METHODS OF SOCIAL CONTROL THROUGH THE LAW
LECTURE SUMMARY – LEGAL METHOD 2018/2019 SESSION

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NB: This is just a summary or highlight/elaboration of important points raised in the class discussion. To fill in the details consult the approved textbooks

This lecture will focus primarily on the question “How does the law do what it does”? or “What does the law’s methodology consist of”? These questions are treated by Hans Kelsen in his work “The law as a Specific Social Technique”¹ and by R. VON JHERING, “Law as a Means to an End” or by Hocking, “The RELATION OF Law to Social ENDS”². However, the most apposite discussion of the subject for us at this level, is by Professor Robert Summers in his article “the Technique element in law”³

In every society, there are social functions which may be discharged by employing various social techniques. According to professor Summers, some of these social functions include reinforcement of the family; promotion of human health and a healthy environment; maintenance of community peace; provision for redress of wrongs; recognition and ordering of property ownership; preservation of basic freedoms; protection of privacy; etc.

The social techniques are collective ways of discharging these social functions and are subdivided into nonlegal and legal techniques. Two examples of nonlegal techniques, according to professor Kelsen are morality and religion. Legal techniques involve the use of the law in discharging social functions.

Professor Summers make the valid point that law is not just one single technique but a set of techniques. Such techniques according to him are fivefold

1. The grievance-remedial technique
2. The penal technique
3. The administrative-regulatory technique
4. The public benefit conferral technique
5. The private arranging technique.

Professor John Farrar and Anthony Dugdale in their book Legal Method also add two other techniques

6. The Constitutive technique

¹ 9 U. CH. L. REV. 75 (1941)
² 10 J.PHIL. 512 (1913)
The Fiscal technique

We will also in this discussion, discuss in rudimentary outline another technique whose relevance and importance is growing considerably but which has not been included as part of our legal methods syllabus (you will be properly appreciate this technique which operates under international law in your final year in Public International Law class). This technique is

The State-regulatory technique.

We shall examine these techniques in detail after the following introductory discussions

LAW AS AN INSTRUMENT OF SOCIAL CONTROL

Law is an instrument of social control which is employed to maintain social order. According to Farrar and Dugdale, the laws assists in maintaining social order by:

i. Maintaining private order – alternative to private feud and vengeance and other informal dispute resolution processes. It also does this by suppressing deviant conduct

ii. Making possible (facilitating) co-operative action by recognizing basic interests and providing rule framework for effectuating them

iii. Constituting and regulating principal organs of power

iv. Communicating and reinforcing social values by enforcing some shared morality

WHY IS IT IMPORTANT TO HAVE A FORM OF SOCIAL CONTROL?

1. Human nature makes it imperative that there should be a way to regulate the conduct of individuals that affect the society

2. The fact of community life and need for social order demands that there should be restraint, predictability, consistency, reciprocity and persistence in human conduct.

The human nature as well as the fact of community life make it necessary to have the law as a form of social control. There are various other means of social control, such as family, church, school and professional organizations. These other means may employ customs, public opinion, religious rules and morality to control individuals, but the law rather often uses sanctions to control behaviour.

This human nature despite the difficulty in scientifically pinpointing what it really is, has been identified by H.L.A Hart as being characterised by

1. Human vulnerability

2. Approximate equality

3. Limited Altruism/measure of selfishness

4. Limited resources

5. Limited understanding and strength of will.

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It is because man is susceptible to being harmed by the activity of others and does not have an immunity to shield him from negative activities of others coupled with the fact that he is in most cases almost equal to his fellow humans whether in physical or mental strength and could decide to take matters into his own hands either to protect himself or to oppress others that one begins to recognize the need for a law to stand as an impartial arbiter between him and his fellow humans.

Combined with these factors is the truism that human beings are not altogether selfless and public minded. There is a streak of selfishness in the best of us and that innate drive to favour oneself and advance our personal agenda, sometimes at the cost of others. Economic theory recognizes the fact that there are unlimited wants and needs and very limited resources to meet those needs or wants. If there were no means of dividing these scarce resources, anarchy would inevitably be the outcome as people who have a tinge of selfishness begin to scramble for these resources.

Finally, the problems and challenges of life are indeed very complex and myriad, and we are often confronted with problems we cannot solve, or we need others to help us solve. This is because we are all limited in our knowledge and understanding and the strength of will to carry out or implement even the resolutions and solutions to our challenges. That is why some in desperation take to crime and anti-social activities in order to solve their problems. The law stands at such points to define the socially accepted conducts and to serve as deterrent to keep those who would have easily strayed in line with its sanctions. Because of these necessitating factors, law operates as an instrument of social control which is employed to maintain social order and ensure smooth functioning of society.

TECHNIQUES/METHODS OF SOCIAL CONTROL THROUGH THE LAW

Techniques or methods of social control through the law are the various systems, ways or procedure that a legislator can adopt to achieve social ends or control social behaviour of citizens that affect others through law.

1. PENAL TECHNIQUE –

This is the method in which the law uses punishment or sanctions directed against the life, liberty or property of an offender to suppress deviant behaviour. It operates through the criminal law. It spells out the prohibited conducts, specifies the penalty for breach of its stipulations, outlines the procedure for determining the guilt of its violators and prescribes the appropriate punishment for any person adjudged guilty of an infraction of its rules.

In Nigeria, these substantive provisions are contained in such statutes as the Criminal Code for the south and the Penal Code for the North, while the procedural provisions are contained in the Criminal procedure Code for the North and the Criminal procedure Act for the South, both of which have been replaced by the Administration of Criminal Justice Act 2015. Other

substantive criminal law provisions may be found in other legislations like the Economic and Financial Commission Act (EFCC), the National Drug Law Enforcement Agency Act, etc.

According to Farrar and Dugdale, the penal technique involves rules prohibiting certain deviant behaviour, the maintenance of a police force and other enforcement agencies to detect and prosecute violations, together with a system of courts to adjudicate questions of criminal liability, and also involves the maintenance of prisons, custody centres and such other places as a penal system. And it is therefore merely the part of the legal system created for the specific purpose of applying the penal technique.6

The criminal justice system executes the penal technique. The criminal justice system consists of the Police Force, the courts and the prisons.

Criminal procedure or the penal technique is set into motion when a victim makes a complaint to the police about a crime, who then swings into action to investigate, make arrest or conduct searches, grant or refuse bail to the arrested persons, draft charges, arraign the accused persons in court, prosecute the case in court and defend an appeal if the accused goes on appeal. (the police can also initiate an investigation on their own without a complaint from an aggrieved citizen)

The punishment meted out to the offender depends on the nature of the offence and may be a monetary fine, imprisonment or corporal punishment or death

The penal technique respects the principle that there can be no offence without a written law, which in Latin reads “nullem crinem sine lege, nulla poena sine lege – see the case of Aoko v. Fagbemi and s. 36(12) 1999 constitution

The Nigerian criminal justice system adopts the adversarial system which presumes the accused to be innocent until proven guilty

Before punishment is meted out, there must be proof beyond reasonable doubt

The state plays the paramount role in the penal technique in investigating and prosecuting the defaulters. Private persons can only prosecute if they receive the fiat of the Attorney General to do so. – see the case of Akilu v. Fawehinmi

Penal technique is a means of social control that fosters social order because it identifies conducts that it considers inimical to the society and condemnable enough to warrant imposing sanctions on the offender. It thus suppresses deviant conduct and communicates and reinforces social values. In the words of professor Friedman, the communal law is a barometer of the moral and social thinking of a community.

SUMMARY

i. The aspects of the penal technique which are important to note are

a. Prohibition of certain anti-social conduct by the penal technique
b. Prescribing punishment for anti-social conduct
c. The maintenance of law enforcement agents like the police and other officials to enforce its prohibitions and to investigate and detect violations of its prohibitions
d. Administering processes for resolving questions of penal liability
e. Operating a correctional system and institutions like prisons, remand homes, borstal institutions etc.

ii. The penal technique is prohibitory and operates within the criminal law.

Alternatives to the Penal Technique

a. Non-intervention – this encompasses the use of criminalization and de-criminalization, morality and ethics in areas where legal intervention is not morally justifiable or practicable, for example private sexual behaviour or with child offenders and also private arranging methods in cases not too serious or involving family members
b. Self-help/reciprocity (an eye for an eye and a tooth for a tooth) – this is alternative is usually a mark of an undeveloped system and often leads to violence and anarchy
c. Censure by Public Opinion which may be organized or unorganized (this worked effectively in the traditional societies which were closely bonded and were still experiencing the organic solidarity as propounded by Emile Durkheim
d. Warning or caution – which may be an alternative to or an integral part of penal system. This may require the making of a binding over order, binding an individual over to keep the peace. The order is designed to prevent future misconduct and may require the individual to promise to pay a specified sum if the terms of the order are breached. Oftentimes child offenders or petty offenders may just be simply warned instead of being punished with the full punishment prescribed by law
e. Compounding – The Nigerian Supreme Court in the case of PML (NIGERIA) LIMITED v. FEDERAL REPUBLIC OF NIGERIA (PML (NIG) LTD v. FRN (2017) LPELR-43480(SC)), made a distinction between condonation, “compounding an offense” and “compounding a crime” which may all seem like related concepts. According to the Court, "Condonation" is "the voluntary overlooking or pardon of an offence" or an "implied pardon of an offence by treating the offender as if it had not been committed". It differs from compounding of an offence in that compounding does not mean that the offence had not been committed, but by condoning the offence, the offender is treated as if the offence had not been committed in the first place. The court further held that “Compounding a crime” should not be confused with “compounding an offence” since compounding a crime is a crime in itself but compounding an offense is legitimately recognized in law. It adopted the Black’s Law definition of "Compounding a crime" as follows “The offense of either agreeing not to prosecute a crime that one knows has been committed or agreeing
to hamper the prosecution”. For the meaning of “compounding an offence” it relied on the UK Essays which provided that “"Compounding of offences” on the other hand, is an act on the part of the victim, who decides to pardon the offence committed by the accused person, and requests the Court to exonerate him. This does not mean that the offence has not been committed; it only means that the victim is willing to pardon it or has accepted some form of compensation for what he or she has suffered. So, the compounding of offences terminates the legal proceeding against the offender and he is entitled to an acquittal.”

There is a little difficulty with this distinction between compounding an offence and compounding a crime, which I will not bother you with but it is sufficient for our purpose that you know that compounding a felony is still a crime under section 127 of the Criminal Code which provides that “Any person who asks, receives, or obtains, or agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person upon any agreement or understanding that he will compound or conceal a felony, or will abstain from, discontinue, or delay a prosecution for a felony, or will withhold any evidence thereof, is guilty of an offence.” However, our law specifically provides for instances when it is possible to compound an offence. This is for example provided for in the Economic and Financial Crimes Commission Act (EFFC Act 2004) in its section 14(2) which reads inter alia: “the Commission may compound any offence punishable under this Act by accepting such sums of money as it thinks fit exceeding the maximum amount to which that person would have been liable if he had been convicted of that offence”

In such an instance as recognized under the EFCC Act above, compounding can be used as an alternative to the penal technique

2. Grievance-remedial Technique –

In this technique, the law recognizes wrongs or conducts that cause harm or pain to others for which remedies should be provided by the law distinct from the punishments of the penal technique. In the words of Professor Summers, “The grievance-remedial technique defines remediable grievances, specifies remedies, administers processes for resolving disputed claims to such remedies, and provides for enforcement of remedial awards.”

While the penal technique punishes conduct, which is considered harmful primarily to the state or society, the grievance-remedial targets the injury or pain or harm caused to an individual

This technique provides substantive rules that create rights and duties and the remedies that apply when the rules are breached. It works through the civil law and civil courts who adjudicate on the claims for remedies. According to Farrar and Dugdale “This particular technique involves the statement of substantive legal rules, principles and standards which
create rights and duties to back up those rights. It involves the existence of civil courts to process claims for the establishment of remedies. A particular conduct may be handled either through the grievance-remedial or penal technique because it constitutes both an offence and a civil wrong, for example, assault which is both an offence and a tort.

The remedies employed by the grievance-remedial technique includes damages (which may be liquidated or unliquidated, special, general or exemplary), specific performance, injunction (which may be prohibitive, mandatory, interim or perpetual) etc.

This technique operates within the civil law and is reparative in its primary thrust. The operation of grievance-remedial technique is seen in such areas of law as law of contract, commercial law, law of torts, property law, Equity and Trusts, labour law, etc.

The grievance-remedial technique postpones the action of the executive branch of government to the last stage in the settlement of a private controversy between individuals… the government merely arbitrates differences between individuals through the courts after the difference has arisen, and then enforces the courts award through the executive.

Grievance-remedial technique as a method of social control ensures social order by facilitating co-operative living through its recognition of basic interests and providing framework for effectuating them. By virtue of this method, private wrongs are settled amicably through the law and offended victims are not left to resort to self-help and vengeance.

SUMMARY

1. This method has the following components
   a. Defines remediable grievances – *ibi remedium ibi jus*. Not everything that hurts you will attract a remedy
   b. Specifies remedies – for every hurt there is a specific remedy. May be damages, restitution, rescission, injunction, specific performance etc
   c. Administers processes for resolving disputed claims to such remedies
   d. Provides for enforcement of remedial awards

2. This technique or method is reparative

ALTERNATIVES TO THE GRIEVANCE-REMEDIAL TECHNIQUE

a. Penal technique – some conducts constitute both a crime and civil wrong. Thus, for such cases, the suspect may be prosecuted as well as being sued for damages. The rule in Smith v Selwyn, however prohibited the bringing of an action in Tort

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if the conduct also constituted a felony. The above rule appears to have been abolished in Nigeria by virtue of the decisions of the Court of Appeal. In *Alamieyeseigha v. F.R.N.* (2006) 16 NWLR (Pt.1004) pg.1 the Court of Appeal held:

“I agree with and accept the respondent’s submission on the abrogation of the archaic rule in *Smith v. Selwyn* (1914) 3 KB 98 or its inapplicability in Nigeria for its being a “clog in or to the wheel of administration of justice” – see *Veritas Insurance Co. Ltd. v. City Trust Investment Ltd.* (supra); *James v. IGP* (supra) and *A.-G., Fed v. Dawodu* (supra)…

The reason for holding the rule inapplicable was earlier explained by Aderemi JCA in the case of *ALAO v. NIDB* (1999) LPELR-6673(CA) as follows:

"The intendment of the Rule in *Smith v. Selwyn* is primarily to avoid the compounding and the concealment of a felony hence it dictates a hold on further proceedings in an action for damages founded on a felonious act alleged to have been committed by the defendant against the plaintiff until the defendant has been prosecuted or a reasonable excuse offered for his non-prosecution. The appellant and the respondents are ad idem in their respective briefs that where a criminal act which consequently injures public feeling is also a civil injury to a person, that person shall not be permitted to seek a redress for the civil injury until the injured public feeling is first assuaged. The rule founded on public policy and aptly stated by Swinfen Eady L. J. in his judgment in *Smith & Anor. v. Selwyn* (1914)1 K.B. 98 (Court of Appeal, England) was long ago enshrined in the jurisprudence of England until it was abolished thereby the promulgation of Criminal Justice Act, 1967 Section 1 thereof. The application of the rule has since stopped in England. However, the rule has been followed in a number of cases in Nigerian Courts. See (1) Ojikutu v. A.C.B. (1968) 1 All NLR 40; (2) *Haco Ltd. v. Udeh* (1959) NMLR 61 and (3) Fulani v. Idi (1990) 5 NWLR (Pt.150) 311. The appellant in his brief of argument contended that the rule is still in force in Nigeria as no decree or act has been promulgated repealing it nor has the Supreme Court, the highest court of the land, overruled its earlier decisions where in which it applied the rule. On the other hand, the respondents, through its brief of argument contended that the rule has constituted a clog in the wheel of proper administration of justice and this is an anachronism. It defeats the end of justice. It further contended that the combined effect of Section 5 of the Criminal Code Act 1958 (now Cap 77 of the Laws of the Federation, 1990) and Section 8 of the Interpretation Act is that a pending criminal matter must never be allowed to stand in the way of an aggrieved person from seeking a redress in the court of law. Section 5 of the Criminal Code provides: "When by the code any act is declared to be lawful, no action can be brought in respect thereof. Except as aforesaid, the provisions of this Act shall not affect any right of action which any person would have had against another if this Act had not been passed." Section 8 of the Interpretation Act 1964 provides: "An enactment shall not be construed as preventing the
recovery of damages in respect of injury attributable to any act by reason only of the fact that the enactment provides forfeiture or punishment in respect of the act." Let me say straightaway that Nigerian Courts preserve and follow, stricto sensu, the common law doctrine of stare decisis - which literally translated means that a lower court must for all times hold itself bound by the decisions of a higher court or better put by the decisions of the Highest court of the land until they are seen to have been overruled. The highest court of our land undoubtedly, is the Supreme Court. Such decisions of the Supreme Court can only be annulled by legislation, or a Decree or by rules regulating the practice and procedure as given by the judicial decision of the Supreme Court itself given intra judicially when it is satisfied that its previous decision was reached per incuriam or that it would perpetuate injustice. See Bucknor-Maclean v. Inlaks Ltd. (1980) 8-1 1 S.C. 1. It follows that it is only the Supreme Court, sitting as a full court that can depart from its previous decisions. See Yonwuren v. Modern Signs (Nig.) Ltd. (1985) 1 NWLR (Pt.2) 244; (1985) 2 S.C. 86 and Ojokobo v. Alamu (1987) 3 NWLR (Pt.61) 377. I shall now examine the cases in which Nigerian Courts have considered the applicability of the rule in Smith v. Selwyn. In Ojikutu v. A.C.B. (supra) which touches on banking transaction and the Supreme Court considered the circumstances for the application of the rule in Smith and Selwyn. In that case the defendant had averred in his statement of defence paragraph 5 thereof thus: "The defendant avers that there is a written agreement for a loan of ₦13,000.00 between the plaintiff and defendant and that the said agreement was altered and forged without the knowledge and consent of the defendant." Based on this averment the counsel for the defendant had, argued before the Supreme Court that the application was sufficient to bring the rule into force. That argument had been overruled by the trial Judge. The Supreme Court said at page 45: "Mr. Ojikutu submitted to us that the principle in Smith v. Selwyn...was that the plaintiff must be deprived from benefitting from his felonious act and so could not be permitted to sue if the defendant alleged that he based his claim on a felonious act. We do not see that Smith v. Selwyn decided anything of the sort. It was dealing with exactly the opposite situation where a plaintiff was bringing an action against a defendant for damages based on a felonious act of the defendant...No authority was cited to us to show the converse applied and we consider the learned trial Judge was right to reject the submission that Smith v. Selwyn could be extended in the way that was suggested." It will be seen from the above quotation that the Supreme Court never held that the rule in Smith v. Selwyn was applicable to the case before it. In the recent case of Okonkwo & Ors. v. Obunseli & Anor. (1998) 7 NWLR (Pt.558) 502 in which the dispute was as to whether the respondents (plaintiffs in the court below) were right in instituting a civil action against the appellants (defendants in the court below), while the criminal prosecution of the appellants was still going on or pending at the Chief Magistrates Court or they should have waited for the completion of the said prosecution before instituting this action, this court (Enugu Division) per the leading judgment of Akpabio JCA said at page 511: "In my respectful view, I think that the emphasis in both the
Torts Law and the Law of Actions Law including even the rule in Smith v. Selwyn (supra) itself was on the commencement of prosecution rather than on its conclusion. This is borne out of the fact that even in Section 5 (1) of the Torts Laws 1987 under the last two subparagraphs (b) and (c) set out above, it is not even necessary that any prosecution should have been commenced. Under sub-para. (b) it is sufficient that a mere report is made to the police who fail to prosecute or sub-para. (c) reasonable excuse is offered for failure to prosecute the felony. In the same case Tobi JCA added at page 512 and I quote:- In the light of the state of the statutory laws at the Federal level which make the English Common Law rule in Smith v. Selwyn (1914) 3 K.B. 98 no more applicable in Federal matters it is a matter of some serious concern why Section 9 (1) of the Law of Actions Laws (1981) and Section 5(1) of the Torts Law 1987 of Anambra State should still operate. That apart, the entire policy behind Smith v. Selwyn will work injustice particularly in Nigeria where it, at times, takes so much time to apprehend an accused person. And what is more, proof of a criminal matter is quite different from proof of a civil matter and there is really no justifiable reason why the two should be so related in terms of prosecution. Section 8 of the Interpretation Act 1964 now embodied in the Laws of the Federation 1990 Cap. 192 Section 8(2) thereof which I quoted above is a Federal Legislation: it is unambiguous, the wordings are very clear and straight forward and giving same the ordinary and simple grammatical meaning and connotation which the law enjoins. See Olanrewaju v. Arewa (1998) 11 NWLR (Pt.573) 239; the only conclusion I can reach and which I reach is that the English Common Law Rule in Smith v. Selwyn is no more applicable in Nigeria. To hold otherwise is to deny an aggrieved person the right to seek a redress in the citadel of justice. The Limitation Law with all its excruciating weight will be allowed to descend on him prostrate having been tied down by that rule. Even in England where process of seeking justice is not tardy as here, the rule in Smith v. Selwyn has in their collective wisdom been rendered out of operation. To encourage its application in this country giving the prevailing conditions is to allow for the rolling out of a clog in the wheel of administration of justice. Per ADEREMI, J.C.A. (Pp. 15-20, paras. CG)

The above decision in Alao’s case came was later in time to the case of Veritas Insurance Co. Ltd. v. Citi Trust Investments Ltd. (1993) 3 NWLR Pt. 281, P. 349 at 365, where the Court of Appeal had expressed the position that in view of the combined provisions of the Nigerian Constitution, Criminal Code Act and the Interpretation Act, the rule in Smith v Selwyn no longer applies in Nigeria. Reading the unanimous judgment of the Court of Appeal, Niki Tobi JCA as he then was, stated:

“It appears that the decisions to the effect that the rule (in Smith v. Selwyn) applies in Nigerian law were made per incuriam. It is my view that the rule is not applicable in Nigeria in view of the very clear two local statutory
provisions. Section 5 of the Criminal Code Act ... is one, section 8 of the Interpretation Act... is another. Let me state verbatim ad literatim the provisions of the two statutes: First, section 5. The section provides that the Criminal Code: ‘Shall not affect any right of action which any person would have had against another if the Act had not been passed’. Second, section 8 (of the Interpretation Act). The section provides thus: ‘An enactment shall not be construed as preventing the recovery of damages in respect of injury attributable to any act by reason only of the fact that the enactment provides for a penalty, forfeiture or punishment in respect of the act’. In the light of the above statutory provisions, it is not correct to contend… that the rule applied in the case. It does not. Apart from the clear position of our law, it does not even seem to be a sensible thing to stop a plaintiff from instituting an action merely because the criminal action on the same matter has not been prosecuted. Certainly, a man who is aggrieved should have nothing to do with a criminal matter before instituting a civil action. The criminal matter is the concern of the State, so to say, while the civil matter is the concern of the aggrieved individual.”

b. Private settlement – example a liquidated damages clause in a contract
c. Insurance - example in car accidents
d. Arbitration

3. Administrative-regulatory technique –

In this technique, the state sets up administrative bodies and agencies to regulate wholesome activities which it is not reasonable to leave its operation to the discretion of individuals. By virtue of such regulations, the government prescribes minimum standards in the overall interest of the public⁹

Such activities are those that are important to the progress of society and which is fraught with danger to the society if not done according to prescribed standards, example, broadcasting, air transportation/aviation, establishment of schools, provision of foods and drugs, mobile telephony and wireless communication services, manufacturing of goods etc.

Such administrative agencies involved in this kind of regulation include National Agency for Food and Drugs Administration (NAFDAC), Standards Organization of Nigeria (SON), Nigerian Communications Commission (NCC), etc.

The Administrative-Regulatory technique differs from the grievance-remedial in that it is designed to operate preventively, before any grievance has arisen¹⁰. Here, administrators created by the law, take precautionary steps to ensure that parties whom the law has made subject to regulation, comply with the legally specified regulatory standards so that nothing harmful or irregular happens. It is also different from the penal technique

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even though it imposes sanctions for breach of regulatory standards, in that it regulates wholesome activity rather than prohibiting antisocial behaviour altogether. Its primary thrust therefore is regulatory.

Summers identified two more general differences between the penal technique and the administrative-regulatory technique. First, under the regulatory technique, regulators must inform regulates of what is expected of them in order to comply with the regulatory standards through promulgation of general standards and issuance of specific statements. In contradistinction, this informational function is not as significant in the penal technique where there is a rule that ignorance of the law is not a valid excuse for violation of its precepts. The legislator, police or prosecutors are not under any obligation to tell citizens what conduct is wrong.

The second difference identified by Summers is that the prospect of incurring moral disgrace for being convicted of a crime which plays an important preventive/deterring role in the penal technique is not similarly significant in the regulatory technique. This is true, because being fined or having one’s licence revoked for failing to meet regulatory standards do not carry the same moral disgrace as being fined or convicted for the offense of stealing for example. Thus, there is no consequential moral disgrace to deter a person carrying out the regulated activity or which will motivate such a person to comply with the standards.

Here, the government officials or agencies adopt regulatory standards, communicate these standards to those participating in the regulated activities and take steps to ensure compliance. These steps may include a system of licensing, inspection and warning letters, revocation of licence or bringing of administrative proceedings, civil litigation or criminal prosecution ultimately.

The government may also by imposing the requirement of a licence for certain activities also administratively regulate operations in such sectors example, import/export licence, firearms licence, motor vehicle licence etc.

This method of social control ensures social order by ensuring that conduct which will constitute a harm to society or to individuals is prevented from occurring and upholding standards in certain important spheres of activity

4. Private-arranging technique

Law does not usually interfere with the individual’s private life except where the individual’s private transactions will have notable effects on society. In the Private-arranging method, the law while permitting the individual to make private arrangements to serve his interests, provides rules determining the validity of such private arrangements and transactions.

11 Ibid.
12 Ibid.738-739
13 Ibid. 739
14 Ibid.
15 Ibid. p.738, see also Farrar and Dugdale op.cit. p.27
This method can be seen in the law regulating marriage in family law, the laws of contract, probate law (law of wills), law of trusts, commercial law, the law of purchase and sales (commercial law) etc

For example, the Marriage Act determines the conditions under which a marriage is void or voidable, conditions for divorce etc, while the law of contract stipulates conditions for a valid contract

According to Farrar and Dugdale, what the law does here is to provide a framework of rules primarily determining the validity of the transaction as well as providing a system for determination of rights and duties and liabilities.

Summers breaks down the private-arranging legal activity into three primary ingredients which are

a. a grant to citizens of legal power to create the relevant private arrangement, such as a marriage, a will, a contract, or a private association or corporation
b. rules of validation that specify steps to be taken if legal significance is to be accorded the arrangement
c. affirmative significance that law will accord the arrangement once the appropriate validating steps are taken e.g. that of holding one party legally bound to another (or to several others) either to do or to refrain from doing something, and providing a method of enforcing this duty, the provision of remedies such as money damages or injunctive relief for unjustified departures from these arrangements, recognizing a status, such as spouse, owner, or member, and attaching various legal incidents to that status, such as sexual privileges, rights to income, voting rights of shareholders, or due process rights of union members, regarding an individual or group as qualified for some general legal benefit, such as the power to sue, a grant-in-aid, or eligibility for certification or licensing, confer immunity on a person or group from certain claims or defenses of others, as in the case of corporate shareholders who have limited liability, or certain religious and public service organizations that are exempt from taxation.

The primary thrust of this technique is to enable private citizens to realize benefits for themselves by themselves. Therefore, it facilitates and effectuates private choice. It does not give them things as such (public benefit conferral); it is not primarily regulative (administrative-regulatory); nor is it primarily prohibitive (penal) or primarily reparative (grievance-remedial).

CONFERRAL OF SOCIAL BENEFIT TECHNIQUE—

16 Farrar and Dugdale op.cit. p.24
17 Summers op. cit. p.744
18 Summers p.737
Here the law is used to give legal backing to the government to expend resources in providing social amenities and benefits to its citizens. In other words, it is the use of the law to make available social or governmental benefits to citizens. The law mandates and empowers the government to cater to the welfare of its citizens in order to avert discontent and social disharmony in society.

Social benefits are those welfare facilities which citizens enjoy as part of belonging to society. These include education, unemployment benefits, good roads, electricity, housing, health care, social security etc.

Most governments now have the added duty of providing social benefits which were originally left to public spirited individuals and charities. This is aimed at making sure that the citizens are happy with the state and government and would not engage in social strife or activities that demonstrate apathy and rebellion towards the government. It aims indirectly to maintain social harmony and equilibrium.

According to Summers, for public benefit conferral to be regarded as being legal in nature, legal ordering must play a role in it which is not merely accidental but is based on sound reasoning, and that ordering should have a significant bearing on the quality of benefits conferred. The legal ordering of such public benefit conferral relates to such matters as providing for a system of taxation, defining the nature of benefits to be conferred, specifying the beneficiaries and the terms and conditions, if any, upon which they are to receive the benefits, structuring the administrative and operational organization that is to implement the beneficial program and specifying the qualifications of required official personnel and the method of their recruitment etc.

Some of the programmes executed in Nigeria as part of this technique include Universal Basic Education programme, National Poverty Eradication Programme (NAPEP), Oil Minerals Producing and Development Commission (OMPDADEC), Niger Delta Development Commission (NDDC), Family Economic Advancement Programme, National Health Insurance Scheme (NHIS), Educational Trust Fund etc.

The primary thrust of this technique is to give things to people, rather than to exact compensation and it spends money raised by the fiscal for this purpose. Its primary thrust is distributional

Laws are used in the ordering of public benefit conferral to provide guidance to officials who are to confer benefits. It also makes it possible for the law makers in the process of formulating guiding laws, to face up to difficult questions and thus deliberate about important aspects of the proposed beneficial programs. It equally ensures that the burdens which must be imposed on the citizens in order to fund the programs is not carried out through informal, unregularized verbal understandings but only through laws and legal forms. It also makes it easier to determine whether the proposed distributions are fair and equitable since they are

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19 Ibid. p.739
20 Ibid. 740
21 Ibid. 737
spelled out in the law and not left to informal ad-hoc allocations. It also makes it possible for citizens to take advantage of the best available means of conferring benefits as well as it helps to combat and control official whims and caprice, when such proposed programmes are reduced into law and legal forms\textsuperscript{22}

**FISCAL TECHNIQUE**

This is the use of taxation to raise money for the government’s spending through legislations that impose a variety of such levies. Apart from raising money, taxation is also used to redistribute income and bridge the gap between the haves and have-nots. It is also used to stimulate economic growth. Government also often uses taxation to control social behaviour by imposing heavy taxes on conduct it considers anti-social. For example, in the 1998 budget the government increased the penalty for gas flaring by 1,900 percent. This was with the intention to discourage gas flaring and its damaging effects on the ecosystem of the oil producing communities.\textsuperscript{23}

Here, legislations are promulgated which imposes levies on the people, for example, income tax, corporation tax and capital transfer tax or tax on consumption of services like value added tax. The government agency responsible for collecting such taxes include the Federal Board of Internal Revenue and the State board of Internal Revenue at the Federal and state levels respectively.

This technique provides a means of raising funds and finance for governmental spending by levies, taxes which include Income tax, Corporation tax, Value added tax, etc.

**CONSTITUTIVE TECHNIQUE**

Under this technique, the law recognizes “a group of persons as constituting a legal person, separate from the individuals composed in the group”.\textsuperscript{24}

This technique is primarily aimed at the creation of an artificial legal person endowed with rights and duties like the right to sue and be sued in its own name, perpetual succession, limited liability etc. according to Farrar and Dugdale, the creation of a new legal person is the distinctive characteristic of the constitutive technique.\textsuperscript{25} It operates through company law to create such legal persons as a company limited by shares, companies limited by guarantee, incorporated trustees and statutory corporations.

The principle of legal personality of the company was established in the case of Salomom v. Salomon [1897] A.C 22

Constitutive technique also uses the law to recognize some collective interest without vesting them with legal personality example, partnerships, professional bodies and labour unions.

\textsuperscript{22} Ibid. p.740-741
\textsuperscript{23} Abiola Sanni, op. cit. p.103
\textsuperscript{24} Farrar and Dugdale op.cit. p.26
\textsuperscript{25} Ibid.
It fosters social order by facilitating co-operative actions

State-Regulatory Technique – (You will not be examined on this technique so you will receive a comprehensive note and lecture guide on this)

CONCLUSION

We have basically discussed in rudimentary form how the law does what it does in controlling social behaviour that affects others who are members of the society. Thus, the law either acts in a prohibitory manner through the penal technique or in a reparative manner through the grievance-remedial technique or in a regulatory manner through the administrative-regulative technique. It may also facilitate and effectuate private choice through the private arranging technique or act in a distributional manner through the conferral of social benefit technique. It may be used to raise revenue for the government through the fiscal technique or it may be used to recognize a group of persons as constituting a legal person, separate from the individuals composed in the group in the constitutive technique. Finally, it may regulate the activities of states by marshalling the rules of international law in the state-regulatory technique.

Understanding these techniques will give you the necessary foundational knowledge to enable you appreciate and understand the various aspects of law which you will meet in your undergraduate study and help you to properly engage with novel areas of law constantly evolving in contemporary times.

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