Journal of African Studies and Sustainable Development
ISSN: 2630-7065 (Print) 2630-7073 (e). Vol. 5 No. 3. 2022
Association for the Promotion of African Studies

LAW AS IDENTITY: A PANACEA FOR AFRICA'S REGIONAL AND CONTINENTAL INTEGRATION

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DOI: 10.13140/RG.2.2.23939.78889

Abstract

The positivists' conception of law in its multifaceted presentations such as Raz's idea of law as an authority or the imperatives as the command, Hart's notion of law as the social control of behavior, and Dworkinian's thesis of law as integrity, have remained dominant in jurisprudence and admittedly has influenced several legal systems. However, as noted in the extant literature, such a conception of law takes a top-down legalistic approach; making law somewhat sterile, rather than a phenomenon that is viable and generates interesting outcomes. The positivists' conception of law limits the function of law to commanding obedience and ensuring social control, reducing as it were the agency of the individual for whom the law is enacted. This paper takes off from this limitation of the positivists' conception of law, to advance the concept of law as identity; a panacea for Africa's regional and continental integration. Law as identity highlights the status of the law as a phenomenon that is enlivened through performativity and belongingness. Law as identity is the performative expression of belongingness an agent demonstrates through their cognitive and affective domains of the shared belief in the legitimacy of a legal system; the recognition of acceptance of one's true inner self and the outer world of social rules and norms; the dialectical legal consciousness of the various shades of meaning in the community legal consciousness that is reasonably requiring the attention of performativity as a result of the agent's belongingness. The hermeneutic method is used and was significant for the interpretative dimensions of the dialectics associated with the concept of law. The paper argues that legal concepts such as statutes, judicial precedent, and legal propositions are categories to be understood and roles to be performed by the agent in other to accentuate the concept of law as identity. Such conceptualization of law would help abate the challenges associated with social justice, and enhance regional and continental integration insofar as the requirement that makes for social justice is already part of the agent's lived experience.

Keywords: Law, Positivism, Concept, Performativity, Belongingness, Identity, Legal, System, Agent

Introduction

Law has been a significant topic for philosophical discussion since its beginnings. The attempts to discover the principles of cosmic order, and to discover or secure the principles of order in human communities, have been the wellspring of inquiry into law. Such inquiry has probed the nature and being of law, and its virtues, whether those that it is considered as intrinsically possessing or those that ought to be cultivated by lawgivers, judges, or engaged citizens. Law is fundamental to the social and political nature of man; it is one of the civilizing institutional capacities evolving human society through the internal dialectics of its span. The progression of civilization is largely linked with the continuous improvement of a system of legal rules and particularly an understanding of law as identity.

Law as identity is the performative expression of belongingness of an agent in a said legal system, this belongingness, the agent assimilates and expressed through the agent's cognitive and affective domain in the shared belief in the legitimacy of a legal system. It is the recognition of the union of one's true inner self and the outer world of social rules and norms, and also the dialectical legal consciousness of the various shades of meaning and influence of the community legal consciousness. Thus, legal concepts such as the statutes, judicial precedent, and legal propositions are categories to be understood and roles to be performed in other to activate the concept of law as identity, for the agent, is reflexive by making itself an object that can categorize, classify or name itself in particular ways concerning the legal phenomena, concepts, and classifications.

The dialectics of reason is considered in the philosophical speculation about the underpinning principles of law. On the one side, there is the idea that the cosmos itself, and human society too, contain immanent principles of rational or reasonable order, and this order must be capable of discovery or apprehension by the society and expressed in individual conduct, on the other hand, rationality inherent in man has enabled the creation of guiding principles of conduct and regulation. However, there are many theories considered in the conception of the term law, such as the Natural law theory, the Marxist law theory, and the Realist Law Theory but consideration is here given to the Positive law theory which is the subject of our study. The positive law theory is also known as imperative or analyst law theory. It referred to laid down law. It has the belief that law is the rule made and enforced by the sovereign body of the state and there is no need to use reason, morality, or justice to determine the validity of the law. According

to this theory, the rule made by the sovereign are laws irrespective of any other considerations. These laws, therefore, vary from place to place and from time to time. The problems associated with earlier research work on the theme of the positive conception of law vary from reductionistic approaches to the concept of law as authority or command and control or enforcement which portrays a top-down static approach. A living expression and engagement with the law that is dynamic, whole, and participatory will build more holistic compliance to the retinue of the concept of law made manifest in the shared understanding of the Acts and status, precedent, and constitutional requirement.

In this article, I present law as identity, a panacea for African regional and continental integration as the regularities in attitude resulting from the performative actions exercised by the belongingness of an agent in a legal system and peculiarly the *belongingness as Igwebuike.*

Igwebuike means the *number is power* or *strength is power.* Kanu, the proponent of *Igwebuike*, defines it as "the expressive modality of being in Igbo Ontology[34]." For him, *Igwebuike*, which, according to Asouzu, is *strength in togetherness,* is the locus of the meeting of beings in Igbo communalist metaphysic, with special reference to existentialism and leadership[35]. Kanu, however, opines strongly on the concept of *Igwebuike* thus:

> Igwebuike provides an ontological horizon that presents being as that which possesses a relational character of mutual relations. As an ideology, Igwebuike rests on the African principles of solidarity and complementarity. It argues that 'to be' is to live in solidarity and complementarity and to live outside the parameters of solidarity and complementarity is to suffer alienation. 'To be' is 'to be with the other', in a community of beings. This is based on the African philosophy of community, which is the underlying principle and unity of African Traditional Religious and philosophical experience.[36]

It is a living document of the *concept* of law, seeking its expression in an actual legal system. An actual legal system is that which has gained legitimacy, which

[34] Kanu, I. A. Igwebuike and Being in Igbo ontology: *Igwebuike: An African Journal of Arts and Humanities*.(2017) Vol. 4 No 5. [12-21].
[35] Asouzu, I.I Ibuanyidanda: New Complementary Ontology, Zurich: lit, Verlag GmbH & Co; Wien (2007)p 11
[36] Kanu, I. A. Igwebuike and Being in Igbo ontology (2017) p 34

incorporates the static and dynamic principles' meaning and expectation into the populace and the associated role and performativity. This incorporation is reached because of the understanding of the categorization of the individual as a result of his belongingness within the jurisdiction of the actual legal system. Thus, the expectation and meaning thereof form sets of standards that guide performative behaviors.

Law as command

John Austin's work *The Province of Jurisprudence Determined* seeks to define positive law, by distinguishing "laws properly so-called" from other law-like utterances and other things called laws. Laws properly so-called turn out to be "commands" requiring conduct; issues from a sovereign to members of an independent political society over which sovereignty is exercised.

Law as identity is not opposed to Austin's concept of law as a command but rather articulates Law as a participatory enterprise and more an inclusive action of agents within the legal system. It shows that, for a man to achieve his aims or objectives in this world, he has to be in relational character with the other people around him, Kanu argues that 'to be' is to live in solidarity and complementarity and to live outside the parameters of solidarity and complementarity is to suffer alienation[37]. Thus, the performativity and belongingness that characterized Law as identity present this conception of law as overarching for Africa's regional and continental integration.

The concept of command and compelling obedience is reductionist and do not represent all there is in the conception of law, for the penal code is not all there is in law. However, commands entail a purpose and a power to impose sanctions on those who disobey; a sovereign is a determinate human superior (that is, one who can successfully compel others to obey) who is not in a habit of obedience to such a superior and who also receives habitual obedience.

Law as identity portrays a democratic coexistence of all the agents within a legal system, at least in principle, for every agent shares in the belongingness and performativity of expectation and requirements of every one of the agents, unlike the sovereign who is a determinate human superior not in obedience to the command. Hence, Law as a command can't address the problems associated

[37] Kanu, I. A Igwebuike Philosohy and complementray relations, (Igwebuike Research Institute, 2020). P. 121

with social injustice and inequality when this breach is emanating from the positons of who or those who appear to be the sovereign. Law as identity is requiring that the constitution is interpreted and addressed from the viewpoint of belonging and performativity than from the viewpoint of command, as Austin's "legal positivism" sees the issue of "the law" as reduced to the issue of who sets the rule (i.e. "command") and how the command is enforced (i.e. by force or threat of force). Thus, Austin sees the operative principle in the determination of "the law" as something like, (successfully and effectively exercised)" *might makes* (properly "legal") *right*."

Law as a union of Rule

The work now generally regarded as the most important twentieth-century statement of the positivist position in the Anglo-American tradition is H.L.A. Hart's book, *The Concept of Law*. In it, Hart does not seek to defend a narrow, partisan tradition, but rather departs from Austin's version of positivism by undertaking a broad reexamination of the fundamental questions of jurisprudence, clarifying them and securing their importance.[38] Hart's analysis of the concept of law is because of several interrelated ideas: "Law as the union of Primary and Secondary Rules."[39]

Reliance on the concept of a rule allows Hart to pursue several tasks simultaneously. First, the concept explains the operation of law in ordinary social life: basic legal standards tend to be well known, and departures from them are regarded as occasions for criticism or self-criticism, if not official coercion.[40] Second, Hart hopes to account for the phenomenon of legal change: "power-conferring" rules authorize the creation of new rules by designated officials.[41] Third, he aims to explain the nature of adjudication: judges typically apply the law but are authorized by power-conferring rules to fill gaps and possibly to effect other changes.[42] Fourth, and most generally, by beginning with the concept of a social rule, Hart emphasizes that law is a phenomenon grounded in shared standards of appropriate conduct and socially enforced pressure to conform.[43]

38. H.L.A. Hart, *The Concept of Law*. Second Edition, (Oxford: Clarendon Press, 1994). p. 17.
39. Ibid; p. 77.
40 Ibid; p. 30.
41 Ibid; p.93-94.
42 Ibid; p.121.
43 Ibid; p.113.

This union of rules captures the performativity tenet represented in law as identity. Hart's concept of law is more inclusive than that of John Austin's command. Hart maintains that a legal system—in contrast to a set of unrelated laws—consists of a union of primary rules of obligation and secondary rules. Hart's primary rules of obligation are the performativity principle in the concept of law as identity. Hart insists that the point of view of people who follow and apply the law must be considered.[44] In particular, he emphasizes the importance of an internal point of view of the law, that is, the point of view of those who operate within the law rather than of external observers of the law. Therefore, according to Hart, a legal theorist who wishes to understand a legal system must view the legal system from the point of view of an actor *in* the system.[45] Thus, from the concept of law as identity.

Furthermore, in distinguishing primary rules of obligation from secondary rules, Hart takes the position that there is at least one type of law that imposes an obligation.[46] This type tells citizens that they must not do this or must do that. But raising the crucial question of what an obligation concerning legal rules means, Hart rejects the idea that to say that law imposes an obligation is merely to assert a prediction (about the likely behavior of citizens). Nor does he accept the view that laws imposing an obligation are simply coercive orders. Hart attempts to provide a general analysis of obligation in terms of social pressure.[47]

This social pressure is the vibe of direction in the concept of law as identity, which emanates from the shared belongingness of the agents, life is shared in the African worldview which makes life meaningful. So, it is in the relationship or coming together that each completes as a whole, force or any sort of command in a loose sense is not applicable where the law as identity is properly understood.

Law as Authority

According to Joseph Raz, an essential feature of the law is that it claims legitimate authority.[48] A legal system is in force only where it is widely obeyed, and accepted as authoritative by some. The concept of law as identity underscores that, for the law to be accepted as authoritative without being

44. Ibid; p. 86- 87.
45. Ibid; p. 88.
46. Ibid; p. 80.
47. Ibid; p. 84.
48. Joseph Raz, *The Authority of Law: Essays on Law and Morality*, (Yale University Press, 2009), p. 30.

performative is dead, its performativity is the sole action of an agent who through belongingness in the legal system demonstrates the acceptance of the authoritative attributes of law as conceptualized by Raz. Authoritativeness of the law in itself is a tool of fear and force, the encompassing attribute of a legitimate legal system that conceives law is the concept of law as identity, - the union of the belonging of an agent and the resultant actions of duty, role, privileges and right share by the agent.

Raz conceives authority as a power to create exclusionary reasons for action that efface competing considerations, including moral reasons.[49] Indeed, he sees the very efficacy and fairness of law as requiring this sort of normative opacity. Yet he argues that a moral agent may permissibly create such a duty by committing herself to obey a particular legal system,[50] and he denies that to accept the authority of a legal system requires abdicating moral autonomy.[51] Irrespective of moral autonomy, the share belongingness is the fundamental reason for action that represents a worldview of those within the legal system.

However, an authority as a power to create exclusionary reasons for action will in some instances impede social justice and create inequality or be silent in both situations. Law as identity becomes the process of the dialectics that mirrors social justice and inequality, for it recognizes the belonging of all agents and the corresponding performativity of action required of each and all within the legal system by either requiring the demand of social justice or the execution of social justice.

Law as integrity

Ronald Dworkin holds that the best "interpretation" of legal practice is a conception of law that he calls "law as integrity."[52]The concept of law as integrity requires a judge to test his interpretation of any part of the great network of political structures and decisions of his community by asking whether it could form part of a coherent theory justifying the network as a whole. Law as integrity

[49] Ibid; p. 3.
[50] Ibid; p.234.
[51] Ibid; p. 25.
[52] R Dworkin, *Law's Empire*; p.94.

"makes the law depend on more refined and concrete interpretations of the same legal practice it has begun to interpret.[53]

A meta-analysis of Law as integrity is here considered as an administrative activity of Law as identity, as some specialized agents in the legal system, and to the level of their degree of performativity as a result of their belongingness, and in this instance, as custodian created out of the concept of Law as an identity to demonstrates specialized performativity in the subset of a legal system by upholding and propagating the Law as identity.

Law as integrity asks judges to make the law coherent, so far as possible and the interpreter "cannot claim in good faith to be interpreting his practice at all.[54] Flowing from the above discussion of constructive interpretation, it is apparent that the judge is the central figure of Dworkin's interpretive methodology. Not only is a judge immersed in the interpretation of his legal practice, but also he is equally committed to furthering its aims and purposes. It is for this reason that a judge, on Dworkin's characterization, is both a critic and an artist. Not only must he observe, but he must also perform.[55]

The Concept of Identity

The meaning of identity is certainly a herculean task to achieve. Identity has been analyzed in time and in many different research areas, and its meaning shifts according to what the specific research area focuses on. The concept of identity corresponds to the combination of social awareness (self) and social identity (persona), whose meaning changes according to the disciplinary context in which it is studied[56]. When we talk about the concept of identity, therefore, we must take into consideration the fact that it is the product of individuals within particular social and historical conditions, and not assume that they are the result of impersonal historical or social forces[57]; identity, therefore, cannot be simply described as a concept but must be defined as a construct.

The word identity derives from the Latin idem (the same) and reflects exactly this meaning; Western philosophy and logic have broadly contributed to the

[53] Ibid; p.410.
[54] Ibid; p.257.
[55] Ibid; p.229.
[56] Francesca Vitali "In Search of a Legal Identity: Christopher Marlowe's The Jew of Malta" https://www.degruyter.com/ Accessed on20/05/22
[57] Ibid; p.149

creation of its sense and an example of this process could be the clause of identity in Aristotelian logic. Identity, therefore, corresponds to sameness with a set of characteristics, and sameness "in terms of a shared difference from others"[58]. Moreover, the reason for people's unceasing demands for the recognition of their communal identity is not based on their shared communal features, but on the power and specific rights comprised in the concept of identity itself [59]; the negation of any kind of identity, therefore, implies the denial of any right and the recognition of individuals as political and juridical subjects.

The first step toward a definition of identity is the acknowledgment of the difference existing between the philosophical study of the concept, and the idea of it that is provided by social science. Whereas philosophy deals with identity as the study of the "self," in an attempt to grasp the intrinsic nature of personality, social science studies identity as "social identity," i.e. underlining the importance of interrelations in its process; personality is constructed socially and daily. If on one hand, according to Locke, memory, although fallible and imperfect, is the vital key concept in the definition of identity ("you are what you know") since knowledge and experience are preserved in our memory, on the other hand, sociologists or psychologists insist on considering interaction with other human beings a fundamental step in the process of the construction of the self. As Riley perfectly summarizes in his work Language, Culture and Identity, "philosophers can discuss 'identity' as a quality which entities 'have' without reference to other entities, since it is intrinsic. [. . .] Socially speaking, though, 'identity' is a quality which is ascribed or attributed to an individual human being by other human beings."[60]

Research on identity is inclined to the differences among people and peoples that come to appear self-evident. Identity seems to be constituted through difference, yet it also implies sameness in two senses: those sharing an identity are the same, and all humans are similar in having identities. Sameness and difference are, of course, central concepts in Western legal thought[61]. Although identities have many sources and the historical roots of any particular identity are complex,

[58] Ibid; p. 150
[59] Ibid;
[60] P. Riley, Language, Culture and Identity (London: Continuum, 2007), 87

[61] J .F. Collier."Sanctioned identities: Legal constructions of modern personhood" https://doi.org/10.1080/1070289X.1997.9962524 Accessed on 20/05/22

Western law provides an increasingly transnational forum for eliciting and negotiating expressions of identity.[62]

Therefore, not forgetting the importance of the "self" studied by philosophy, we can define identity as Sarup does in his *Identity, Culture, and the Postmodern World*: "a construction, a consequence of a process of interaction between people, institutions, and practices,"[63] i.e. a structure which evolves continuously, which is fluid and perennially subject to change and movement and is never equal to itself. However, since human behavior has so many possibilities of expression, boundaries are necessary to contain and regulate it; as Sarup suggests, boundaries may coincide with geographical areas, political or religious viewpoints, occupational categories, linguistic and cultural traditions, or, as we will see, with law.

Law as Identity

Law as identity is the philosophical concept of law, against the background of an internalized model of existence, cultivated through the legal system. It articulates the milieu and dialectical legal consciousness of the agent and its unfolding legal system from the performative actions exercised by the belongingness of an agent in a legal system. It is the expressive concept designed to demonstrate an internal, participant's view of a community's legal practice through the principles of performativity and belongingness of the agent in that legal system.

- **The Principle of Belongingness**

The social contract theories allude to the fact that belongingness was a part of its component as people lived together in society following an agreement that establishes moral and political rules of behavior. It shows that all humans have a profound need to belong and that a sense of "belonging together" is a prerequisite for creating political communities. It is more encompassing to drive a legal system from a profound need of the agent of that system. Hence, the law as identity and its principle of belonging is more attuned to a pragmatic realization of the concept of law, as the agents within this system have a commonly held sense of legitimately belonging together towards some form of common future, and this future is advanced and guided where the law as

[62] Ibid;
[63] M. Sarup, Identity, Culture and the Postmodern World (Athens, GE: The University of Georgia Press, 1996), 11.

identity is understood and practiced. It is often the anchored understandings of the limits and boundaries of "belongingness" that then inform the possibility of a shared future in the community.

In developing this fundamental character of being as belongingness, Iroegbu initially defines belongingness as *a definitive principle in African communalism*[64]. He uses belongingness in a technical sense. It is, thus, for him, a principle of membership applied to a given community. This membership is not mere identification but a kind of belonging that is security-assured. This belongingness implies the basic commonness that makes a community a community, in our context, what makes a given African community such. Iroegbu shows that communalism makes belongingness an indispensable conceptual starting point for communal existence. Accordingly, Iroegbu explains thus: one native expression of belongingness is the term, *Umunna*. In this sense, *Umunna,* a basic community, transcends the nuclear family to mean, by extension, people of common lineage as well as the commonness of origin. Belonging, however, is the human need to be an accepted member of a group. Abraham Maslow suggested that the need to belong was a major source of human motivation. And since *no man is an island,* the need to belong to and with one another becomes a basic demand for man's existence and co-existence. In belonging, people form a community of togetherness, and strengthened by such togetherness, many activities are possible. Some theories in life have also focused on the need to belong as a fundamental psychological motivation. We belong to a group with which we have commonalities. This feeling of belonging is a basic need and a unique term in the dynamics of living and existence.

Thus, as observed by Mary Healy this sense of 'belonging together' can be a prerequisite for citizens without which a sense of political community committed to some form of social justice becomes less likely.[65] Belongingness bridges the diverse cultural and national differences existing over the geographical location as an overlapping or interaction; negotiated over time through the law as identity as a panacea for Africa's regional and continental integration. Law, more than any other institution, because of its ability to shape normative values and beliefs are often charged with transmitting these principles to successive generations. In being so designated, they are expected to contribute to the

[64] Iroegbu, P Kpim of politics: Communalism, Owerri International Press. (1996b) p.45
[65] Mary Healy, The other side of belonging: Studies in Philosophy and Education (2020) 39:119–133 https://doi.org/10.1007/s11217-020-09701-4. Accessed on 20/05/22

development of identity-forming bonds needed by individuals and underscore the political belonging needed by the state, often created through a better understanding of law as identity, because of its power to form 'connectedness' in society. In other words, connecting ourselves in this way to the fabric of our surroundings is to see ourselves as an integral part of a system or community that shared the rootedness and support offered therein.

Hence, Iroegbu asserts that "belongingness makes sure that all belong and none is marginalized, both contributively (duties and responsibilities) and distributively (sharing of communal cake)[66]." One is ever conscious of where one is putting oneself or belonging. The importance of communal existence is a rational provision aimed at a better understanding and appreciation of man, not as a discrete individual but as a being - properly expressed in belongingness as *Igwebuike* This understanding has provided an enduring manner of attending to man as being with inalienable interconnectivity with the rest of men. And so, the idea of coexistence as the bedrock of caring and concern (sympathy) is highly significant in Africa as a whole. Hence, the Igbo people normally talk of power as belonging to the multitude (*Igwe-bu-Ike*), especially when they cohabit or live together as in an extended family system, a form of *onyeaghana nwanneya*!. The very concept of the multitude is in itself understood as a source of power and authority.

- **The Principles of performativity**

J.L. Austin's introduction of the notion of a 'performative utterance' into the philosophy of language was aimed at undermining precisely this representational and assertoric understanding of language. 'Performative utterances' – such as naming ships, saying 'yes' in a wedding ceremony, leaving a will, declaring war, pronouncing a sentence in court, and so forth – have the power of doing and executing what they say as they say it[67]. For Austin, this 'power' is precisely not rooted in the linguistic and grammatical form of an utterance, but in its institutional embeddedness in the practices of a society. In other words, we don't speak about the world, but act, by speaking, within the world.

[66] Iroegbu, P., Metaphysics: Kpim of philosophy. Owerri: International University Press. (1995). P 19
[67] Austin, John (1962a): How to Do Things with Words, Oxford: Taylor and Francis.

Therefore, performativity involves realizing that the cultural and national identities that are worthy of respect often require some form of acknowledgment or recognition in the public life and legal institutions of a society to secure a sense of law as identity. The actual forms of acknowledgment or recognition are various and mutable, and they must be worked out by citizens and their representatives through the understanding of law as identity through democratic discussions, agreements, and periodic reviews, and are held accountable in principle. The term 'performativity' is the tool to describe this accountability scenario against measurable outcomes and the propensity of the legal institutions to comply with areas of practice that maximize outcomes as defined by these criteria.

Owning to Austin's (1962) notion of performative utterances I wish to consider the performative nature of statements made in legal institutions when in characterizing people in various ways we categorized them as people of a certain kind. Does Austin's work aid us to understand the self or the individual as being constituted in certain ways? Yes, for we were offered conceptual tools from him for understanding how selves might be constituted as subjects of performativity.

Furthermore, within the performative category, Austin draws distinctions between the locutionary, illocutionary and perlocutionary aspects of language. Briefly, these three correspond respectively to the utterance of a 'statement' which is to do something in the very utterance (provide a description, make a report, etc.), to do something else in making that utterance ('I do'), and to bring about something different by making the utterance ('I convinced him that . . . ')

Law as Identity and Social Justice

The theme of social justice can be expressed, concerning the regulatory problems it poses, in the question: what regulatory forms are available, feasible, and appropriate for economic and other planning, and organizations generally, to serve the interest of sharing the benefits of life among all citizens? The theme of law as identity can be expressed, concerning the regulatory problems it poses, in the question: what forms of regulation and institutional forms are available, feasible, and appropriate to secure as fully as possible the capacity of each citizen to act autonomously to the same extent as - and together with - all other citizens in determining the conditions which shape her or his life? What links these themes of social justice and law as identity is the value of equality, which is expressed in an assertion of the right of all citizens to share in society's benefits and to participate in collective life. Law as identity and social justice in these

senses can be considered, for example, concerning political institutions, economic enterprises, domestic relationships, and community organization.

To discuss whether or not public institutions in a society are just, Susan R. Wysor Nguema opined that one should understand the historical context of justice theory, which is rooted in social contract theory[68].

Thomas Hobbes (1588-1679) first introduced social contract theory in the mid-17th century. Hobbes asserted that for men to truly practice their free will they had to give some freedom away to governing power, or public institutions, that would ensure that laws and regulations were put in place to keep individuals safe in society.[69] Button as cited in Wysor Nguema SR furthered the discussion on Hobbes' theory by arguing that most texts leave Hobbes in a state-versus-individual tension. He, however, saw Hobbes' work as an ongoing search for civil accord through a deeper understanding of justice and a desire by people to compromise and see the greater good to build and transform institutions that reflect the diversity of society[70].

John Locke saw individuals as having moral guidance even before there was governing guidance through public institutions. This moral guidance kept individuals from interfering with the freedom of others and allowed each person to have equal access to the property, a key component of Locke's theory.[71] However, unlike in Hobbes' version of social contracts, Locke allowed for the disintegration and reformulation of government and leaders; should an immoral leader attempt to take property from the people.

According to Jean-Jacques Rousseau (1712-1778), the turning point was the development of the private property. As individuals began to gain property, inequality became more prevalent as did greed and competition. Rousseau saw

[68] Wysor Nguema S.R. (2017) Confidence in public institutions: a difference-in-differences Analysis of the attitudes of blacks and whites in south Africa and the united states 1981-2006. Center for Social Work Education.

[69] Hobbes, T. (1968). Leviathan [1651]. Classics of Moral and Political Theory, Ed. M. Morgan, 581-735.

[70] Button, M. E. (2008). Contract, culture, and citizenship: Transformative liberalism from Hobbes to Rawls. University Park, PA: Penn State Press.

[71] Ibid.,

political society and public institutions as overtly organizing individuals into civil society, but covertly maintaining inequality and power imbalances[72].

John Rawls (1971), following in the traditions of Hobbes, Locke, and Rousseau, among other social contract theorists, also assessed justice from a symbolic position that he called the veil of ignorance. This was akin to the State of Nature discussed by previous theorists. Rawls argued that, behind the veil of ignorance, individuals who are making decisions about the society they want to create would be unaware of their status in society and the attributes that they hold, for example, gender, race, and ability. Rawls argued that only from this position of ignorance could humans make decisions about a truly just society.

Rawls also set forth an order for principles of justice, arguing that in a just society (1) everyone must have equal access to basic liberties and (2) social and economic inequalities must both benefit everyone and be attached to positions in society available to everyone. In doing so, Rawls posited that a society must be first concerned with civil liberties and justice before concerning itself with social or economic advantages. Without this prioritization of values, equal citizenship and equal opportunity would be diminished[73].

A common theme across the work of all four theorists was the balance between equity and opportunity in society and individual power and privilege. Thus, Law as identity as the legal coherentism of truth and justification of equity and opportunity, individual power and privilege in the legal system advanced Social justice and inclusivity. For social justice to prevail in a society, all members of that society must have equal access to participation at a variety of levels. They must be recognized as citizens from civil, political, and social perspectives and this, Law as identity has achieved, a panacea for Africa's regional and continental integration.

Conclusion

There are various conceptual analysis of the concept of law in the positivist tradition. These analysis has over the years influenced the tenents of many legal systems and views of various theme in jurisprudence. Over and above all, Law as identity is an inclucive concept of law that best addresses the miraid of social problems in Africa and thus, will abate the gap of Africa's regional and

[72] Wysor Nguema S.R. (2017) Confidence in public institutions.
[73] Ibid.,

continental disintegration. It is a legal phnenomen that speaks in an inclusive manner as it portrals a two fold denmensions of active participations (belongingness and performativity.) in the formation of the concept of law, as law as indentity.

Law as identity, a panacea for Africa's regional and continental integration, presents us as members of a system or the community, our lives have to be joined together in a profound habit: by participating in this system or community, we share the formation and shaping of the collection of laws and principles we agree to live by and see ourselves as part of a larger imagined community in this way allows one to transcend the limitations of one's own body to give the potential for meaning to one's life, to create a shared legal identity and to give access to collective goods. But it is also to accept, have sympathy, or agree with a network of mutual obligations and values.