanza of our former National Anthem:

Oh God of all creation,  
Grant this our one request,  
Help us to build a Nation,  
Where no man is oppressed,  
And so with peace and plenty,  
Nigeria may be blest.

Now oppression is injustice or at best “sad eyed justice” without a human face. Oppression brings war. The ancient Romans said, “If you want peace prepare for war.” But behind this disillusioned dictum of an equally disillusioned statecraft, lay generation after generation decimated by a thousand wars and still there was no peace. In 1972, Pope Paul VI offered the world a new peace formula, a new antidote: “If you want peace work for justice.”

Peace expresses itself in justice and justice brings peace. The super powers not heeding the lessons of history seem to be saying today “If you want to prevent a nuclear war, make more nuclear bombs as deterrents.” Suppose the deterrent fails to deter, suppose the computers make a mistake? The world will then be destroyed in a nuclear holocaust. And yet the answer is simple – justice will bring peace. For rich and poor alike justice is not only a right, it is a duty.

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11. Romans 13:10

It is fast becoming the ultimate means of survival of the human race on this planet.

### **Justice With A Human Face**

As I observed earlier on, one's idea of justice is necessarily conditioned by one's conception of the person, of society, and of the relationship of the individual to society. In totalitarian states the person does not matter; the almighty state is all that matters; the person is merely a means not an end; the person gives himself wholly to the state and loses his identity. He no longer has a face and any justice in such a situation will be justice without a human face. Because of this, the main issues in the relationship of the individual to society are:

1. May individual interest be sacrificed for social goals?
2. Are State interests and social concerns always to be preferred to individual interests? or
3. Do individuals have some sacred turf upon which not even Caesar may tread?
4. Is extreme individualism and its claims to meritocratic competition the effective answer?

In a very short and brief answer to the question posed above, one can definitely say that if the aim and end of government is the welfare of the governed, then it follows that individual interest and social goals should be complimentary, not antagonistic. Any social goal that dehumanises the individual will, in the end, backfire. The state arose to cater for the needs of man and continues in existence in order to make life better. Having said that, one will soon add that group interests will surely over-ride individual interests where the two cannot be reconciled. The basis of democracy and the democratic processes is that the individual has certain freedoms and certain rights – some are so sacred that the state cannot afford to ignore or to overlook them – his fundamental human rights, his inalienable rights. Not even a Caesar is allowed to ride rough-shod over these types of rights. Finally, extreme individualism forgets the social functions of the state and extreme socialism forgets the sanctity of the human person. Both offend against justice.

Justice is something very human. It is difficult for any man who closes his eyes to this fact to form a genuine idea of justice. Justice is rooted in sincere feeling for man. Properly defined, justice is the virtue which accepts

everyone and renders to everyone his or her due *Scum cuique* (to each his or her own) is thus the persistent core formula for justice that has spanned classical, medieval and modern literature from Homer; through Aristotle and the Greek thinkers; Cicero and the Roman Jurists; Ambrose, and Augustine and the Fathers of the Church. In our own time, *scum cuique* is still seen as the axiomatic core of justice. The simplicity and consistency of this definition belies the complexity of the problem of justice and the fact that it ought to have a human face if it is meant to serve the needs of man – every man that is. In fact, the Justinian *Pandects* equated justice with equity which it defined as:

*honeste vivere, alterum, non laedere suum tribuere* (to live honestly not to hurt another, to give to each his due}.

From the above, we may safely conclude that if justice is administered with equity, it must of necessity have a human face.

### **What Then Is Equity?**

I have touched on this rather briefly before. In its primary sense, equity is fairness. Taken broadly and philosophically, equity means to do to all men as we would they should do unto us. This is the Golden Rule. Taken in a less universal sense, equity is used in contra-distinction to strict law. This is moral equity, which should be the genius, the real foundation of justice with a human face and of every kind of human jurisprudence, since it expounds and limits the language of positive laws, and construes them, not according to their strict letter, but rather in their reasonable and benignant spirit. No wonder Aristotle called moral equity the correction of mere law. Legal equity endeavours to afford a remedy in all cases where natural justice would seem to require it, and where the remedy at law, if any, was inadequate. Equity jurisdiction is based upon twelve fundamental principles known as the Maxims of Equity.

### **Law And Order, Equity And Justice**

Law provides the necessary background for order. One thus usually hears of “law and order.” And that is right as it is almost impossible to separate law from order. In fact the definition of order is usually given in terms of law – “the natural moral or spiritual system in which things proceed according to definite laws.” Law and order not only reinforce one another but they also reflect one another. Thus an unjust system of law will surely uphold an unjust order. So that, sometimes, the much vaunted “social order” one hears in totalitarian States, in oppressive regimes, in colonial and exploited dependencies, etc. may not mean more than “organized disorder”, “a *cumulus* and *calculus* of stratified injustices.”

From yet another angle, even a comparatively just system of law may be so maladministered that the resulting “order” becomes unjust. This malfunctioning of the law can be produced by abuses on the part of those who administer the law – the police and law enforcement agents, the courts and judicial officers. To have proper order, law must be administered with equity and justice and should have a human face. Tyranny cannot flourish where governments recognise the worth of every individual and are prepared to render him or her what is due to him or her because of his/her humanity and personality.

Justice is thus the attitude of mind that accepts that others- all others – are subject of rights in their own rights; that one’s own ego is not absolute; that one’s interest are related to the interests of others – that my own rights stop where my neighbour’s rights begin; that every man is free to do that which he wills, provided he infringes not the equal freedom of any other man. In this simple concession that each deserves his own (*scum cuique*) the moral self comes to grips with the reality and value of other selves. Justice is thus the manifestation of the other regarding character of moral and political existence. The alternative to justice with a human face is social disintegration because it will mean a refusal to accept the value of persons or the sanctity of life. Justice emphasizes to each his/her own. We owe each his own. This is indebtedness. But this indebtedness, which justice implies, is grounded on worth. Each is worth his own. We show what a person is worth by what we ultimately concede is due to him. Thus if we deny persons justice, we have declared them worthless. Hitler declared the German Jews worthless and then embarked on the “Final Solution.” It is because everybody has some worth that we talk of fundamental human rights, or the inalienable rights of man. These rights attach to man as man, to his humanity and personality, and justice accepts and respects them. In this way, justice brings peace. The aim of justice with a human face will therefore be to give justice an ingredient of peace and peace an ingredient of justice, otherwise we will have in the first place a false justice and in the second place a false peace.

## **Social Justice And The Lawyer As A Social Engineer**

### **Social Justice**

What is social justice and how are we, as lawyers, involved in or concerned with it? All of justice is divided into three principal parts. As I mentioned before, we are social individuals and there are three fundamental modes of sociality to which the three kinds of justice correspond, namely, individual justice, social justice and distributive justice. Justice itself is an integral whole which does not admit of partition but the three modalities mentioned above are merely the three ways in which justice is realised. Failure

at any form of justice is injustice. Since justice is to give to each man, his due these are the three ways in which we give him his own (*suum cuique*). To miss out on any of these is to be unjust.

Implicit in any conception of justice are, as I have mentioned earlier on, assumptions about the nature of personhood, what it means to be human, and the rapport between the individual and society. Thus, if we deny persons justice, we declare them worthless. In the political realm, only justice stands between us and barbarity. Therefore, where justice fails, persons perish.<sup>12</sup>

As we become more sensitive to the value of persons and consequently to our social obligation to give each his due or worth, we perceive more needs. Only recently did we establish the Legal Aid System in Nigeria. It is also because we appreciate the value of human life that the state assigns counsel to anyone on trial for his life. On the social plane, we then find that basic needs issue into rights when their neglect would effectively deny the human worth of the needy. Therefore, meeting essential needs of society is not a work of optional charity or benevolence. Meeting essential needs merely establishes our credential to humanity. It is the minimal manifestation of our humanness; it is the difference between humanity and barbarity, between being human and being a barbarian.

What then are these human needs? Because of our humanness, because of our personhood; because of our worth; certain human needs should not be left unmet, if there is going to be justice with a human face. We have spoken of the inalienable rights of man. These sound highly philosophical. But coming down from these Olympian heights to stark realities – persons should be literate, they should have safety in themselves and in their homes. Each man's home should be his castle; which in turn implies that each man should have what he can call home. People should have sufficient food to sustain them. They should have some say in how they are governed and over their political destiny. All these are contained in the “*Fundamental Objectives and Directive Principles of State Policy*” of our 1979 Constitution. But we need a more vigorous legislative thrust, a thrust more potent than “Operation Feed the Nation” or “Green Revolution” or the various phases of the “War Against Indiscipline” to combat effectively the dire need of our people for food, shelter and clothing.

Social justice demands that, in the words of our former National Anthem, we are

Nigerians all and proud to serve

Our sovereign motherland.

It is a fact of life that when others look at us in a friendly way, we feel alive and

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12 South Africa for example

vital, when others recognise us just as we are, we feel fulfilled. And when we feel accepted and affirmed we are happy, for we human beings need acceptance just as birds need air and the fish, water. Acceptance is the atmosphere of community and sociality. That is why we are repulsed by the indifferent glance, hurt by disregard and humanly destroyed when others deny us. In our country, social justice demands that there be no first class or second class or third class citizens. We should all be Nigerians not Nigerians who are merely tolerated.

Social justice demands that Nigerians should never become “closed human beings”. A closed human being no longer has any hope. Such a person is full of anxiety. Closed human beings will produce a closed society. And a closed society has no longer any future, for it kills the hope for life of those who stand on its periphery and then it finally destroys itself. In the political realm therefore, social justice stands between us and self destruction. Social evolution is based on a growing appreciation of the worth of persons which is the grounding of all moral and political life. It is the failure of social justice that produce racism, classism, sexism, statism, ethnicity and all forms of totalitarianism. Social justice will compel us to take the rights of others seriously, namely, the rights of women, the rights of the poor, the rights of the handicapped in our midst, the rights of children and young people, the rights of minorities etc.

In the Preamble to our 1979 Constitution, there is a solemn pledge in favour of social justice:

We the People of the Federal Republic of Nigeria solemnly resolved:

To live in unity and harmony...

And to Provide for a Constitution for the purpose of promoting the good government and welfare of *all persons* in our country on the principles of Freedom, Equity and Justice ...

The spirit of our Constitution, therefore, is that the beneficial effects of freedom, equality and justice should not be reserved to a selected few but shall be the proud heritage of all Nigerians high and low, men and women, children and grown-ups, rich and poor, employer and employee, government and governed etc, etc. There is to be no favoured class, no favoured *creed*, no favoured tribe, no favoured tongue. The word “We” in the Preamble to the Constitution is and should be inclusive.

### **The Legal Profession And Justice**

A very great proportion of what goes on in our Courts is the administration of justice between man and man, between the citizens and the State. This is individual justice. Individual justice is thus basically simple in its

concept and rather reasonably clear-cut. It deals mainly with contracts, torts or crimes. Commutative justice governs contracts. Distributive justice governs the distribution of rewards and punishments. It assigns to each either the rewards that his personal merits or services deserve or proper punishment for his crimes. It does not consider all men as equally deserving or equally blame-worthy, but discriminates between them to obtain a just proportion and comparison.

Distributive justice is also concerned with the distribution of goods and benefits – the national cake – by the representatives of the common good, the government. The prime subjects of distributive justice are thus the agents and agencies of government. There are however other economic and institutional powers that control some of the conduits through which the goods and rewards of society flow. Thus, individual citizens are often implicated through their support or apathy, in some way, in the working of distributive justice. Distributive justice is vitally important in a federation like Nigeria. For one thing, proper, fair and equitable distribution of amenities give the component parts a sense of belonging, or to borrow the language of our 1979 Constitution, it reflects the federal character. For another more serious reason every government requires a base of contentment among the people – the governed, otherwise the days of that government are numbered. It becomes just a matter of time before it is toppled at the polls. Thomas Aquinas was therefore right when he observed that when people are not rocking the ship of state, they are clearly satisfied. Whenever there are unemployed poor and massive dislocation of wealth and privilege, then, that is a danger signal that the distributional patterns of society are unjust.

### **The Lawyer's Role**

We learn in history that man refuses to learn from history and that is one reason why history repeats itself. Our Constitution, like the American Constitution, promised the citizens (all of them – we the people of -) freedom, equality and justice. The American blacks soon found out to their dismay the elusive quality of the written word for a Constitution that so nobly and so audibly and so eloquently spoke of the inalienable rights of man did not include freed slaves within its definition of “Man”. The “We” in the Preamble to their Constitution was not inclusive. It took years of bitter struggle before the American freed slaves graduated from niggers to negroes, then from negroes to coloured and finally from coloured to blacks. It needed the oratory and courage of a Martin Luther King (Jnr) before the American blacks were granted civil rights and the right to vote. Let us take just a few cases each set from the opposite side of the line.

1. *Plessy v. Ferguson*,<sup>13</sup> with its theory of ‘equal but separate’ approved separate coaches for whites and coloured. This was in 1890.
2. *Scott v. Sandfield*<sup>14</sup> decided that a negro slave cannot become a member of a political party. Negroes had no rights that the white man was bound to respect.
3. In *Missouri ex rel. Gaines v Canad*,<sup>15</sup> the U.S. Supreme Court in 1938, decided that the refusal to admit Gaines, a Negro, to a Law School of the University of Missouri on the ground that he was coloured was against the equal protection guarantee of the 14<sup>th</sup> Amendment.
4. *Brown v. Board of Education of Topeka*<sup>16</sup> was the crowning glory of the struggle. In 1954, the U.S. Supreme Court held that segregation was unconstitutional and that in the field of public education, the doctrine of “separate but equal” has no place. The important observation made in that case was that it “generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.” This was a notable advance compared with the decisions of 1890s. The fight for social justice there still continues.

Where do our lawyers and judges come in here? How do these American decisions affect us? The most astonishing thing in the American experience is that it was not the President of the United States; it was not the United States Congress; rather it was the United States Supreme Court that chained Black Americans and other minority groups to the pillar of second class citizenship from 1896 to 1954 by the way those men of the law – lawyers and judges- construed the United States’ Constitution in spite of its guarantees of freedom, equality and justice to all. We have no race problem in Nigeria, but we have minority problems – linguistic minorities, ethnic minorities and religious minorities. Our lawyers and judges guided by or more appropriately, eager to avoid the American mistakes can be a tremendous force for freedom, for equality, for unity in our diversity, and above all, for social justice to all. Our lawyers, in the words of Thurgood Marshall, former Justice of the U.S. Supreme Court, can become social reformers by making our law not only respond to social change but also initiate such desired changes.

Let us now consider briefly what the lawyer – qua law – can do to promote justice in a wider context. Justice Maugham once said of lawyers:

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13. 163 U.S. 337.  
14. Howard 393 (1857)  
15. 305 U.S. 337  
16. 347 U.S. 483.



You are the custodians of civilization than which there can be no higher aim and no nobler duty.

In a changing and inter-dependent world generally, and in a developing society like ours in particular, lawyers should, in addition to their day to day duties in court and to the administration of law, lead the way in the achievement of social justice. For whether any given society can be described as a happy or an unhappy one, depends to some extent on the question whether the laws by which it is regulated are thought by the average member to be broadly speaking just. Our lawyers therefore have to be active in law reform and in normal legislation. They have a duty which they owe to the community at large to put across proposals to change the law in order to bring it in line with justice. In developing countries like ours, where illiteracy is general, and where public understanding of the mechanics of legislation is slight, the knowledge of the lawyer is of considerable importance. As many lawyers as possible should be actively involved in the political fortunes of the country, going there to serve the greater ends of justice without any clogs of selfish interest. The lawyer politician should initiate or support changes in the law in the wider interest of justice with a human face. The lawyer of today should see himself as a social engineer, a determined fighter for freedom and the rights of man within the larger ambit of greater justice. Our law teachers have a vital role in attuning our future lawyers to the idea that law is good but that justice is better. Our law faculties and Law School should therefore turn out men and women who, as well as becoming competent practitioners, have in addition, a burning zeal in law approximating as far as is humanly possible to justice, and who intend to do the best they can in the course of their professional lives to improve the quality of our law and thus further the cause of justice in our land.

### **Summary And Conclusions**

If justice must have a human face, then on no account must it give way to policy. Rather, every policy should be subjected to the acid test of justice. Secondly, there must not be one rule by which the rich are governed and another for the poor. No man should have justice meted out to him by a different measure on account of his rank or fortune, from what would be done if he were destitute of both. Thirdly, every invasion of property should be judged by the same rule; every injury compensated in the same way; and every crime restrained by the same punishment, be the condition of the offender what it may. It is thus and thus only that justice can truly reflect the intrinsic equality of all men and therefore our common humanity. In other words, it is the duty of the courts to ensure and maintain the supremacy of the law. Fourthly, the

courts have been severally described as the bulwark of democracy, the last hope of the common man. Now the foundation of the court system is the confidence that the people (society) repose in their judges. Even good laws can be badly administered, leading to injustice. Judges should therefore be true to their oath of office and administer justice to all without fear or favour, affection or ill-will. Judges should not, either under pressure or of their own volition, yield moral authority; nor should they in their process of decision making allow themselves to be swayed from the path of truth and justice. In the corridors of justice, there should no sirens of wealth, power or influence, for the law is no respecter of persons, wealth, position or influence. Lawyers should see themselves as determined fighters for freedom and social justice. They should no longer live in ivory towers but should be genuinely concerned with the process of change in our society and thus direct the course of social evolution towards greater justice for all.

Finally, let us map out the direction of the procession towards our desired goal. We lawyers will ensure that:

Civilisation walks in the foot-steps of peace armed with an olive branch. Civilisation is then followed by the Doctors of the law with their weighty volumes on law which will lead to the ideal human society; then follow the politicians (most of them lawyers) expert not so much in the calculation of all conquering armies for winning wars and representing the defeated and demoralized, but rather in assessing the resource of the psychology of goodness and friendship, Justice then moves in this ordered procession, no longer proud and cruel but completely intent on defending the weak, punishing the violent and ensuring an order which is extremely difficult to achieve, but which alone is worthy of that divine name – order in freedom and conscious duty.<sup>17</sup>

This is the procession of Justice tempered with equity, clemency, mercy and love. It is a procession. “*Towards Justice with a Human Face.*”

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17. Pope Paul VI, Real Weapons of Peace 1<sup>st</sup> January, 1978

