

## Bartlett's Feminist Legal Methods and the Question of the 'Rule of Law' in Nigeria

Ngozi Chukwuemeka Aja, PhD

### **Abstract**

This paper, motivated by the belief that the 'rule of law' can enhance realization of Katherine Bartlett's the feminist legal methods in Nigeria, used textual analytical method, to critically examine the formal, substantive and functional interpretations of the 'rule of law'. Also, Bartlett's feminist legal methods, formulated as 'Asking the Woman Question' 'Feminist Practical Reasoning' and 'Consciousness-Raising', were analyzed. It is noted in this paper that the formal interpretation emphasizes legality and procedural justice and ultimately leads to entrenchment of inequalities, which Bartlett's feminist legal method anchored ultimately extensive application of judicial discretion in giving effect to aspects of women's experiences not captured in enacted legal codes, is designed to eliminate. On the other hand, the substantive and functional interpretations elicit natural justice, and therefore are germane to achieving her feminist legal method in Nigeria. These interpretations emphasize extensive use of judicial discretion and invariably give effect to Bartlett's feminist legal method. Hence, this paper laments that the clog to achieving the feminist legal methods in Nigeria is the lip-service paid to the requirements of the substantive and functional interpretations of the 'rule of law'. It was also reiterated in this paper that the background for these interpretations is created by Nigeria's federal constitution with its provision for separation of powers. Thus, until this constitutional provision which ensures independence of the judiciary, and consequently, enhances judicial discretion, is effectively adhered to, achieving Bartlett's feminist legal method in Nigeria will remain a mirage.

**Key words:** Feminist, Legal, Law, Method, Rule

### **Introduction**

The double aspect of law in feminism, promoting and protecting feminism, is yet to be fully realized in Nigeria, even when feminism has long attained great success in other countries. Adherence to 'rule of law' is the major factor that enhances the realization of the feminist agenda. Feminism is a movement that advocates for the recognition and protection of the rights of women. It courts across various disciplines. However, the contribution of feminism in law is referred to as feminist jurisprudence. 'Rule of law' is an expression on which political philosophers have taken varying positions. Some political philosophers praise it while others ridicule it. Those who applaud it equally see it as the lodestar for different legal theories and legal systems. The concept also serves a wide range of purposes. It serves the purpose of political sloganeering. 'Rule of law' also provides a platform for protecting individual rights from the power of the government. However, the concept has never been used with precision, neither has it been an objective standard for the protection of individual rights and liberties. At most, the doctrine of 'rule of law' has degenerated into a politicized mantra used in criticizing the so-called developing countries.<sup>1</sup> Thus, a country berated with corruption, human rights violation, and general lawlessness, is said to be low in terms of adherence to, 'rule of law'.

Wherever such organizations as the Fraser Institute and Transparency International release reports on development index, they use adherence to 'rule of law' as basis for the reports. Assessments using, 'rule of law' as a maxim, are seen as objective. The challenges of developing countries are blamed on non-adherence to 'rule of law'. There may be some truth in such blame for in the ideal of 'rule of law', is founded the indices of good governance, such as, accountability, legality, and respect for individual and human rights. 'Rule of law' is also the foundation for the feminist legal methods identified by Katherine Bartlett, namely, 'Consciousness-raising', Asking the

---

<sup>1</sup> Vilhelm Aubert, *In Search of Law: Sociological Approaches to Law*, (Oxford: Martin Robertson & Company Ltd. 1983), pg. 36-38

Woman Question; and 'Feminist Practical Reasoning'<sup>2</sup>. It is argued that the bad governance witnessed in Nigeria is due to non-adherence to 'rule of law'<sup>3</sup>. Concomitant to this bad governance is the inability of feminists in the country to transcend the bounds of economic, political and social limitations on women, and aspire for the transformation and restructuring of the society alongside feminist agenda. The aim of this paper is critically examine how the concept or 'rule of law' and most of the assumptions associated with it, can give effect to the feminist legal methods in Nigeria.

The study is qualitative in nature, so, the textual analysis method is adopted for gathering information for the work. 'Rule of law' in all its interpretations, will be critically analyzed. Also Bartlett's feminist legal methods are to be succinctly analyzed. Then the possibility of achieving them in Nigeria, relying on adherence to 'rule of law', will be determined.

### **'Rule of Law'**

The concept 'rule of law', is of German origin. The *German Encyclopaedia of the Social Sciences* recognizes two interpretations of the concept, namely, the formal and the substantive interpretations.<sup>4</sup> However, it was formally defined by the British Jurist, A. V. Dicey when he used it to emphasize the function of the courts in protecting individual rights and the scope of governmental authority. He notes that the 'rule of law' requires:

No man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land... every man, whatever be his rank or condition, is subject to the ordinary law of

---

2 Katherine Bartlett, "Feminist Legal Methods", in *Harvard Law Review*, vol.103, (Harvard: Harvard Law Review Association, 1990), pg.829-867

3 Benjamin Nwabueze, *How President Obasanjo Subverted the Rule of Law*, (Abuja: Gold Press Ltd. 2007), pg.38

4 *German Encyclopaedia of the Social Sciences*, vol.8, Gustav Fischer, (Ed.) (Gttingen: Vundenhoech & Ruprecht, 1964), pg. 768-769.

the realm and amenable to the jurisdiction of the ordinary tribunals.<sup>5</sup>

Looking at Dicey's statement, the first requirement of 'rule of law' emphasizes the idea of fair-hearing, while the second requirement emphasizes equality of all before the law. Together, the requirements point to the scope of the function of the judiciary as an arm of government saddled with the responsibility of determining justice. They also point to the doctrine of separation of powers and invariably, to the idea of independence of the judiciary. Dicey retained the formal and substantive interpretations of 'rule of law'. A. L. Wade later articulated Dicey's definition of 'rule of law' pointing out that the concept may be impracticable. Like Dicey, he attributed to the courts a central function in upholding the 'rule of law'. However, he sees as a mirage, actualization of the idea of independence of the judiciary, which positions the courts to effectively uphold the 'rule of law'.<sup>6</sup> With time, the internal contradictions in the 'rule of law', evidenced by conflicts between the 'rule of law' and efficiency, occasioned a third interpretation of the 'rule of law', the functional interpretation.

In its formal interpretation, 'rule of law' implies recognition of certain procedural guarantees which, when followed, due process of law is maintained. What comes to mind is independence of the judiciary. The judiciary is expected to interpret the law according to its letters without any interference. Thus the formal interpretation depicts 'rule of law' as a maxim that does not entertain flexibility in law. 'Rule of law' in its formal conception lays emphasis on generality, and certainty, in the application of legal rules. In other words, the law must be prospective and well-known. Law should furnish one with the guide for future conduct and, it should be defined in such a way that one whom it guides, knows the situations to

---

5 A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, (London: Macmillan, 1968), pg.23.

6 A. L. Wade, *Administrative Law*, (Oxford: Clarendon Press, 1977), pg.23.

which it applies and those to which it does not apply. Generality of law implies that law should be applicable to a wide range of people. Law should be applied with no disparity, such as distinguishing between the rich and poor, the ruler and the ruled. In line with the formal interpretation of 'rule of law' F.A. Hayek observes that, "Nothing distinguishes more clearly conditions in a free country from those in a country under arbitrary government than the observance in the former of the great principle known as the rule of law".<sup>7</sup> Hayek's assertion hinges on the belief that the characteristic of generality, equality, and certainty, depicts 'rule of law' as supporting democracy and the idea of individual rights. Thus countries whose laws protect democracy and individual rights are recognized as those that have high compliance with the 'rule of law'.

However, 'rule of law' also obtains in countries that do not necessarily protect democracy and individual rights. In its formal interpretation, 'rule of law' primary aims at legality. It mainly serves to ensure that the procedural dictates of the law are followed. Thus, even an act of government authority that infringes on individual liberty could be seen as complying with the 'rule of law' so far as it is authorized by an act of parliament. In china and in the Soviet Union, that practiced communism, for instance, one cannot deny the observance of 'rule of law'. Also in the Nazi Germany adherence to 'rule of law' could be observed even though the laws were against individual liberty. In the Apartheid South Africa, 'rule of law' was also observed.

The legal positivists like Jeremy Bentham; John Austin and H. L. A. Hart, who defended the formal interpretation of 'rule of law', though with varying degrees, argued it ensures the validity of legal rules reside within the legal framework.<sup>8</sup> Thus, for them, even obnoxious laws when applied procedurally by the courts, result to justice, albeit, legal justice. Joseph Raz argues that the principles of 'rule of law', such as prospectiveness, stability, independence of the judiciary, judiciary review, judiciary discretion, and others derive from the basic idea of

<sup>7</sup> F. Hayek, *The Constitution of Liberty*, (Harvard: Harvard University Press, 1960), pg.63

<sup>8</sup> M. D. A. Freeman, *Lloyd's Introduction to Jurisprudence*, 7th ed. (London: Sweet & Maxwell Ltd. 2001), pg.1375-1377.

'rule of law', which is that the law must be capable of guiding the conduct of its subjects.<sup>9</sup> The idea refers to generality and certainty, and does not say anything on how the law should be made. Organizations that identify with the formal interpretation of 'rule of law' include the World Justice Project, a non-governmental organization, and the United Nations. The United Nations in its resolutions since 1992 identifies the characteristics of 'rule of law' as generality, equality and certainty.<sup>10</sup> These characteristics, in addition to the independence of judiciary, are also recognized by the World Justice Project.

The substantive interpretation of 'rule of law' claims that the concept involves more than the formal interpretation offers. Seen as a narrower conception of 'rule of law' the substantive interpretation is also informed by the view that law does not constitute of only enacted laws. In other words, the concept of law transcends statutory law. Substantive interpretation of 'rule of law' surfaces especially when there is conflict between Natural law and positive or enacted law. The idea implicit in this interpretation is that the ultimate aim of law is to maintain justice. Consequently, when adherence to formal application of law results to perceived injustice, it said that 'rule of law' has been violated. Substantive interpretation of 'rule of law' is advocated by the nature law theorists, like Thomas Aquinas and John Locke. The contemporary natural law theorist, Lon Fuller, for instance, sees the substantive interpretation as a way of refuting legal positivism.<sup>11</sup> His notion of 'legal morality', which states that law can be invalidated due to secret legislation, excessive retroactive legislation, etcetera, is in support of the substantive interpretation of 'rule of law'. According to Fuller's *Morality of Law*, there are conditions for the validity of law that cannot be written into the positive law.

---

9 Joseph Raz, *The Authority of Law*, (Oxford: Clarendon Press, 1979), pg.214-218

10 Bardo Fassbender, "What's in a Name? The International Rule of Law and the United Nations Charter", in *Chinese Journal of International Law*, vol.17, (2018), pg.761-797

11 Lon Fuller, *The Morality of Law*, (London: Yale University Press, 1964), pg.5-6

Failure to identify certainty and generality in the formulation of laws assumes principle of generality and certainty other than, and higher than the generality and certainty presupposed by the formal interpretation.

Organization and scholars adducing to the substantive interpretation of 'rule of law' include the International Bar Association, the International Commission of Jurists, and even, Dicey. The International Commission of Jurists' Declaration of Delhi, 1959, notes the following as the requirements of 'rule of law':

- i. Protection of certain rights and freedoms, the fundamental human rights;
- ii. Independence of the judiciary; and,
- iii. Recognition of social, economic and cultural conditions conducive to human dignity-emphasis is laid on the recognition and promulgation of law protecting democracy and individual rights.<sup>12</sup>

In 2009, the council of the International Bar Association passed a resolution that above all, emphasises the equality of all before the law. It is pertinent to note that the 'equality' emphasized is not merely the assumption that the government is also subject to the law it makes, as the formal interpretation presupposes. Rather, it is 'equality before the law' according to the substantive interpretation, which implies the existence of a higher law to which everybody - the government, the ruled, and the law made by the government- are subject to. That is, the natural law. Dicey, who popularized the phrase, 'rule of law', expresses further the implications of the substantive interpretation in his assertion that, the 'rule of law' includes the result of judicial decisions determining the rights of private persons.<sup>13</sup> Private persons, refers to individuals in their personal capacity irrespective of their status and their affiliations.

---

12 International Commission of Jurists, *The Dynamic Aspects of the Rule of Law*, Geneva, 1965, Pg.14

13 A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, Pg.189.

The functional interpretation of 'rule of law' is based on the Common Law distinction between the 'rule of law' and the 'rule of man'. The 'rule of law', according to this interpretation is defined by adherence to laid-down rules, just like the formal interpretation. However, unlike the formal interpretation, the functional interpretation admits some kind of flexibility in the application of legal rules. It also slurs 'rule of law' from 'rule of man' which depicts arbitrariness in the application of legal rules. The 'rule of man' connotes high flexibility in terms of government officials having great deal of discretionary power. The functionalist sees a country that emphasises rigidity in the application of statutory rules as one that has a high degree of 'rule of law'.

A country in which government officials enjoy high discretionary power is said to have low degree of 'rule of law'. In line with the functional interpretation, developing countries are usually said to have low degree of 'rule of law'. This is because those countries overdependence on bureaucratic arrangement make their systems tilt towards 'the rule of man', rather than 'the rule of law'. Notwithstanding, the functionalist approach assumes a middle ground between 'rule of law' and 'rule of man', to emphasize on flexibility in the application of laid-down rules in line with the transformation and needs of the society. Thus, the functional interpretation is seen as the widest interpretation of the 'rule of law'. The German philosopher, Fichte, alludes to the functional interpretation when he argued that the state is obliged to ensure that the necessities of live are produced in a quantity proportionate to the number of citizens and that everyone can satisfy his needs through work.<sup>14</sup> Fichte emphasizes the requirements of distributive justice, an aspect of social justice which is also echoed by Karl Marx. The welfare state, in emphasizing the enactment and application of rules that ensure equitable distribution of resources, adduces to the functional interpretation of the 'rule of law'.

---

<sup>14</sup> Johann G. Fichte, "Foundations of Natural Right", in Wolfgang Friedmann, *Legal Theory*, 5th (London: Stevens & sons, 1967), Pg. 163.



**Bartlett's Feminist Legal Methods**

Feminist jurisprudence is an aspect of philosophy of law which advocates for the reconstruction of law in such a way that the patriarchal nature of law and other social orders could be undermined or ultimately eliminated. Bartlett sees feminist legal methods as weapon with which feminists can reconstruct the law and the society. She argues that in addition to the traditional legal methods, namely, deduction, induction and analogy, feminists adopt other methods which though not unique to feminists, reveal features of a legal issue, which the traditional methods intend to overlook or suppress. The features of a legal issue contemplated by Bartlett are those that concern the subjugation of women what she identifies as patriarch. Explaining her feminist legal methods, Bartlett writes:

One method, asking the woman question, is designed to expose how the substance of law may silent and without justification, submerge the perspectives of women and other excluded groups. Another method, feminist practical reasoning, expands traditional notions of legal relevance to make legal decisionmaking more sensitive to the features of a case not already reflected in legal doctrine. A third method, consciousness-raising, offers a means of testing the validity of accepted legal principles through the lens of the personal experience of those directly affected by those principles.<sup>15</sup>

On asking the woman question, Bartlett argues that the question assumes that some features of the law may be not only non-neutral in the general sense, but also "male" in a specific sense. The purpose of the woman question is to expose those features and how they operate, and to suggest how they might be corrected.

---

15 Katherine Bartlett, "Feminist Legal Methods", in *Harvard Law Review*, Pg. 836.

One perspective of women that feminists highlight is that the law is patriarchal. Bartlett argues that asking the woman question reveals the patriarchal feature of law thereby pointing to possible elimination of that feature of law. Exactly what the woman question is remains a paradox, for it seems that for her, the woman question is any question about the subjugation or subordination of women. She also thinks that the woman question could differ from generation to generation depending on improvements to be made in achieving the feminist agenda of women emancipation. Thus, she argues that:

Women have long been asking the women question. The legal impediments associated with being a woman were, early on, so blatant that the question was not so much whether women were left out, but whether the omission was justified by women's different roles and characteristics... while social stereotypes and limited expectations for women may have blinded women activists in the eighteenth and nineteenth centuries, their demand for the vote, for the right of married women to make contracts and own property, for other reforms, and for birth control challenged legal rules and social practices that to others in their day, constituted the God-given plan for the human race.<sup>16</sup>

Bartlett also alludes to the fact that in contemporary feminist struggle, the woman question has shifted from whether the omissions are justified by conceived women's roles to whether they are even to be contemplated in the first instance. Thus, attention is now focused on the all areas of law to expose instances of the omission as in cases of rape where the demand on proof of consent omits the intention of the woman, and in the workplace, where the gender differences are regarded as factors determining job descriptions. It is pertinent to also add that in this era in which issues of same-sex or gay marriages and trans-gender have become apprehensible, the woman

---

16 Katherine Bartlett, "Feminist Legal Methods", in *Harvard Law Review*, Pg. 836.

question could also portray these issues. Thus the question of the status of a lesbian wife and husband, gay wife and that of a trans-gender male and female with respect to the rights of women could be regarded as woman question.

'Feminist Practical Reasoning' emphasizes the need for more flexibility in the application of laid-down rules. It presupposes that existing legal rules, being products of the patriarchal structure of the society, is highly unreliable in determining the issues of gender inequality. Therefore, the method argues that rather than legal reasoning restricting itself to only facts predictable through laid-down rules, it should be open to admit facts not contemplated in the course of enacting legal rules, which in effect are facts about the ugly experiences of women.<sup>17</sup> Such facts may not have been recognized by the law because of the patriarchal nature of law itself. The idea is that most of the facts that could be raised through the method of 'Asking the Woman Question' are given effect by the method of 'Feminist Practical Reasoning' which anchors on extensive judicial discretion. Heather Wishic suggests seven questions that feminist jurisprudence poses. They range from questions about women's unique experiences due to gender differences, distortions and denials created by the differences, legal reforms to tackle the consequences of the differences; to legal concerns for the woman's life situation in an ideal world.<sup>18</sup> Bartlett argues that facts raised by questions of this nature can only be justifiably adjudicated on with 'Feminist Practical Reasoning' as against the legal formalist approach.

Consciousness-raising is the motor of feminism for cautioning that gender differences should not be seen as basis of inequality. Bartlett argues this method requires women upholding gender differences by sharing ugly experiences they have because of them, and, also using legal means, such as arts, the popular media and litigation in situations of breach of respect for the

---

17 Katherine Bartlett, "Feminist Legal Methods", in *Harvard Law Review*, Pg.844-848

18 Heather Wishic, "Questions of Feminist Jurisprudence", in *Berkeley Law Journal*, vol.1, (1985), pg.64

differences, to motivate other women who undergo similar experiences.<sup>19</sup> According to Bartlett, consciousness-raising gives room for asking the woman question which in effect raise facts to be tackled by the adoption of feminist practical reasoning. Thus she argues that:

Consciousness-raising provides a substructure for other feminist methods – including the woman question and feminist practical reasoning – by enabling feminists to draw insights and perceptions from their own experiences and those of other women and use these insights to challenge dominant versions of social reality.<sup>20</sup>

The methods are therefore predicated on the belief that legal facts should be contextual and contingent, what Bartlett refers to as 'positionality'. According to her, "Central to the concept of positionality is the assumption that although partial positivity is possible, it is transitional, and therefore must be continually subject to the effort to reappraise, deconstruct, and transform"<sup>21</sup>.

Taking Bartlett's methods as a whole, one can understand them to be hermeneutical in that they require legal interpretation to discern meanings which may or may not be latent in legal rules but which can make justiceable, women perspectives not captured by legal rules. Thus, they have far reaching implications for feminism as they tend to even contemplate resent developments on gender issues, such as gay marriages, cohabitation, trans-gender, and others, which also demand attention from feminism.<sup>22</sup> Application of Bartlett's feminist legal methods in Nigeria may undermine issues of gay-marriage, and trans-gender, which are viewed as offences against morality in the country. However, their application in

---

19 Katherine Bartlett, "Feminist Legal Methods", in *Harvard Law Review*, Pg. 849-855.

20 Katherine Bartlett, "Feminist Legal Methods", in *Harvard Law Review*, Pg. 866.

21 Katherine Bartlett, "Feminist Legal Methods", in *Harvard Law Review*, Pg. 887.

22 Boma Geoffrey Toby and Linus Onyeazurule Nwauzi, "The Legal Protection of Feminism: The Rights of Women in Nigeria", in *The Journal of Jurisprudence, International Law and Contemporary Issues*, vol.12, No.1, 2019, pg.125-126.

Nigeria may also prompt rights agitations from gay couples and trans-gender personalities. Notwithstanding, the application of her methods in any country would go a long way advancing the feminist agenda in that country.

### **'The Rule of Law' and Achieving Bartlett's Methods in Nigeria**

Even if it became universally accepted that the formal interpretation of 'rule of law' represents the idea of any conception of the doctrine, how practicable is that concept? The full implications of the 'limited government component' that makes this interpretation appealing have remained elusive in practice. Implicit in that component is the maxim that 'rule of law' best promotes liberty by regulating and restricting state authority. This maxim seems unrealizable, especially with every government of the world tending towards instrumentalism. Also, the maxim of equality before the law implied in that component, has remained an empty category. Marx and Engels rightly observe that unless there is equality in economic positions, there could be no equality before the law.<sup>23</sup> The fear expressed by Marx and Engels defines the impracticable nature of the 'rule of law' doctrine even in the common-law countries best known for the substantive interpretation of rule of law. Common-law courts, as well as civil-law courts, is known today for serious delay in the delivery of justice. Factors contributing to this include economic disparity which affects the rate of accessibility to the service of legal practitioners, inaccessibility to official documents which may be declared confidential by either the executive arm of government or the legislature; non-regularly in keeping with time on the part of the court; and other encumbrances. These factors seem unavoidable thereby making the 'rule of law' an impracticable ideal.

---

23 Karl Marx and Friedrich Engels, *The German Ideology*, in David McLellan, *The Thought of Karl Marx*, (London: Macmillan, 1971), pg.191-195

The situation seems worse in Nigeria where the independence of the judiciary is utopia. Women, the poor and the minority are being subjected to the whims and caprices of men, the rich and the majority. If the formal interpretation of rule of law is to be relied on as a measure of equality in Nigeria, women, who, lack the social, political and economic will to even seek redress in the common courts, will continue to be subjugated. They are among the low income earners; they hardly occupy prominent political positions. Women in Nigeria are socially relegated by stereotyping norms which depict them as inferior to men in terms of making decisions about their families, communities and even social organizations such as political parties, religious groups and clubs. 'Rule of law' in this formal interpretation, emphasizes legality and as such, submerges the perspectives of women and other excluded groups in that of the male and other dominant groups. In its wider sense exhibited by the substantive interpretation, the 'rule of law', accommodates 'feminist practical reasoning'. The social justice component of the substantive interpretation calls for extension of judicial discretion. Thus, facts identified through 'Asking the Woman Question', could be admitted in the judicial process, through judicial discretion. According to the Declaration of Delhi, 1959:

The rule of law is a dynamic concept for the expansion and fulfilment of which jurists are primarily responsible and which should be employed not only to safeguard and advance the civil and political rights of the individual in a free society, but also to establish social, economic, educational and cultural conditions under which his legitimate aspirations and dignity may be realized.<sup>24</sup>

Rule of law, understood in line with this declaration has been behind the progress of the feminist legal methods in the more advanced countries of the world, such as European and

---

<sup>24</sup> *The Dynamic Aspects of the Rule of Law*, op. Cit. pg.15.

American countries. In these countries, feminist jurists have been successful in asking the woman question on suffrage, on rape, and on women rights to ownership of property.<sup>25</sup>

The gridlock for achieving the feminist legal methods in Nigeria stems from paying lip service to the substantive and functional interpretations of the 'rule of law'. It is obvious that the Nigerian constitution adduces to the doctrine of separation of powers.<sup>26</sup> However in practice, the executive seems to have become the power house as it appoints and disengages judges at will. Thus, judicial discretion, a corollary of judicial independence, which could give effect to the feminist legal methods, is highly discouraged in the Nigerian legal system. Acclaimed feminist jurists in Nigeria are afraid to ask the woman question for fear of losing in court battles. Women who suffer from unhealthy and humiliating cultural practices are unwilling to share their experiences in line with the method of Consciousness-raising. Thus, while their counterparts in the advanced societies are now fighting to ensure the feminist legal theories replace the traditional methods of legal reasoning like deductive reasoning, inductive reasoning and analogical reasoning, feminists in Nigeria are still hoping that one day, there will be an opportunity for them to introduce the methods in the legal system.

### Conclusion

This paper has explained that the ideal of 'rule of law' is essential to achieving the feminist legal methods identified by Katherine Bartlett. It is the social justice component in the substantive interpretation of 'rule of law' that makes it amenable to the feminist legal methods. The social justice component plays down on the formal interpretation of 'rule of law', especially with respect to those countries beset by massive poverty, disease and premature death. These social ills are seen to portray the

---

25 See decided cases such as *Bradwell v. Illinois* (1873) 83 U.S. (16 Wall.) 130; *Reed v. Reed* (1971) 404 U.S. 71; and *R. v. R.* (1991) 3 W. L. R. 767.

26 1999 *Constitution of the Federal Republic of Nigeria*, Gazetted and Amended, (2011), sections 4, 5 and 6.

situation of Nigerian citizens especially, women, and this necessitates the need for recognition of the feminist legal methods in Nigeria. Procedural guarantee as evident in the fundamental right to fair-hearing is abstract. The law being patriarchal in nature, men are in a position to access that right more than women. However, the social justice component of 'rule of law' evident in the substantive and functional interpretations, can establish grounds of equality or equity which will enable women access abstract rights like their male counterparts. Thus, 'rule of law' also obtains when measures such as affirmative action and other gender parity initiatives are directed to repositioning women to compete favourably with men. The contemplation of these measures was facilitated by feminists in the more advanced countries, who, due to adherence to the substantive and functionalist interpretations of 'rule of law', devised the feminist legal methods and fought for their recognition by the legal system. Feminists in Nigeria do not have the background laid for them as the country continues paying lip service to the substantive and functional interpretations of 'rule of law'.

However, lack of independence of the judiciary and consequently, enhanced judicial discretion renders the substantive and functional interpretations of 'rules of law' ineffective in the Nigerian legal system not just when there are such ingredients as independence of the judiciary and fair-hearing but essentially when all citizen are socially, economically and politically positioned in such a manner that they can access legal aids. In other words, the Marxist argument that concrete or economic rights should precede abstract rights is what the idea of 'rule of law' demands.



**Bibliography**

- Aubert, V. *In Search of Law: Sociological Approaches to Law*, Oxford: Martin Robertson & Company Ltd. 1983.
- Bartlett, K. "Feminist Legal Methods", in *Harvard Law Review*, vol.103, Harvard: Harvard Law Review Association, 1990.
- Cain, P. A. "Feminism and the Limits of Equality", in *Georgia Law Review*, vol. 24,1990.
- Dalton, C. "An Essay on the Deconstruction of Contract Doctrine", in *Yale Law Journal*, vol. 94, 1985.
- Dicey, A. V. *Introduction to the Study of the Law of the Constitution*, London: Macmillan, 1968.
- Fassbender, B. "What's in a Name? The International Rule of Law and the United Nations Charter", in *Chinese Journal of International Law*, vol.17, 2018.
- Fichte, J. G. "Foundations of Natural Right", in Wolfgang Friedmann, *Legal Theory*, 5<sup>th</sup> London: Stevens & sons, 1967.
- Freeman, M. D. A. *Lloyd's Introduction to Jurisprudence*, 7<sup>th</sup> ed. London: Sweet & Maxwell Ltd. 2001.
- Fuller, L. *The Morality of Law*, London: Yale University Press, 1964.
- German Encyclopedia of the Social Sciences*, vol.8, Gustav Fischer, ed. Gttingen: Vundenhoech & Ruprecht, 1964.
- Harris, D. J. *Cases and Materials on International Law*, 6<sup>th</sup> ed. London: Sweet & Maxwell, 2004.
- Hayek, F. *The Constitution of Liberty*, Harvard: Harvard University Press, 1960.
- International Commission of Jurists, *The Dynamic Aspects of the Rule of Law*, Geneva, 1965.
- Marx K. and Engels, F. *The German Ideology*, in David Mcllellan, *The Thought of Karl Marx*, London: Macmillan, 1971.
- Nwabueze, B. "Nigeria's Presidential Constitution, 1979-1983", Ibadan: Longman Nigeria Ltd., 1985.
- Nwabueze, B. *How President Obasanjo Subverted the Rule of Law*, Abuja: Gold Press Ltd. 2007.
- Raz, J. *The Authority of Law*, Oxford: Clarendon Press, 1979.
- Toby, B. Geoffrey, and Nwauzi, Linus O., "The Legal Protection of Feminism: The Rights of Women in Nigeria", in *The Journal*

*of Jurisprudence, International Law and Contemporary Issues*,  
vol.12, No.1, 2019, pp125-126.

Wade, A. L. *Administrative Law*, Oxford: Clarendon Press, 1977.

Wishic, H. "Questions of Feminist Jurisprudence", in *Berkeley  
Law Journal*, vol.1, 1985.

*1999 Constitution of the Federal Republic of Nigeria, Gazetted and  
Amended*, 2011.